

MAGISTRATES' COURT ACT (MC)

MC S14 MESSENGERS OF THE COURT

- (7) A messenger receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the messenger any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the practitioner or plaintiff; and the magistrate may, if he is satisfied that a sum is due and payable by the practitioner or plaintiff to the messenger as aforesaid which notwithstanding request has not been paid, by writing under his hand authorize the messenger to refuse to serve or execute such process until the sum due and payable to the messenger has been paid.
- (8) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a messenger receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.

MC S15 SERVICE OF PROCESS BY THE POLICE

(1) (a) Whenever process of the court in a civil case is to be served or executed within any area for which no messenger has been appointed, and whenever process of any court in a criminal case is to be served, a member of the police force shall be as qualified to serve or execute all such process and all other documents in such a case as if he had been duly appointed messenger.

(b) The fees payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable but shall be paid into the Consolidated Revenue Fund.

(2) Whenever under any law a public body has the right to prosecute privately in respect of any offence or whenever under any law any fine imposed on conviction in respect of any offence is to be paid into the revenue of a public body, the process of the court and all other documents in the case in which prosecution takes place for such offence, shall be served -

(a) by a person authorized in writing by such public body;

(b) where it is expedient that such process shall be served in the area of jurisdiction of another public body, by a person authorized as contemplated in paragraph (a) by such other public body; or

(c) with the consent of the Minister by a member of the police force, in which case fees in accordance with the scale set out in the rules shall be paid by the public body or such compounded amount in respect of all such process and other documents in any year as may be agreed between the said public body and the Minister, and such fees or such amount shall be paid into the National

Revenue Fund.

(2A) The Minister may, by notice in the Gazette, determine the conditions of authorisation of a person referred to in subsection (2)(a) or any other matter relating to that authorisation.

(3) An officer in the service of a province of a class defined by the Premier of that province by notice in the Provincial Gazette of the province concerned, shall be competent to serve any process of the court or any other document in a case in which a prosecution takes place for an offence in terms of any law of that province as if he had been appointed as a deputy messenger of the court.

(4) An officer or employee in the service of the State of a class defined by the Minister by notice in the Gazette, shall be competent to serve any process of the court or any other document in a case in which a prosecution takes place for an offence in terms of a provision of any law specified by the Minister in such notice, as if he had been appointed as a sheriff of the court.

MC S16 MESSENGER'S DUTIES RESPECTING DETENTION OF PERSONS BY ORDER OF COURT

The messenger shall receive and cause to be lodged in a prison all persons arrested by such messenger or committed to his custody.

MC S17 MESSENGER'S RETURN TO BE EVIDENCE

The return of a messenger or of any person authorized to perform any of the functions of a messenger to any civil process of the court, shall be prima facie evidence of the matters therein stated.

MC S30BIS ATTACHMENT TO FOUND OR CONFIRM JURISDICTION

The court may order attachment of property to found or confirm jurisdiction against any person who does not reside in the Republic, in respect of an action within its jurisdiction, where the claim or the value of the matter in dispute amounts to at least R2 500, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing service of any process in such action to be effected in such manner as may be stated in such order.

MC S31 AUTOMATIC RENT INTERDICT

- (1) When a summons is issued in which is claimed the rent of any premises, the plaintiff may include in such summons a notice prohibiting any person from removing any of the furniture or other effects thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto has been made by the court.
- (2) The messenger shall, if required by the plaintiff and at such plaintiff's expense, make an inventory of such furniture or effects.
- (3) Such notice shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.
- (4) Any person affected by such notice may apply to the court to have the same set aside.

MC S32 ATTACHMENT OF PROPERTY IN SECURITY OF RENT

- (1) Upon an affidavit by or on behalf of the landlord of any premises situate within the district, that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to the said premises, and that the said rent has been demanded in writing for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to

remove the movable property upon the said premises, in order to avoid the payment of such rent, and upon security being given to the satisfaction of the clerk to the court to pay all damages, costs and charges which the tenant of such premises, or any other person, may sustain or incur by reason of the attachment hereinafter mentioned, if the said attachment be thereafter set aside, the court may, upon application, issue an order to the messenger requiring him to attach so much of the movable property upon the premises in question and subject to the landlord's hypothec for rent as may be sufficient to satisfy the amount of such rent, together with the costs of such application and of any action for the said rent.

- (2) Any person affected by such order may apply to have it set aside.
- (3) A respondent whose property has been so attached may by notice in writing to the clerk of the court admit that such property is subject to the landlord's hypothec for an amount to be specified in such notice and may consent that such property (other than property protected from seizure by the provisions of section sixty-seven) be sold in satisfaction of such amount and costs; and such notice shall have the same effect as a consent to judgment for the amount specified.

MC S45 JURISDICTION BY CONSENT OF PARTIES

- (3) Any consent given in proceedings instituted in terms of section 57, 58, 65 or 65J by a defendant or a judgment debtor to the jurisdiction of a court which does not have jurisdiction over that defendant or judgment debtor in terms of section 28, is of no force and effect.

MC S61 DEFINITION

In this Chapter-

'emoluments' includes-

- (i) salary, wages or any other form of remuneration; and
- (ii) any allowances,

whether expressed in money or not; and

"debts" includes any income from whatever source other than emoluments.

MC S62 POWER TO GRANT OR SET ASIDE A WARRANT

- (1) Any court which has jurisdiction to try an action shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.
- (2) A court (in this subsection called a second court), other than the court which gave judgment in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another court against a party who is subject to the jurisdiction of the second court.
- (3) Any court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section seventy-two.

MC S63 EXECUTION TO BE ISSUED WITHIN THREE YEARS

Execution against property may not be issued upon a judgment after three years from the day on which it was pronounced or on which the last payment in respect thereof was made, except upon an order of the court in which judgment was pronounced or of any court having jurisdiction, in respect of the judgment debtor, on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why execution should not be issued.

MC S64 EXECUTION IN CASE OF JUDGMENT DEBT CEDED

Any person who has, either by cession or by operation of law, become entitled to the benefit of a judgment debt may, after notice to the judgment creditor, and the judgment debtor, be substituted on the record for the judgment creditor and may obtain execution in the manner provided for judgment creditors.

MC S66 MANNER OF EXECUTION

- (a) Whenever a court gives judgment for the payment of money or makes an order for the payment of money in instalments, such judgment, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court, shall be enforceable by execution against the movable property and, if there is not found sufficient movable property to satisfy the judgment or order, or the

court, on good cause shown, so orders, then against the immovable property of the party against whom such judgment has been given or such order has been made.

(b) Upon such failure to pay any instalment in accordance with any court order, execution may be effected in respect of the whole of the judgment debt and of costs then still unpaid, unless the court, on the application of the party that is liable, orders otherwise.

- (1) No immovable property which is subject to any claim preferent to that of the judgment creditor shall be sold in execution unless-
 - (a) the judgment creditor has caused such notice in writing of the intended sale in execution to be served personally upon the preferent creditor as may be prescribed by the rules; or
 - (b) the magistrate or an additional or assistant magistrate of the district in which the property is situate has upon the application of the judgment creditor and after enquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, and those steps have been carried out, and unless -
 - (c) the proceeds of the sale are sufficient to satisfy the claim of such preferent creditor, in full; or
 - (d) the preferent creditor confirms the sale in writing, in which event he shall be deemed to have agreed to accept such proceeds in full settlement of his claim.
- (2) A sale in execution of such immovable property as is referred to in subsection (2) shall take place within such period of the date of attachment and in such manner as may be provided by the rules.
- (3) If a sale referred to in subsection (3) does not take place or the immovable property concerned is not released from attachment within a period of one year from the date of attachment, such attachment shall lapse.
- (4) The court may, upon the application and at the expense of the judgment creditor, after due notice of such application has been given to the judgment debtor,

extend the period of one year referred to in subsection (4) by further periods of one year each.

- (5) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a magistrate's court) desiring to attach immovable property that is already under attachment (whether made by a deputy sheriff or by a messenger) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the deputy sheriff or messenger of the court, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of this warrant.
- (6) A messenger who is directed to attach immovable property, shall not be precluded merely by the absence of the execution debtor from his place of residence or business, from discharging his duties, but may discharge his duties if he is able to do so and shall endorse a return of service to the court on the warrant.
- (7) If the execution debtor, having been requested by the messenger of the court to point out property in order to satisfy a warrant of execution against movable property, declares that he has no movable property or insufficient movable property and the messenger is unable to find sufficient movable property to satisfy the warrant, the messenger shall request the execution debtor to declare whether he has immovable property which is executable and shall enter the execution debtor's reply in his return of service endorsed on such warrant.

MC S67 PROPERTY EXEMPT FROM EXECUTION

In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, namely:

- (a) the necessary beds, bedding and wearing apparel of the execution debtor and of his family;
- (b) the necessary furniture (other than beds) and household utensils in so far as they do not exceed in value the amount* determined by the Minister from time to time by notice in the Gazette;
- (c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the amount* determined by the Minister from time to time by notice in the Gazette;
- (d) the supply of food and drink in the house sufficient for the needs of such debtor and of his family during one month;
- (e) tools and implements of trade, in so far as they do not exceed in value the amount* determined by the Minister from time to time by notice in the Gazette;
- (f) professional books, documents or instruments necessarily used by such debtor in his profession, in so far as they do not exceed in value the amount* determined by the Minister from time to time by notice in the Gazette;
- (g) such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment:
Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the amounts determined by the Minister in respect of paragraphs (b), (c), (e) and (f).

MC S68 PROPERTY EXECUTABLE

- (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.
- (2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied; and the execution creditor may, when the time of payment has arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.
- (3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.
- (4) Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession, as to any property sold by him in execution.

- (5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer. Anything done by the messenger under this subsection or subsection (4) shall be as valid and effectual as if he were the execution debtor.
- (6) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate may be attached and sold in execution.

MC S69 INTERPLEADER CLAIMS

- (1) (a) Where any person, not being the judgment debtor makes any claim to or in respect of any property attached or about to be attached in execution under the process of any court, or to the proceeds of such property sold in execution, his claim shall be adjudicated upon after issue of a summons in the manner provided by the rules.
- (b) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such property shall be stayed and shall abide the result of the proceedings taken upon such summons.
- (2) Where two or more persons make adverse claims to any property in the custody or possession of a third party such claims shall be adjudicated upon after issue of a summons in the manner provided by the rules.

MC S70 SALE IN EXECUTION GIVES GOOD TITLE

A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

MC S71 SURPLUS AFTER EXECUTION

If, after a sale in execution, there remains any surplus in the hands of the messenger, it shall be liable to attachment for any other unsatisfied judgment debt.

MC S71A MOVABLE PROPERTY WHICH MESSENGER CANNOT DISPOSE OF IN TERMS OF THIS ACT, SHALL BE SOLD BY PUBLIC AUCTION

(1) Any movable property in the custody of the messenger or any other person acting on his behalf in respect of which attachment has been withdrawn or which is released from attachment and in respect of which the owner or person from whose possession the property has been removed, cannot be traced, and which cannot be disposed of in terms of this Act, shall be sold by the messenger by public auction, and the proceeds of the sale shall, after deduction of the messenger's costs, be paid into the Consolidated Revenue Fund:

Provided that such sale shall not take place unless such property has remained unclaimed for a period of fourteen days after the messenger has published, in one English and one Afrikaans newspaper circulating in the district where the last known address of the judgment debtor is situated, a notice containing the name of the judgment debtor, a description of the property and stating the intention to sell such property if it is not claimed within the period specified therein.

(2) After the public auction referred to in subsection (1), the messenger shall draw up a vendue roll as if the sale was a sale in execution of property and shall attach the roll to his return in respect of the relevant process of the court in the case together with proof that the proceeds of the sale have been paid into the Consolidated Revenue Fund.

(2) The proceeds of a sale paid into the Consolidated Revenue Fund in terms of this section, shall be refunded out of accruing revenue to any person who satisfies a judicial officer of the district in which the sale took place that he would have been entitled to receive the property referred to in this section after the attachment thereof had been withdrawn or the property had been released from attachment.

MC S72 ATTACHMENT OF DEBTS

- (1) The court may, on ex parte application by the judgment creditor or under section 65E(1)(b), order the attachment of any debt at present or in future owing or accruing to a judgment debtor by or from any other person (excluding the State), residing, carrying on business or employed in the district, to an amount sufficient to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and make an order (hereinafter called a garnishee order) against such person (hereinafter called the garnishee) to pay to the judgment creditor or his attorney at the address of the judgment creditor or his attorney, so much of the debt as may be sufficient to satisfy the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.
- (2) If, after any such garnishee order in respect of any debt has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of the garnishee order, be left to the judgment debtor, the court shall set aside the garnishee order or amend it in such manner that it will affect only the balance of the debt over and above such sufficient means.
- (3) Any order under this section may at any time for good cause be suspended, amended or rescinded by the court.
- (4) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to make application for an administration order under section 74.

S74 GRANTING OF ADMINISTRATION ORDERS

(1) Where a debtor-

- (a) is unable forthwith to pay the amount of any judgment obtained against him in court, or to meet his financial obligations, and has not sufficient assets capable of attachment to satisfy such judgment of obligations; and
- (b) states that the total amount of all his debts due does not exceed the amount* determined by the Minister from time to time by notice in the Gazette,

such court or the court of the district in which the debtor resides or carries on business or is employed may, upon application by the debtor or under section 651, subject to such conditions as the court may deem fit with regard to security, preservation or disposal of assets, realization of movables subject to hypothec (except movables referred to in section 34 of the Land Bank Act, 1944 (Act 13 of 1944), or otherwise, make an order (in this Act called an administration order) providing for the administration of his estate and for the payment of his debts in instalments or otherwise.

- (2) An administration order shall not be invalid merely because at some time or other the total amount of the debtor's debts are found to exceed the amount* determined by the Minister from time to time by notice in the Gazette, but in such a case the court may, if it deems fit, rescind the order.

MC S78 EXECUTION OR SUSPENSION IN CASE OF APPEAL, ETC

Where an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application. The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

MC S79 PERSON WHO HAS MADE A *NULLA BONA* RETURN NOT TO INCUR DEBTS

Any person shall be guilty of an offence and liable to a fine not exceeding R300 if after a return of nulla bona has been made in respect of a judgment against him and before satisfaction of the said judgment, he obtains credit to an amount or amounts exceeding one hundred rand in the aggregate without previously informing all persons from whom he so obtains credit that there is an unsatisfied judgement against him and that a return of nulla bona

MC S81 REVIEW OF TAXATION

Taxation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district; and the decision of such judicial officer may at any time within one month thereafter be brought in review before a judge of the court of appeal in the manner prescribed by the rules.

MC S107 OFFENCES RELATING TO EXECUTION

Any person who-

- (1) obstructs a messenger or deputy sheriff in the execution of his duties;
- (2) being aware that goods have been placed under arrest, interdict or attachment by the court, makes away with or disposes of those goods in any manner not authorized by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner;
- (3) being a judgment debtor and being required by a messenger or deputy sheriff to point out property to satisfy a warrant issued in execution of judgment against such person, either—
 - (a) falsely declares to that messenger or deputy sheriff that he possesses no property or not sufficient property to satisfy the warrant; or
 - (b) although owning such property neglects or refuses to point out the same;or

(4) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy sheriff in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable upon conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

MC S108 CUSTODY AND PUNISHMENT FOR CONTEMPT OF COURT

(1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall (in addition to his liability to being removed and detained as in subsection (3) of section 5 provided) be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. In this subsection the word 'court' includes a preparatory examination held under the law relating to criminal procedure.

In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for the consideration and review of a judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.

