

UNIFORM RULES OF COURT

(HIGH COURT RULES) [HC]

HC R1 DEFINITIONS

'SHERIFF' means a person appointed in terms of section 2 of the Sheriffs' Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and deputy sheriff, and a person designated to serve process in terms of section 6A of the said Act.

HC R4 SERVICE

- (1) (a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (a) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners:
- (i) by delivering a copy thereof to the said person personally:
Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;
 - (ii) by leaving a copy thereof at the place or residence or business of the said person, guardian, tutor, curator, or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than 16 years of age. For the purposes of this paragraph when a building, other than a hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;
 - (iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than sixteen years of age and apparently in authority over such person;

- (iv) if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen;
- (v) in the case of a cooperation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by the law;
- (vi) by delivering a copy thereof to any agent who is duly authorized in willing to accept service on behalf of the person upon whom service is to be effected;
- (vii) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (ii) at the place of business of such partnership, firm or voluntary association and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairperson or secretary of the committee or other managing body of such association, as the case may be, in one of the manners set forth in this rule;
- (viii) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the municipal manager or person in attendance at the municipal manager's office of such local authority or to the secretary or similar office or member of the board or committee of such body, or in any manner provided by law; or
- (ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule:

Provided that where service has been effected in accordance with subparagraphs (ii); (iii); (iv); (v) and (vii) of subparagraph (a), the sheriff shall in the return of service set out the details of such manner and circumstances under which such service was effected.

(aA) Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

(b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.

(c) No service of civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on Sunday unless the court or a judge otherwise directs.

(d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in a return or affidavit or on the signed receipt that the person serving the process or document has done so.

If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. Where such directions are sought in regard to service upon a person known or believed to be within the Republic, but whose whereabouts therein cannot be ascertained, the provisions of subrule (2) of rule 5 shall, *mutatis mutandis*, apply.

(3) Service of any process of the court or of any document in a foreign country shall be effected -

(a) by any person who is, according to a certificate of-

(i) the head of any South African diplomatic or consular mission, any person in the administrative or professional division of the public service serving at a South African diplomatic or consular mission or trade office abroad;

(ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of the Republic in such country;

(iii) any diplomatic or consular officer of such country serving in the Republic; or

(iv) any official signing as or on behalf of the head of the department dealing with the administration of justice in that country, authorized under the law of such country to serve such process or document; or
(b) by any person referred to in subparagraph (i) or (ii) of paragraph (a), if the law of such country permits such person to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(4) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding the provisions of subrule (3), also be effected by an attorney, solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorized to serve process of court or documents and in a state to which independence has been granted by law by a person in the state concerned who is under the law of that state authorized to serve process of court or documents.

(5) (a) Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with certified copy of the process or document and such translation.

(b) Any process of court or document to be served as provided in subrule (3), shall be delivered to the registrar.

(c) Any process of court or document delivered to the registrar in terms of paragraph (b) shall be transmitted by the registrar together with the translation referred to in paragraph (a), to the Director-General: International Relations and Cooperation to a destination indicated by the Director-General: International Relations and Cooperation for service in the foreign country concerned. The registrar must be satisfied that the process of court or document allows a sufficient period for service to be effected in good time.

(6) Service shall be proved in one of the following manners:

(a) Where service has been effected by the sheriff; by the return of service of such sheriff;

(b) Where service has not been effected by the sheriff, nor in terms of subrule (3) or (4), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of such attorney's staff, the Government of the Republic, or on any Minister, Premier or a Member of an Executive Council, or any other officer of such Government or Province, in such person's official capacity by the production of a signed receipt therefor.

(6A) (a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The said person shall file each such document on behalf of the person who effected service with the registrar when

(i) such person sets the matter in question down for any purpose;

(ii) it comes to such person's knowledge in any manner that the matter is being defended;

(iii) the registrar requests filing;

(iv) the mandate to act on behalf of a party, if such person is a legal practitioner, is terminated in any manner.

(7) Service of any process of court or document in a foreign country shall be proved_

(a) by a certificate of the person effecting service in terms of paragraph (a) of subrule (3) or subrule (4) in which the person identifies himself or herself, states that he or she is authorised under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by the law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in subrule (4) shall be duly authenticated; or

(b) by a certificate of the person effecting service in terms of paragraph (b) of subrule (3) in which such person states that the process of court or document in question has been served, setting forth the manner and date of such service and affirming that the law of the country concerned permits such person to serve process of court or documents or that there is no law in such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

(8) Whenever any process has been served within the Republic by a sheriff outside the jurisdiction of the court from which it was issued, the signature of such sheriff upon the return of service shall not require authentication by the sheriff. [Subrule

(8) In proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council.

(9) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit.

(10) Whenever a request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar of a provincial or local division under the provisions of subsection (2) of section 40 of the Act, the registrar shall transmit to the sheriff or a sheriff or any person appointed by a judge of the division concerned for service of such process or citation

(a) two copies of the process or citation to be served; and

(b) two copies of a translation in English of such process or citation if the original is in any other language.

(11) Service shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation (if any) thereof in accordance with the provisions of this rule.

(12) After service has been effected the sheriff or the person appointed for the service of such process or citation shall return to the registrar of the division concerned one copy of the process or citation together with

- (a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff or a sheriff. by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by a judge of the division concerned, by the certificate and seal of office of the registrar of the division concerned: and
- (b) particulars of charges for the cost of effecting such service.

(13) The particulars of charges for the cost of effecting service under subrule (1) shall be submitted to the taxing master of the division concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

(14) the registrar concerned shall, after effect has been given to any request for service of civil process or citation, return to the Director-General of the Department responsible for the administration of justice

- (a) the request for service referred to in subrule (11);
- (b) the proof of service together with a certificate in accordance with Form J' of the Second Schedule duly sealed with the seal of the division concerned for use out of the Jurisdiction; and
- (c) the particulars of charges for the cost of effecting service and the certificate, or copy thereof, certifying the correctness of such charges.

HC R4A DELIVERY OF DOCUMENTS AND NOTICES

(1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5) (b), 6(5) (d) (i), 17(3), 19(3) or 34(8), by-

- (a) hand at the physical address for service provided, or
- (b) registered post to the postal address provided, or
- (c) facsimile or electronic mail to the respective addresses provided.

(2) An address for service, postal address, facsimile address or electronic address mentioned in subrule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that subrule at such new address.

(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by facsimile or electronic mail.

(4) Service under this rule need not be effected through the Sheriff.

(5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail.

HC R5 EDICTAL CITATION

(1) Save by leave of the court no process or document whereby proceedings are instituted shall be served outside the Republic.

(2) Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and extent of his claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorize. If such manner be other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his present whereabouts. Upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served. Where

service by publication is ordered, it may be in a form as near as may be in accordance with Form 1 of the First Schedule, approved and signed by the registrar.

- (3) Any person desiring to obtain leave to effect service outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as to it seems meet.

HC R45 EXECUTION-GENERAL AND MOVABLES

- (1) Judgement creditor may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof corresponding substantially with form 18 of the First Schedule.
- (2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ or execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.
- (3) Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there -
 - (a) demand satisfaction of the writ and, failing satisfaction,
 - (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,
 - (c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5) shall be taken into the custody of the sheriff: Provided –

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.

(4) The sheriff shall file with the registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

(5) Where any movable property has been attached by the sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 19 of the First Schedule.

(6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

(7)(a) Where any movable property is attached as aforesaid the sheriff shall where practicable and subject to rule 58 sell it by public auction to the highest bidder after due advertisement by the execution creditor in a newspaper circulating in the district in which the property has been attached and after expiration of not less than 15 days from the time of seizure thereof.

(b) Where perishables are attached as afore-said, they may with the consent of the execution debtor or upon the execution creditor indemnifying the sheriff against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as seems expedient.

(c) The sheriff shall not later than 15 days before the date of sale either in terms of paragraph (a) or paragraph (b), forward a notice of sale to all other sheriffs appointed in that area.

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when

- (i) notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and
- (ii) the sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security as the case may be, and
- (iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when

the sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,

(i) the attachment shall only be complete when-

(a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and

(b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

(9) Attachment of property subject to a lien shall be effected mutatis mutandis in accordance with the provisions of sub-paragraph (b) of subrule (8).

(10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.

(11) (a)(i) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with any sheriff appointed for a particular area or any other sheriff before or on the day of the sale in the execution shall rank pro rata in the distribution of the proceeds of the goods sold, in the order of the preference referred to in paragraph (c) of subrule (14) of rule 46.

(ii) The sheriff conducting the sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed in the district in which he or she has been instructed to conduct a sale in respect of the attached goods.

(iii) The sheriff conducting the sale shall accept from all other sheriffs appointed in that district or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

(b) If there should remain any surplus, the sheriff shall pay it over to the judgment debtor; and the sheriff shall make out and deliver to him an exact account, in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the sheriff shall refund such sum to the judgment debtor.

(12) (a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice of such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, pro tanto, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the Sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why he should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him to the party against whom execution is issued, or he does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any

previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner mutatis mutandis in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.

(d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.

(e) the costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) Where the sheriff is of opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) to (k) inclusive.

- (13) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for himself or for any other person.

HC R45A SUSPENSION OF ORDERS BY THE COURT

The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.

HC R46 EXECUTION - IMMOVABLE PROPERTY

- (1)(a) Subject to the provisions of rule 46A, no writ of execution against the immovable property of any judgment debtor shall be issued unless-
- (i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the writ; or
 - (ii) such immovable property has been declared to be specially executable by the court or where judgment is granted by the registrar under rule 31(5).
- (b) A writ of execution against immovable property shall contain-
- (i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and
 - (ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.
- (2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a writ corresponding substantially with Form 20 of the First Schedule.
- (3) (a) Notice of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.
- (b) Any notice referred to in paragraph (a) shall-
- (i) draw attention to the provisions of subrule (8)(a) (iii); and
 - (ii) be served according to the provisions of rule 4, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4) (a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property: as well as the condition of such improvements:

Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or Structure being locked, the sheriff may use a locksmith to gain entry.

(b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) Subject to rule 46A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless-

(a) the execution creditor has caused notice of the intended sale to be served upon-

(i) preferent creditors;

(ii) the local authority, if the property is rated; and

(iii) the body corporate, if the property is a sectional title unit,

calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed; or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

- (6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.
- (7) (a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being except by special leave of magistrate, no less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.
- (b) (i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.
- (ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.
- (c) The execution creditor shall-
- (i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and, in the Gazette, not less than five days and not more than 15 days before the date of the sale; and
- (ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the Gazette, respectively.
- (d) Not less than 10 days prior to the date of sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.
- (e) Not less than 10 days prior to the date of sale, the sheriff conducting the sale shall affix –
- (i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property is situated in the district where the court out of

which the writ was issued is situated, then on the notice-board of such court; and

(ii) one copy at or as near as may be to the place where the said sale is actually to take place.

(8) (a)(i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.

(iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.

(V) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 (Act 68 of 2008), and the regulations promulgated thereunder.

(b)(i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.

(ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

(c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.

(d) Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon 24 hours' notice to all known affected parties, apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.

- (9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.
- (10) Immovable property attached in execution shall be sold by the sheriff by public auction.
- (11) (a)(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached and immovable property may be put up for sale again.
- (ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.
- (iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.
- (b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a judge given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a judge for the aforesaid purpose.
- (c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.
- (12) Subject to the provisions of rule 46A and subrule (5) hereof-
- (a) the sale shall be conducted upon the conditions stipulated under subrule (8); and
- (b) the immovable property shall be sold to the highest bidder.
- (13)(a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such

moneys in his or her trust account until transfer has been given to the purchaser.

- (b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.
- (c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.

(14)(a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the writ of execution.

- (b) (i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar and to all other sheriffs appointed in that district.
 - (ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.
- (c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:
- (i) Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter
 - (ii) Claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections 96, and 98A to 103 (inclusive) of the Insolvency Act, 1936 (Act 24 of 1936).
- (d) Any interested person objecting to the plan must-
- (i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and

- (ii) within 10 days after the expiry of the period referred to in paragraph (b) (ii), bring such objection before a judge for review upon 10days notice to the sheriff and the said persons.
- (e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems appropriate.
- (f) If-
 - (i) no objection is lodged to such plan; or
 - (ii) the interested parties signify their concurrence therein; or
 - (iii) the plan is confirmed or amended on review,the sheriff shall, on production certificate from the conveyancer, that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

- (15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any immovable property offered for Sale either for himself or herself or for any other person.

- (16) in this rule, the word "days' shall have the same meaning as court days as defined in rule 1 of these Rules.

HC R46A EXECUTION AGAINST RESIDENTIAL IMMOVABLE PROPERTY

- (1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.
- (2) (a) A court considering an application under this rule must-
 - (i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor;
 - and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property which is the Primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.

(c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be -

(a) substantially in accordance with Form 2A of Schedule I;

(b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 46(5)(a): Provided that the court may order service on any other party it considers necessary;

(c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and

(d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4) (a) The applicant shall in the notice of application-

(i) state the date on which the application is to be heard;

(ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;

(iii) appoint a physical address within 15 kilo-metres of the office of the registrar at which the applicant will accept service of all documents in these proceedings; and

(iv) state the applicant's postal, facsimile or electronic mail address where available.

(b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a) (11).

- (5) Every application shall be supported by the following documents, where applicable, evidencing -
- (a) the market value of the immovable property,
 - (b) the local authority valuation of the immovable property;
 - (c) the amounts owing on mortgage bonds registered over the immovable property;
 - (d) the amount owing to the local authority as rates and other dues;
 - (e) the amounts owing to a body corporate as levies; and
 - (f) any other factor which may be necessary to enable the court to give effect to subrule (8):

Provided that the court may call for any other document which it considers necessary.

- (6)(a) A respondent, upon service of an application referred to in subrule (3), may-
- (i) oppose the application; or
 - (ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or
 - (iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.
- (b) A respondent referred to in paragraph (a)(i) and (ii) shall-
- (i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and
 - (ii) set out the reasons for opposing the application and the grounds on which the application is opposed.
- (c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.
- (d) A respondent opposing an application or making submissions shall, within 10 days of service of the application-
- (i) deliver the affidavit referred to in paragraph (C);
 - (ii) appoint a physical address within 15 kilo-metres of the office of the registrar at which documents may be served upon such respondent; and
 - (iii) state the respondent's postal, facsimile or electronic mail address where available.

- (7) The registrar shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.
- (8) A court considering an application under this rule may-
- (a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;
 - (b) order the furnishing by-
 - (i) a municipality of rates due to it by the judgment debtor; or
 - (ii) a body corporate of levies due to it by the judgment debtor;
 - (c) on good cause shown, condone
 - (i) failure to provide any document referred to in subrule (5); or
 - (ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);
 - (d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;
 - (e) set a reserve price;
 - (f) postpone the application on such terms as it may consider appropriate;
 - (g) refuse the application if it has no merit;
 - (h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or
 - (i) make any other appropriate order.
- (9)(a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.
- (b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account
- (i) the market value of the immovable property;
 - (ii) the amounts owing as rates or levies;
 - (iii) the amounts owing on registered mortgage bonds;
 - (iv) any equity which may be realised between the reserve price and the market value of the property,
 - (v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (IV);
 - (vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

- (vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;
 - (viii) any prejudice which any party may suffer if the reserve price is not achieved; and
 - (ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.
- (c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed.
- (d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain-
- (i) the date, time and place at which the auction sale was conducted;
 - (ii) the names, identity numbers and contact details of the persons who participated in the auction;
 - (iii) the highest bid or offer made; and
 - (iv) any other relevant factor which may assist the court in performing its function in paragraph (c).
- (e) The court may, after considering the Factors in paragraph (a) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.

HC R47 SECURITY FOR COSTS

- (1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.
- (2) If the amount of security only is contested the registrar shall determine the amount to be given and his decision shall be final.
- (3) If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the

registrar's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

- (4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.
- (5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar.
- (6) The registrar may, upon the application of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient; and his decision shall be final.

HC R47A

Notwithstanding anything contained in these rules a person to whom legal aid is rendered by a statutorily established legal aid board is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

HC R48 REVIEW OF TAXATION

- (1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed mero motu by the taxing master, may within 15 days after the allocatur by notice require the taxing master to state a case for the decision of a judge.
- (2) The notice referred to in subrule (1) must-
 - (a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;
 - (b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed mero motu by the taxing master;
 - (c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof: and

(d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.

(3) The taxing master must-

- (a) supply his or her stated case to each of the parties within 20 days after he or she has received a notice referred to in subrule (1); and
- (b) set out any finding of fact in the stated case.

(4) Save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than R100.

(5) (a) The parties to whom a copy of the stated case has been supplied, may within 15 | days after receipt thereof make submissions in writing thereon, including grounds of objection not raised at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed Mero motu by the taxing master.

(b) The taxing master must within 20 days after receipt of the submissions referred to in paragraph (a), supply his or her report to each of the parties.

(c) The parties may within 10 days after receipt of the report by the taxing master, make further written submissions thereon to the taxing master, who shall forthwith lay the case together with the submissions before a judge.

(6)(a) The judge may-

- (i) decide the matter upon the merits of the case and submissions so submitted.
- (ii) require any further information from the taxing master;
- (iii) if he or she deems it fit, hear the parties or their advocates or attorneys in his or her chambers; or
- (iv) refer the case for decision to the court.

(b) Any further information to be supplied by the taxing master to the judge must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall

forthwith lay such information together with any submissions of the parties thereon before the judge.

(7) The judge or court deciding the matter may make such order as to costs of the case as he or she or it may deem fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge or court.

HC R50 CIVIL APPEALS FROM MAGISTRATES' COURTS

- (1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.
- (2) The prosecution of an appeal shall ipso facto operate as the prosecution of any cross-appeal which has been duly noted.
- (3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within twenty days after the date of the lapse of such appeal. [Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

HC R58 INTERPLEADER

- (1) Where any person, in this rule called the applicant', alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as 'the claimants', in respect thereto, the applicant may deliver a notice, in terms of this rule called an 'interpleader notice', to the claimants. In regard to conflicting claims with respect to property attached in execution, the sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

(2) (a) Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in subrule (1) hereof, to pay the money to the registrar who shall hold it until the conflicting claims have been decided.

(b) Where the claims relate to a thing capable of delivery the applicant shall tender the subject-matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.

(c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him, in the possession of the registrar when delivering the interpleader notice and shall at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with an order which the court may make or any agreement of the claimants.

(3) The interpleader notice shall-

(a) state the nature of the liability, property or claim which is the subject-matter of the dispute;

(b) call upon the claimants within the time stated in the notice, not being less than 15 days from the date of service thereof, to deliver particulars of their claims; and [Para. (b) amended by GN R1262 of 1991.]

(c) state that upon a further date, not being less than 15 days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.

(4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that –

(a) he claims no interest in the subject-matter in dispute other than for charges and costs;

(b) he does not collude with any of the claimants;

(c) he is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.

(5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute.

(5A) Simultaneously with the delivery by a claimant of particulars of claim, such claimant shall specify an address for service within 15 kilometres of the office of the registrar as referred to in rule 6(5) (b).

(6) If a claimant delivers particulars of his claim and appears before it, the court may-

- (a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;
- (b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant;
- (c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;
- (d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;
- (e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of subrule (2), as to it may seem meet.

(7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

HC R66 DURATION OF WRITS OF EXECUTION

Writs of execution of a judgment once issued remain in force, and may, subject to the provisions of subparagraph (ii) of paragraph

(a) of section 11 of the Prescription Act, 1969 (Act 68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

HC R68 TARIFF FOR SHERIFFS

- (1) The fees and charges contained in the appended tariff shall be chargeable and allowed to sheriffs: Provided that no fees shall be charged for the service of process in in forma pauperis proceedings (but the necessary disbursements for the purpose of such service may be recovered).
- (2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.
- (3) (a) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.
(b) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed has been rendered.

HC AMENDMENT OF RULE 68 OF THE RULES

Rule 68 of the rules is hereby amended by the substitution for the Tariff of the following Tariff

Amounts in [...] are the previous fees. Amounts underlined are the current fees

- (1) For registration of any document for service or execution, upon receipt thereof.
[R13,00] R14,50
- (2) (a) For service of summonses, [petitions together with] notice of motion [or set down], other notices, orders or any other documents, each; **[R84,50] R92,50**

Provided that-

(i) Whenever any document to be served with any such process is mentioned in the process or forms an annexure thereto, no additional fee shall be charged for the service of such document, but otherwise a fee of **[R13,00] R14,50** may be charged in respect of each separate document served;

(ii) No fee for the service of a separate document shall be charged in respect of the service of process in criminal cases.

(b) Attempted service of summonses, [petitions together with] notices of motion [or notice of set down], other notices, orders and any other documents:

Provided that an attempted service of more than one document on the same person shall be treated as an attempted service of one document only.

[R63,50] R69,00

3 Travelling allowance:

(a) For the distance actually and necessarily travelled by the sheriff or his or her officer, reckoned, subject to item 3(c) and (d), from the office of the sheriff, both on the forward and the return journey, per kilometre or part thereof
[R6,00] R7,50

(b) When two or more summarises or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the travelling allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the sheriff, but the fee for service shall be payable for each service made or attempted to be made

(c)

The travelling allowance mentioned in item 3(a) and (b) shall be calculated on the distance reckoned from the office of the sheriff if-

(i) the sheriff's office is situated within the area of jurisdiction allocated to the sheriff by the Minister; and

(ii) the distance from the sheriff's office is less than the distance reckoned from the court-house closest to the address for service.

(d) If the requirement in item 3(c) is not met, then the travelling allowance mentioned in item 3(a) and (b) shall be calculated on the distance reckoned from the court-house closest to the address for service.

4. (a) Postage in civil matters, as per postal tariff.

(b) Postage in criminal matters, free

NOTE. The sheriff may take any postal matter to the registrar of the High Court, or if there is no registrar in his or her town or city, to the magistrate, who shall frank the envelope with his or her official franking stamp.

5. For the execution of any writ-

(a) (i) of personal arrest, including the conveyance of the person concerned to court, to an attorney's office or to a prison, per person

[R106,00] R115,50

(ii) for conveying the person concerned to court from a place of custody on a day subsequent to the day of arrest and attending at court, per hour or part thereof

[R126,00] R137,50

(iii) for attachment of property ad fundandam jurisdiction or ad confirmandam jurisdiction

[R106,00] R115,50

(iv) where an attachment in terms of item 5(a) (iii) is withdrawn or suspended;

[R30,00] R32,50

(b) of ejectment **[R126,00] R137,50** per hour or part thereof, subject to a minimum of which shall include the first hour (in addition to reasonable expenses necessarily incurred);

[R188,00] R205,00

(c) against immovable property-

(i) for execution, including service of notice of attachment upon the owner of the Immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is in occupation of some person other than the owner, also upon such occupier;

[R251,00] R273,50

(ii) for notice of attachment to a single lessee or occupier

[R23,00] R25,50

(Identical notices where there are several lessees, occupiers or owners, for each after the first)

[R8,50] R9,50

(iii) for making valuation report for purposes of sale per half hour or part thereof

[R63,50] R69,00

(iv) when-

(aa) a sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed, all the necessary notice for the withdrawal or stay of the attachment

[R251,00] R273,50

(bb) upliftment of judicial attachment on immovable property occurs

[R251,00] R273,50

(v) for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred)

[R126,00] R137,50

(vi) for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered

[R23,00] R25,50

(vii) for consideration of proof that a preferent creditor has complied with the requirements of rule 46(5)(a)

[R13,00] R14,50

(viii) for the notice referred to in rule 48(6)

[R23,00] R25,50

(ix) for consideration of notice of sale prepared by the execution creditor in consultation with the sheriff; and

(x) for verifying that notice of sale has been published in the newspapers indicated and, in the Gazette, inclusive fee for (ix) and (x)

[R126,00] R137,50

- (xi) for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy
[R23,00] R25,50
- (xii) for affixing a copy of the notice of sale to the notice board of the magistrate's court referred to in rule 46(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of **[R53,00] R58,00** and travelling costs referred to in item 3
- (xiii) for-
- (aa) considering the conditions of sale prepared by the execution creditor
[R126,00] R137,50
- (bb) considering further or amended conditions of sale submitted by an interested party
[R126,00] R137,50
- (cc) settling of conditions of sale
[126,00] R137,50
- (dd) all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008)
[R380,00] R414,50
- (ee) the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of item (xiv)
[R251,00] R273,50
- (xiv) on the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3.5 per cent on R100 001,00 to R400 000,00 and 1.5 per cent on the balance of the proceeds of the sale, subject to a maximum commission Of R40 000.00 in total and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;
- (xv) for -
- (aa) written notice to the purchaser who has failed to comply with the conditions of sale
[R63,50] R69,00
- (bb) any report referred to in rule 46(11)
[R63,50] R69,00

(cc) informing judgment debtor of the cancellation referred to in rule 46(11)(a)(iii)

[R23,00] R25,50

(dd) giving notice referred to in rule 46(11)(c)

[R23,00] R25,50

(xvi) for giving transfer to the purchaser

[R30,00] R32,50

(xvii) for-

(aa) receipt of certificate referred to in rule 46(14)(a)

[R23,00] R25,50

(bb) preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar

[R126,00] R137,50

(xviii) for giving notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection, for every notice

[R23,00] R25,50

(xix) for the report referred to in rule 46A(9)(d)

[R63,50] R69,00

(d) against movable property-

(i) when a writ is paid on presentation, 9 per cent on the amount so paid, with a minimum fee of **[R85,00] R93,00** and a maximum of

[R832,50] R908,00

(ii) for any abortive attempt at attachment, including one hour's search and enquiry

[R85,00] R93,00

(iii) when a writ is withdrawn or stayed before any property is attached

[R25,00] R30,00

(iv) for making an attachment, including one hour's search and enquiry

[R172,50] R208,00

(v) notice of attachment, if necessary, to a single person

[R22,00] R24,50

(identical notices, when there is more than one person to be given notice for each after the first)

[R13,00] R14,50

(vi) when an attachment is withdrawn by a judgment creditor or stayed before sale. 3% on the value of the property attached or the amount of the writ, whichever is the lesser, but subject to a maximum of **[R574,00] R626,50**

(vii) when a writ is paid by the debtor to the sheriff after attachment but before sale, 9% on the amount so paid, with a minimum fee of **[R85,00] R93,00** and a maximum of **[R832,50] R908,00**

(viii) when moneys are taken in execution, 9% of the amount so taken, but subject to a maximum of **[R832,50] R908,00**

(ix) for drawing up advertisements of sale of goods attached **[R85,00] R93,00**

(x) for selling in execution, including distribution of the proceeds, on the first R15 000,00 or part thereof. 9%, and thereafter, 6%, with a maximum

[R11 653,50] R12 706,50

(xi)

(xii) commission shall not be chargeable against a judgment debtor on the value of movable property attached and subsequently calmed by a person other than the judgment debtor and released in consequence of such claim. unless such property has been attached at the express direction of the judgment creditor, in writing, in which event the judgment creditor shall be liable to the sheriff for the commission;

(xiii) for insuring movable property attached when it is considered necessary and when the sheriff is directed thereto in writing by the judgment creditor, in addition to the amount of premium paid, an inclusive fee of

[R45,00] R49,00

(e) for keeping possession of property (money excluded)-

(i) for each officer necessarily left in possession, a reasonable inclusive fee per officer per day not exceeding

[R158,00] R172,50

NOTE: 'Possession' means the continuous and necessary presence on the premises for the period in respect of which possession is reckoned,

of a person employed and paid by the sheriff for the sole purpose of retaining possession

- (ii) for removal and storage, the reasonable and necessary expenses for such removal and storage, and if an animal is to be stabled or fed, the reasonable charges for such stabling and feeding;
- (iii) for tending livestock, the necessary expenses for tending such stock,
- (iv) when no officer is left in possession and no security bond is taken, but movable property attached remains under the supervision of the sheriff, per day

[R6,00] R7,00

6. (a) For making an inventory, including all necessary copies and time spent in stocktaking, per hour or part thereof

[R158,00] R172,50

- (b) For assistance, where necessary. in taking inventory, a reasonable and inclusive fee per day, not exceeding

[R158,00] R172,50

7. (a) For making return of service or execution, including drawing up and typing of original for court, limited to one person upon each original process; and
(b) copy thereof for party desiring service or execution.

[R52,00] R57,00

8. Drawing and completing of bail band, deed of suretyship or indemnity bond.

[R31,00] R34,00

9. For the making of all necessary copies of documents per A4 size page.

[R6,50] R7,50

10.

11. attending any criminal session of a superior court or any circuit court,

[R126,00] R137.50 per hour or part thereof, with a maximum per day of

[R574,00] R626,50

12. For the writing of each necessary letter, facsimile or electronic mail excluding formal letters accompanying process or returns

[R23,00] R25.50

13. Each necessary attendance by telephone:

[R20,00] R22,00

14. Sending and receiving of each necessary facsimile or electronic mail per page (in addition to telephone charges):

[R8,50] R9,50

15. Bank charges: Actual costs incurred regarding bank charges and cheque forms.

16. For interpleaders referred to in rule 58

[R800,00] R873,00

17. (a) Where the mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 2 or 5 on an urgent basis or after hours, the sheriff shall charge an additional fee, irrespective of whether the service or execution was successful, and such additional fee shall be paid by the mandator, save where the court orders otherwise.

[R283,00] R308,00

(b) For the purpose of paragraph (a) -

(i) urgent means on the same day or within 24 hours of the written instruction; and

(ii) 'after hours' means any time-

(aa) before 7h00 or after 19h00 on Mondays to Fridays, or

(bb) on a Saturday, Sunday or public holiday

AMENDMENT OF RULE U OF THE RULES

11. Rule 70 or the rules is hereby amended by the substitution for the Tariff of Fees of

Attorneys of the following Tar of Fees of Attorneys:

**"TARIFF OF FEES OF ATTORNEYS
A - CONSULTATIONS, APPEARANCES.
CONFERENCES AND INSPECTIONS**

1. Consultation with a client and witnesses to institute or to defend an action, for advice on evidence or advice on commission, for obtaining an opinion or an advocate's guidance