

No. R. 1342

12 December 2008

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

- [] Expressions in bold type in square brackets indicate omissions from existing rules.
— Expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule "the Rules" mean the rules published under Government Notice No. R. 1108 of 21 June 1968, as amended by Government Notices Nos. R. 3002 of 25 July 1969, R. 490 of 26 March 1970, R. 947 of 2 June 1972, R. 1115 of 28 June 1974, R. 1285 of 19 July 1974, R. 689 of 23 April 1976, R. 261 of 25 February 1977, R. 2221 of 28 October 1977, R. 327 of 24 February 1978, R. 2222 of 10 November 1978, R. 1449 of 29 June 1979, R. 1314 of 27 June 1980, R. 1800 of 28 August 1981, R. 1139 of 11 June 1982, R. 1689 of 29 July 1983, R. 1946 of 9 September 1983, R. 1338 of 29 June 1984, R. 1994 of 7 September 1984, R. 2083 of 21 September 1984, R. 391 of 7 March 1986, R. 2165 of 2 October 1987, R. 1451 of 22 July 1988, R. 1765 of 26 August 1988, R. 211 of 10 February 1989, R. 607 of 31 March 1989, R. 2629 of 1 December 1989, R. 186 of 2 February 1990, R. 1887 of 8 August 1990, R. 1928 of 10 August 1990, R. 1967 of 17 August 1990, R. 1261 of 30 May 1991, R. 2407 of 27 September 1991, R. 2409 of 30 September 1991, R. 405 of 7 February 1992, R. 1510 of 29 May 1992, R. 1882 of 3 July 1992, R. 871 of 21 May 1993, R. 959 of 28 May 1993, R. 1134 of 25 June 1993, R. 1355 of 30 July 1993, R. 1844 of 1 October 1993, R. 2530 of 31 December 1993, R. 150 of 28 January 1994, R. 180 of 28 January 1994, R. 498 of 11 March 1994, R. 625 of 28 March 1994, R. 710 of 12 April 1994,

R. 1062 of 28 June 1996, R. 1130 of 5 July 1996, R. 419 of 14 March 1997, R. 492 of 27 March 1997, R. 570 of 18 April 1997, R. 790 of 6 June 1997, R. 797 of 13 June 1997, R. 784 of 5 June 1998, R. 910 of 3 July 1998, R. 1025 of 7 August 1998, R. 1126 of 4 September 1998, R. 569 of 30 April 1999, R. 501 of 19 May 2000, R. 1087 of 26 October 2001, R. 37 of 18 January 2002, R. 38 of 18 January 2002, R. 1299 of 18 October 2002, R. 228 of 20 February 2004, R. 295 of 5 March 2004, R. 880 of 23 July 2004 and R. 1294 of 5 December 2008.

Amendment of rule 39 of the Rules

2. Rule 39 of the Rules is hereby amended as follows:

(a) by the substitution for subrule (2) of the following subrule:

"(2) (a) Subject to any hypothec existing prior to attachment, all warrants of execution lodged with [the] any sheriff appointed for a particular area or any other sheriff on or before the day immediately preceding the date of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

(b) The sheriff conducting the sale 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 for the area in which he or she has been instructed to conduct a sale in respect of the attached goods.

(c) The sheriff conducting the sale shall accept from all other sheriffs appointed for that area 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) by the substitution for subrule (3) of the following subrule:

"(3)(a) Withdrawal of attachment shall be effected by note made and signed by the sheriff on the warrant of execution that the attachment is withdrawn, stating the time and date of the making of such note.

(b) The sheriff shall give notice in writing of the withdrawal and of the time and date thereof to the execution creditor **[and]**, the execution debtor, all other sheriffs appointed for that area or any other sheriff who has submitted a certificate referred to in subrule (2)(c) and to any other person by whom a claim to the property attached has been lodged with him or her: Provided that the property shall not be released from attachment **[so long as]** for a period of 4 months if a certificate referred to in subrule (2)(c) or an unsatisfied warrant of execution lodged under subrule (2)(a) remains in the hands of the sheriff.";

(c) by the substitution for subrule (4) of the following subrule:

“(4) If any property attached [or about to be attached] in execution is claimed by any third party as his or her property or any third party makes any claim to the proceeds of property so attached and sold in execution, the sheriff shall on receipt of the claim forthwith give notice to the execution creditor and to all other sheriffs appointed for that area who have submitted certificates referred to in subrule (2)(c).”

(d) by the substitution for subrule (7) of the following subrule:

“(7)(a) On completion of any sale in execution of property, whether movable or immovable, the sheriff shall attach to his or her return a vendue roll showing details of the property sold, the prices realized, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds and shall forthwith send a copy of such vendue roll to all other sheriffs appointed for that area who have submitted certificates referred to in subrule (2)(c).

(b) Where a warrant of execution has been lodged with the sheriff conducting the sale by any other sheriff referred to in subrule (2)(a), the sheriff conducting the sale shall make payment in terms of a distribution account to any sheriff who submitted a certificate referred to in subrule (2)(c) in respect of the aforesaid sale.

(c) Payment in terms of a distribution account shall only be made after the distribution account has lain for inspection for a period of 15 days after the sheriff who has lodged a warrant of execution with the sheriff who conducted the sale, has received a copy of the distribution account.”

Amendment of rule 40 of the Rules

3. Rule 40 of the Rules is hereby amended by the substitution for subrule (2) of the following subrule:

“(2) Such appointment shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets and the sheriff so appointed shall notify all other sheriffs appointed for that area of such appointment.”

Amendment of rule 41 of the Rules

4. Rule 41 of the Rules is hereby amended –

(a) by the substitution for subrule (7)(e) of the following subrule:

“(e)(i) Unless an order of court is produced to the sheriff requiring him or her to detain any movable property under attachment for such further period as may be stipulated in such order, the sheriff shall, if a sale in respect of such property is not pending, release from attachment any such property which has been detained for a period exceeding 4 months.

(ii) If such order was made on application made *ex parte*, such order shall not be subject to confirmation.” and

(b) by the substitution for subrule (8)(a) of the following subrule:

“(a) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff who removed the goods in terms of subrule (7)(b) or, with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, to the highest bidder at or as near to the place where the same was attached or to which the same had been so removed as aforesaid as may be advantageous for the sale thereof.”.

Amendment of Rule 43 of the Rules

5. Rule 43 of the Rules is hereby amended –

(a) by the substitution for subrule (5) of the following subrule:

“(5) Where the said property is situate in a district other than in which the judgment was given, the party requiring execution shall forward the warrant of execution to **[the]** a sheriff of the district in which the said property is situate, who shall proceed to attach the property in the manner provided in this rule.”;

(b) by the substitution for subrule (12) of the following subrule:

“(12) Where the said property is situate in a district other than in which the judgment was given, the sale of the said property shall be effected by **[the]** a sheriff of the district in which it is situate in the manner provided **[by]** in this rule.”; and

(c) by the substitution for subrule (14)(b) for the following subrule:

“(b) The sheriff shall immediately after receipt of the full purchase price prepare in order of preference as hereinafter provided in this rule, a plan of distribution of the purchase money received and such plan shall lie in his or her office for inspection of persons having an interest therein for a period of ~~[10]~~ 15 days after the date of sale, unless all such persons inform the sheriff in writing that they have no objection to such plan and a copy thereof shall be lodged with the clerk of the court and with any other sheriff who submitted a certificate referred to in rule 39(2)(c).”.

Amendment of rule 44 of the Rules

6. Rule 44 of the Rules is hereby amended by the substitution for subrule (2)(a) of the following subrule:

“(a) (i) Where any person other than the execution debtor (hereinafter in this rule referred to as the ‘claimant’) makes any claim to or in respect of property attached by the sheriff in execution of any process of the court and the execution creditor has not admitted the claim within the period referred to in rule 39(6) or where any such claimant makes any claim to the proceeds of property so attached and sold in execution the sheriff shall forthwith prepare and sue out a summons in the form prescribed for the purpose in Annexure 1 to these rules calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.

(ii) The sheriff shall notify all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the claim to the property attached, the date specified in the summons and of the judgment of the court.”.

Commencement

7. These rules shall come into operation on 12 January 2009.