

No. R. 1343

12 December 2008

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

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 of 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" means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa published under Government Notice No. R.48 of 12 January 1965, as amended by Government Notices Nos. 235 of 18 February 1966, R.2004 of 15 December 1967, R.3553 of 17 October 1969, R.2021 of 5 November 1971, R.1985 of 3 November 1972, R.480 of 30 March 1973, R.639 of 4 April 1975, R.1816 of 8 October 1976, R.1975 of 29 October 1976, R.2477 of 17 December 1976, R.2365 of 18 November 1977, R.1546 of 28 July 1978, R.1577 of 20 July 1979, R.1535 of 25 July 1980, R.2527 of 5 December 1980, R.500 of 12 March 1982, R.773 of 23 April 1982, R.775 of 23 April 1982, R.1873 of 3 September 1982, R.2171 of 6 October 1982, R.645 of 25 March 1983, R.841 of 22 April 1983, R.1077 of 20 May 1983, R.1996 of 7 September 1984, R.2094 of 13 September 1985, R.810 of 2 May 1986, R.2164 of 2 October 1987, R.2642 of 27 November 1987, R.1421 of 15 July 1988, R.210 of 10 February 1989, R.608 of 31 March 1989, R.2628 of 1 December 1989, R.185 of 2 February 1990, R.1929 of 10 August 1990, R.1262 of 30 May 1991, R.2410 of 30 September 1991, R.2845 of 29 November 1991, R.406 of 7 February 1992, R.1883 of 3 July 1992, R.109 of 22 January 1993, R.960 of 28 May 1993,

R.974 of 1 June 1993, R.1356 of 30 July 1993, R.1843 of 1 October 1993, R.2365 of 10 December 1993, R.2529 of 31 December 1993, R.181 of 28 January 1994, R.411 of 11 March 1994, R.873 of 31 May 1996, R.1063 of 28 June 1996, R.1557 of 20 September 1996, R.1746 of 25 October 1996, R.2047 of 13 December 1996, R.417 of 14 March 1997, R.491 of 27 March 1997, R.700 of 16 May 1997, R.798 of 13 June 1997, R.1352 of 10 October 1997, R.785 of 5 June 1998, R.881 of 26 June 1998, R.1024 of 7 August 1998, 1723 of 30 December 1998, R.315 of 12 March 1999, R.568 of 30 April 1999, R.1084 of 10 September 1999, R.1299 of 29 October 1999, R.502 of 19 May 2000, R.849 of August 2000, R.373 of 30 April 2001, R.1088 of 26 October 2001, R.1755 of 5 December 2003 and R. 229 of 20 February 2004.

Amendment of rule 45(7) of the Rules

2. Rule 45(7) of the Rules is hereby amended as follows:

"(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 **[him in two suitable newspapers (whenever possible one in each of the official languages)]** the execution creditor in a newspaper circulating in the district in which the property has been attached and after expiration of not less than **[fifteen]** 15 days from the time of seizure thereof.

(b) Where perishables are attached as aforesaid, 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 **[to him]** 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.

Amendment of Rule 45(11)(a) of the Rules

2. Rule 45(11)(a) of the Rules is hereby amended as follows:

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

Amendment of rule 46(2) of the Rules

3. Rule 46(2) of the Rules is hereby amended as follows:

"(2) An attachment shall be made by **[the]** any sheriff of the district in which the property is situate or by **[the]** any sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situate, upon a writ **[as near as may be in accordance]** corresponding substantially* with Form 20 of the First Schedule."

Amendment of rule 46(4) of the Rules

4. Rule 46(4) of the Rules is hereby amended as follows:

"(4) (a) After attachment, any sale in execution shall take place in the district in which the attached property is situate and 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 (b) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(b) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record 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 and shall thereupon notify the execution creditor accordingly."

Amendment of Rule 46(7) of the Rules

5. Rule 46(7) of the Rules is hereby amended as follows:

"(7)(a) The sheriff conducting the sale shall appoint a day and place for the sale of such property, such day being, except by special leave of a magistrate, not less than one month after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the property, its situation and street number, if any, 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, and he or she shall furnish the said sheriff with as many copies of the notice as the latter may require.

(c) The execution creditor shall publish the notice once in a newspaper circulating in the district in which the immovable property is situate and in the *Government Gazette* not less than 5 days and not more than 15 days before the date of the sale and provide the sheriff conducting the sale, by hand or by facsimile, with one photocopy of each of the notices published in the newspaper and the *Government Gazette*, respectively, or in the case of the *Government Gazette*, the number of the *Government Gazette* in which the notice was published.

(d) Not less than **[ten]** 10 days prior to the sale, the sheriff conducting the sale shall forward by registered post a copy of the notice of sale referred to in paragraph (b) above to every judgment/execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

(e) Not less than **[ten]** 10 days prior to the date of the sale, the sheriff conducting the sale shall affix one copy of the notice on the notice-board of the magistrate's court of the district in which the property is situate, or if the property be situate in the district in which the court out of which the writ issued is situate, then on the notice-board of such court, and one copy at or as near as may be to the place where the said sale is actually to take place."

Amendment of rule 46(8) of the Rules

6. Rule 46(8) of the Rules is hereby amended as follows:

"(8)(a) (i) The conditions of sale shall, not less than 20 days prior to the date of the sale, be prepared by the execution creditor **[as near as may be in accordance]** corresponding substantially with Form 21 of the First Schedule, and the said conditions of sale shall be submitted to the sheriff conducting the sale to settle them.

(ii) The execution creditor shall thereafter supply the said sheriff with two copies of the conditions of sale, one of which shall lie for inspection by interested parties at his or her office and the sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district."

Amendment of rule 46(11) of the Rules

7. Rule 46(11) of the Rules is hereby amended as follows:

"(11) (a) If the purchaser fails to carry out any of his or her obligations 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 property may again be put up for sale[, and the] .

(b) The purchaser shall be responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the said sheriff's distribution account, be recovered from him or her under judgment of the judge pronounced summarily on a written report by the said sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose [;and, if he] .

(c) If such purchaser is already in possession of the property, the said sheriff may, on 10 days' notice apply to a judge for an order ejecting him or her or any person claiming to hold under him or her therefrom".

Amendment of Rule 46(13) of the Rules

8. Rule 46(13) of the Rules is hereby amended as follows:

"(13) 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 or 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."

Amendment of Rule 46(14) of the Rules

9. Rule 46(14) of the Rules is hereby amended as follows:

"(14)(a) The sheriff conducting the sale shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price and simultaneously inform all other sheriffs appointed in that district of such payment.

(b) The said sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the registrar of the court and to all other sheriffs appointed in that district. Immediately thereafter the said sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned at his or her office and at the office of the registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection".

Commencement

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