

MOVABLE PROPERTY SALE IN EXECUTION

RULE 41 OF THE MAGISTRATE'S COURT ACT 32 OF 1944

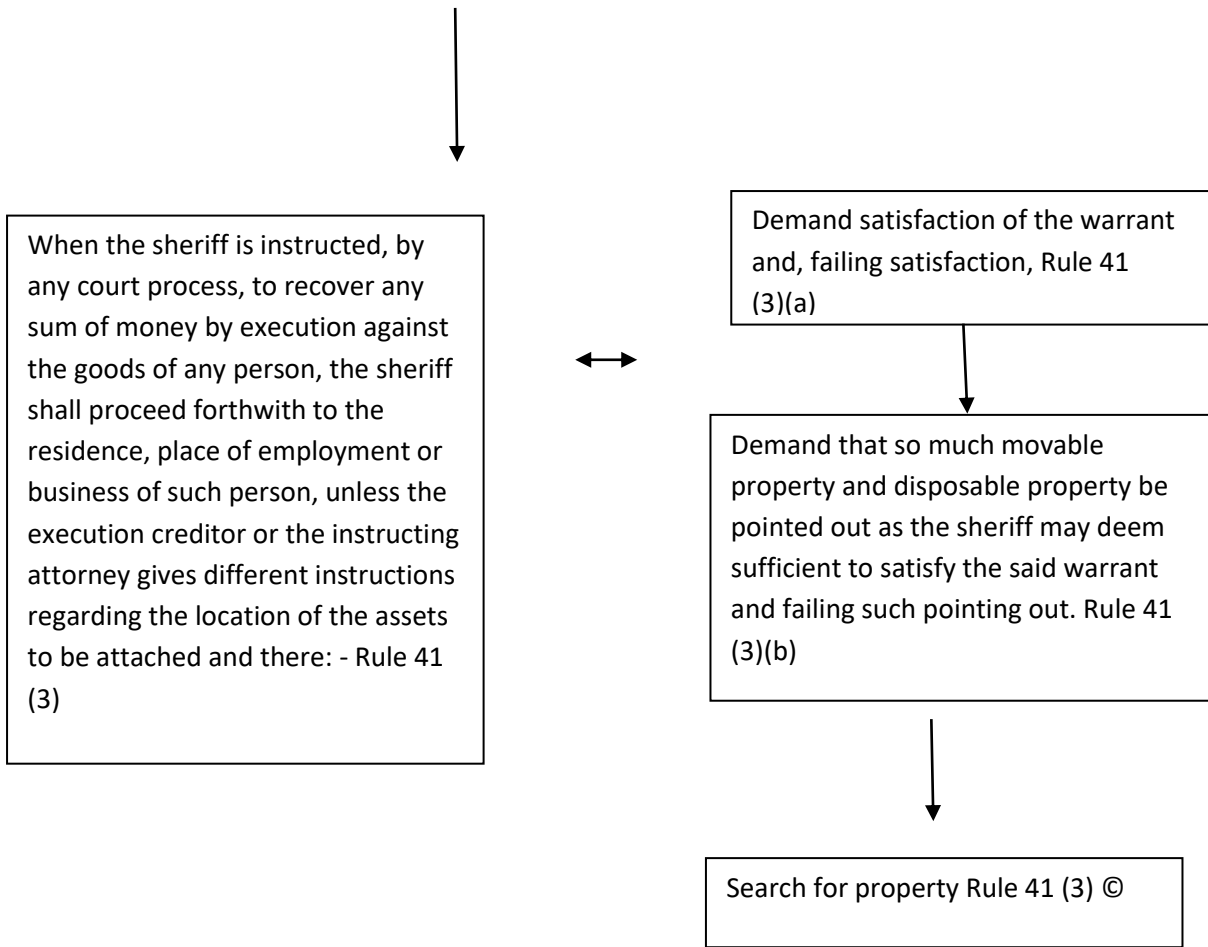
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An execution creditor may, at his or her own risk, issue out of the office of the registrar or clerk of the court one or more warrants of execution in a form corresponding substantially with form 32 of annexure 1. Rule 41 (1)

No process of execution shall be issued for the recovery of any costs awarded by the court to any party, until such costs have been taxed by the taxing master or agreed to in writing by the party liable for the payment of such costs in a fixed sum. Rule 41 (2)(a)

A claim for specified costs already awarded to the execution creditor, which costs are still to be taxed, may be included in the warrant of execution Rule 41 (2)(b)(i)

If such costs are subsequently taxed, they shall be included in the sheriff's account and plan of distribution only if the original bill of costs has been duly allocated and lodged with the sheriff before the date of the sale in execution. Rule 41 (2)(ii)



If on demand the judgment debtor pays the judgment debt and costs, or part thereof, the sheriff shall endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by the sheriff and counter-signed by the judgment debtor or his her presentative. Rule 41(4).

If the property pointed out in terms of sub-rule (3)(b) is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory and valuation of so much movable property as may be pointed out in part execution of the warrant. Rule 41 (5).

If the judgment debtor does not point out any property as required in terms of sub -rule (3)(b), the sheriff shall immediately make an inventory and valuation of so much of the movable property belonging to the judgment debtor as the sheriff may deem sufficient to satisfy the warrant or of so much of the movable property as may be found in part execution of the warrant. Rule 41 (6)



In so far as may be necessary for the execution of any warrant the sheriff may open any door on any premises, or of any piece furniture, and if access is refused or if there is no person there who represents the person against whom such warrant is to be executed, the sheriff may, if necessary, use force or a locksmith to that end. Rule 41 (7).



The sheriff shall exhibit the original warrant of execution and hand to the judgment debtor or leave on the premises a copy thereof. Rule 41 (8).



The sheriff shall sign and hand a copy of the inventory made under this rule, to the judgment debtor or leave the same on the premises, which copy shall have appended thereto a notice of attachment in a format that corresponds substantially with form 33 of annexure 1. Rule 41 (9)



As soon as the requirement of this rule have been complied with by the sheriff, the goods inventoried by the sheriff shall be deemed to be judicially attached. Rule 41 (10).



The sheriff shall file with the registrar or clerk of the court any process with a return of what the sheriff has done thereon and furnish a copy of such return and inventory to the party who caused such process to be issued. Rule 41 (11).



Where perishables are attached, they may, with the consent of the judgment debtor 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 may be expedient. Rule 41(12)



Where money and documents are found and attached, the amount of money or number and kinds of documents shall be specified in the inventory, and any such money or documents shall thereupon be sealed and removed to the office of the sheriff and securely stored. Rule 41 (13)



Where movable property, other than money or documents, has been attached, the execution creditor or his or her attorney shall after notification of such attachment, instruct the sheriff in writing, whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the judgment debtor or in the charge and custody of some other person acting on behalf of the sheriff. Rule 41(14)(a)



Upon the execution creditor or his or her attorney satisfying the registrar or clerk of the court in writing of the desirability for the immediate removal of goods attached, either upon issue of the warrant of execution or at any time thereafter, the registrar or clerk of the court shall endorse his or her approval on the document containing the instructions, and authorize the sheriff in writing, to remove immediately from the possession of the judgment debtor all or any of the movable property attached. Rule 41(14)(b)



In the absence of any instruction under paragraph (a) or authorization under paragraph (b), the sheriff shall leave the attached property, other than money or documents, on the premises and in the possession of the person in whose possession the said movable property is attached. Rule 41(14)(c)

Any person whose movable property has been attached by the sheriff may, together with some person of sufficient means who binds himself or herself as surety to the satisfaction of the sheriff, undertake in writing to produce such property on the date appointed for the sale thereof, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found. Rule 41(15)(a)

This is a new Rule wherein the judgment debtor can now provide security to the satisfaction of the sheriff, so that the attached goods can be left with him or her until the date of sale. The judgment debtor will present the attached assets for sale. This rule is now in line with the of the High Court rules.

The deed of suretyship shall be in the form that corresponds substantially with form 37A of Annexure 1. Rule 41(15)(b)

If the judgment debtor does not, together with a surety, give an undertaking as contemplated in sub-rule (15)(a), then, unless the execution creditor directs otherwise, the sheriff shall remove the said goods to a convenient place of security or keep possession thereof on the premises where they were attached. Rule 41(16)(a)

The costs of such removal or storage shall be recoverable from the judgment debtor and defrayed out of the proceeds of the sale in execution. Rule 41(16)(b)

Unless an order of the 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 release from attachment such property which has been detained for a period exceeding four months unless a sale in execution of such property is pending. Rule 41(18)(a)

All attachments will remain effective for a period of four months. Should the instructing party require the attachment to be extended he or she will have to obtain an order in terms of Rule 41 (18)(a)



If such order was granted in terms of an ex parte application, such order shall not require confirmation. Rule 41(18)(b)



In the event of a claimant lodging an interpleader claim with the sheriff in accordance with Rule 44, the period of four months referred to in paragraph (a) shall be suspended from the date on which the claimant delivers his or her affidavit to the sheriff until the final adjudication of the interpleader claim, including any review or appeal in respect of such interpleader claim. Rule 41(18)(c)

Very important addition to the Rules.

It is now very clear in that as soon as the sheriff receives the interpleader affidavit the remaining lapsing period of four months will immediately suspend until the interpleader is finalized.



Any movable property to be sold in execution of process of court shall be sold publicly for cash to the highest bidder by the sheriff who removed the goods in terms of sub-rule (17)(a) or with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, at or as near to the place where same was attached or to which same had been so removed as aforesaid Rule 19 (a)(i)

It must be noted that an instructing party cannot proceed to appoint a private auctioneer without first approaching court for the approval and without the consent of the Sheriff. The rule is clear in that it states the sheriff has the authority to appoint another person to carry out the auction on his behalf.





The provisions of rule 43 (10) shall apply with appropriate changes to the sale in execution of movable property under this rule. Rule 41 (19)(ii).



Execution creditor/attorney request for Sale Date.



- 1) Sheriff checks file and Notice of Attachment for evaluation of goods – to determine whether sale must be advertised or not. The new rule is that the monetary value for advertising is determined by the monetary jurisdiction value of the small claims court. (Currently this amount is R20000.00)
- 2) Also check if there is no Interpleader Affidavit on file prior to allocating a sale date.
- 3) Sheriff allocate a sale date and informs execution creditor of his requirements.



It is important to note that each time the small claims court monetary jurisdiction is increased, the advertising requirements for this Rule 41 will also increase in line with that of the small claims court.



The execution creditor shall, after consultation with the sheriff, prepare a notice of sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later 10 days before the day appointed for the sale on the notice board or door of the court -house or other public building in which the said court is held and the other at or as near as may be to the place where the said sale is to take place. Rule 41 (19)(b)



If value is below R20 000.00.
Rule 41(19)(c)

If the value of the assets exceeds
the R20000.00

In addition the requirements of paragraph(b) if in the opinion of the sheriff the value of the goods attached exceeds an amount equivalent to the monetary jurisdiction of the small claims court , (the current value of the small claims court is R20000.00) the sheriff shall indicate and direct the execution creditor to publish the notice of sale in a local or other newspaper circulating in the region or district not later than 10 days before the date appointed for the sale and to the furnish the sheriff with a copy of the edition of the paper in which the publication appeared not later than the day preceding the date of sale. Rule 41 (19) (c)

In lieu of paragraph (c), the sheriff may port the notice of sale on the sheriffs office website, upon being so instructed in writing by the execution creditor: Provided that the sheriff shall not later than 10 days before the appointed date of sale, affix on the notice board , the door of the court -house or other public building in which the said court is held, and the other , at or as near as the case may be, to the place where the said sale is to take place , a notice stating the date of the sale in execution and the website on which the full details of the sale may be inspected. Rule 41 (19)(d)

The day appointed for the sale in execution shall not be less than fifteen (15) days after date of attachment. Provided that where the goods attached are of a perishable nature, or with the consent of the judgment debtor, the court may, upon application, reduce any period referred to in this sub-rule or sub rule (19) to such extent and on such conditions as it may deem fit. Rule 41 (20).

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SALE WITHOUT ADVERTISING...cont.

Request Indemnity i.t.o. of Rule 38.

No Adverts.

Once Indemnity is received.

Removal is done. Goods in storage.

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SALE WITH ADVERTISING...cont.

Ensure that the execution creditor / attorney has advertised the sale not less than ten (10) working days prior to sale date in local newspaper circulating in the jurisdiction. RULE 41(19)(c)

Request Indemnity i.t.o. of Rule 38.

Check if Advert is correct.

Once Indemnity is received.

Removal is done. Goods in storage.



Sheriff is required to comply with Section 45 of CPA/FICA:

- 1) Register all buyers.
- 2) Obtain copy of ID and copy of Utility Bill not less than three (3) months old.
- 3) Buyer to pay Registration Fee.
- 4) Hand Bidder's Card to buyer.
- 5) Provide receipt for all payments.
- 6) Label and set goods in lots.
- 7) Display auction rules and read Notice/Conditions of Sale prior to sale commencing.
- 8) Prepare Vendue Roll of all sales.

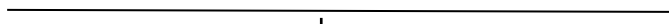
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Distribute proceeds to all Trust Creditors as per the writ on file, after deduction of the sheriff's cost and sale costs

Distribute proceeds to all Trust Creditors as per the writ on file, after deduction of the sheriffs' costs and sale costs.



Where property subject to a real right of any third person, is to be sold in execution, such sale must be subject to the rights of such third person unless he or she otherwise waives such rights. Rule 41 (21)



A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the costs of the sale. Rule 41 (22)



Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and all costs, the sheriff shall pay such balance to the judgement debtor if he or she can be found, failing which the sheriff shall pay such balance into court. Rule 41 (23)(a)



The balance paid into court in terms of paragraph (a), if not Revenue Fund after three months' notice of such intention has been given to the persons concerned, whereafter any publication for the refund of such balance shall be directed to the National Revenue Fund by a person concerned: - Rule 41 (23)(b).

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HIGH COURT ACT 59 OF 1959, ACT 45

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