



7 AUGUST 2020

EXECUTION OF ENFORCEMENT OF AWARDS BY SHERIFFS

Kindly find here below SASS' response to the challenges experienced by sheriffs in relation to the execution of Enforcement Awards issued by the CCMA.

Kindly also note that the issues outlined below were identified through a consultative process between SASS and its members.

1. PREVIOUS ENGAGEMENTS WITH THE CCMA

The sheriff associations had various meetings with CCMA national management whereby challenges were raised by both sheriffs and CCMA. These meetings turned out to be fruitful and various of the challenges could be resolved.

It has been a while since there were interactions with CCMA. However, at the last meeting it was suggested that the CCMA be assisted in dealing with the execution process and the challenges experienced by CCMA officials.

It was suggested that the first point of call should be to capacitate CCMA officials on the execution process in the form of training/ workshop. The ultimate aim was to have a mapped out execution process that would be followed by both parties (Sheriffs and CCMA).

RECOMMENDATION

SASS therefore recommends that:

- (i) a workshop be organised by the SABFS in order to share with the CCMA pertinent issues relating to processes and issues handled by sheriffs in carrying out the instructions by the CCMA.

It is proposed that such a workshop be held in October/ November once the lockdown level has gone down to 2/1.

- (ii) such a workshop be attended by:
 - a) 2 officials from the SABFS
 - b) 11 officials from CCMA
 - c) 2 officials from SASS and 2 from SANAPS

2. PAYMENT OF SHERIFF ACCOUNTS

We are pleased to report that the payment of sheriff's accounts have been resolved to a large extent. We believe this improvement is due to the fact that the payment of sheriff accounts was decentralised to provincial level and is now more accessible.

However, a few members reported challenges with payment of their accounts and these challenges relate to outstanding old accounts, remittance advices not issued, irregular payments, etc.

RECOMMENDATION

It is proposed that these individual incidents be raised with the specific provincial head or official of the CCMA where they have occurred. Sheriffs will be accordingly advised. It is proposed that the CCMA does the same with its provincial officials.

Feedback from the CCMA on this issue will be appreciated.

3. INTERPLEADER PROCEEDINGS

The handling of 3rd party claims and interpleader proceedings remain a matter of concern due to the following reasons:

3.1 Jurisdiction

Enforcement Awards are executed in terms of the Magistrate's Court Regulations. It therefore follows that interpleader summonses should be issued out of the Magistrate's Courts. However, some courts refuse to issue or to adjudicate these interpleaders, claiming they have no jurisdiction over labour matters.

In practice, some Magistrate's Courts which do accept Interpleader Summonses, adopted a process whereby the Interpleader Summons is assigned a new case number when documents are presented to the Clerk of the Court for issuing.

Another practice in some courts is that the Enforcement Award is issued with a case number in the Magistrate's Court, before execution by the sheriff. Any court processes following execution of the Enforcement Award (such as interpleader procedure) will be handled in that Magistrate's Court, under the case number that was initially assigned to the matter.

RECOMMENDATION

It is recommended that the issue of a competent court to adjudicate on Interpleader matters be resolved between the CCMA, the Labour Courts and the Magistrates Courts.

3.2 Process followed after receipt of 3rd party claim

We have been informed that the CCMA has no mandate to issue instructions on interpleader proceedings. Therefore, in the event a 3rd party claim is received after attachment, the matter will only proceed beyond this stage if the complainant (employee) is willing to drive the process.

This results in a situation where the complainant (employee) will have to represent himself/herself in court when the interpleader proceedings are adjudicated, alternatively, the plaintiff will have to appoint a legal representative for court procedures.

RECOMMENDATION

We recommend that the CCMA adopt a definitive position in this regard and a complainant be advised in advance accordingly. The complainant must also be prepared to comply with the guidelines/advise of the sheriff in this regard.

3.3 Sheriffs costs

In the event the complainant (employee) elects to proceed with interpleader proceedings, the CCMA would not pay the cost for the issue and service of the summons. We believe this practice prejudice the complainant (employee) as it adds to the financial constraints on the complainant.

RECOMMENDATION

It is recommended that the CCMA reviews its practise of not assisting a complainant once an Interpleader is lodged. This defeats the entire purpose of why the CCMA intervened on behalf of the complainant in the first place. This also has a potential of the complainant abandoning its case unfairly.

3.4 Release of assets

In practice it often happens that the attachment is uplifted and assets released upon receipt of a 3rd party claim, as no instructions on the issue of an Interpleader summons is forthcoming, either by the complainant (employee) or the CCMA.

The matter is then stalled and the sheriff cannot proceed with execution. Therefore, this loophole in the system has been identified and is sometimes abused by employers and their legal representatives.

RECOMMENDATION

Kindly see recommendation under 3.3 above

4. OTHER MATTERS REPORTED BY SASS MEMBERS

The following aspects of the execution of Enforcement Awards were reported by our members and can be included in the training envisaged for CCMA officials and can also be addressed when the whole process is mapped out.

4.1 Interest payable on the award

Enforcement Awards normally do not provide for payment of interest on the amount of the award. Complainants (employees) sometimes expect to be paid interest and this may result in disagreements between the sheriff and the complainant.

RECOMMENDATION

Whilst this matter can be dealt with in a workshop, we nevertheless recommend that Enforcement Awards, like normal court orders, be in a position to attract interest.

4.2 Copies of Enforcement Award for service

Members also reported that on many occasions a complainant (employee) only provides the sheriff with the original set of documents without copies for service. The cost of copies is then sometimes disputed.

RECOMMENDATION

It is recommended that at the time that an original of the Enforcement Award is given to the complainant, additional copies be made depending on the number of defendants. The CCMA must also advise the complainant that the possibility exists for the sheriff to charge the complainant for copies made.

4.3 Expectation created

Sometimes the complainants (employees) are under the impression that they should merely hand the Enforcement Award to the sheriff whereupon the sheriff will make payment of the award to them.

It appears that the legal procedure is not explained to these complainants (employees) by CCMA officials and an expectation is created that the sheriff will immediately make payment of the amount of the award.

RECOMMENDATION

It is recommended that CCMA officials inform a complainant sufficiently to understand and expect how the process is going to unfold once the complainant is to approach a sheriff with an Enforcement Award.

4.4 Understanding the role of the sheriff by the CCMA branch offices

SASS members reported that the role of the sheriff is sometimes misunderstood by the officials of CCMA branches, as returns of non-service are rejected; sale in execution is expected, without removal of goods, etc.

RECOMMENDATION

Kindly see recommendation under 4.3 above

4.5 Instruction to remove after attachment

There is still uncertainty on the removal instruction after attachment. The last agreement we had with the CCMA, is that a Rule 38 indemnity issued by the CCMA will be forwarded to the sheriff together with the removal instruction. We sometimes find the CCMA branch offices to be reluctant to guide complainants (employees) through the legal process of execution, removal and sale.

RECOMMENDATION

Kindly see recommendation under 4.3 above

4.6 Attachment of bank accounts

Rule 41 of the Magistrate's Court Rules does not provide for attachment of money in a bank account. Therefore, these kinds of attachments cannot be made when an Enforcement Award is executed by the sheriff. Officials of the CCMA branch offices are sometimes not aware of this.

RECOMMENDATION

This matter should be part of the Training Programme recommended.

4.7 Lodging complaints at the Board for Sheriffs (SABFS)

We understand that the complainant (employee) is sometimes advised by CCMA officials to lodge a complaint against the sheriff with the SABFS in the event execution is unsuccessful or when there is dissatisfaction with the outcome of the matter.

RECOMMENDATION

It is important to engage the sheriff before referring a complaint to the SABFS. Referring a matter to the SABFS prematurely prejudices the sheriff and should an enquiry against the sheriff be elevated to a disciplinary procedure, this becomes costly and time consuming to the sheriff.

We therefore recommend that where a complainant is not satisfied with the service by the sheriff, an official of the CCMA alerts the sheriff to this fact before any other action is taken.

4.8 Preparing of notice of sale and advertisement

In order to conduct a sale in execution, a notice of sale must be prepared and the sale must be advertised in a local newspaper in the event the valuation of goods to be sold exceed R5000.00

The drafting and publishing of the notice of sale is the responsibility of the plaintiff (employee) and not the sheriff. This aspect is sometimes not properly explained and the sheriff is then expected to assist.

RECOMMENDATION

We concede that a large number of complainants are sometimes not literate to understand the processes of a sheriff and cannot therefore be in a position to draft a Notice of Sale and advertise. We believe that this is a matter that can be negotiated between the CCMA and the sheriff to come to an amicable solution on behalf of the complainant.

This can also be addressed in the training and workshops envisaged for CCMA and sheriffs

4.9 Rescission / Review applications

When the sheriff attempts to execute the Enforcement Award, employers often claim they were never informed of the hearing. They then immediately apply for rescission / review of the award. We find that applicants do not understand this process; they feel aggrieved and in some cases accuses the Sheriff of not doing his/her job.

The amended labour Act specifically provides that an application for rescission / review does not stop the execution process. Only an order of court will stop execution, but this is not applied consistently by CCMA offices; some direct the sheriff to stay the execution upon receipt of the application and other offices insist that the process continues.

RECOMMENDATION

CCMA must decide on a clear way forward. It is understood that staying the execution process would reduce the financial burden on their part but it is important that there is a national policy.

5. CONCLUSION

SASS wishes to reiterate our commitment to the CCMA and assure all stakeholders that we are available to assist in paving a smooth way going forward, for the benefit of the distressed litigants.