



REPORT OF THE 7TH ANNUAL GENERAL MEETING OF THE SOUTH AFRICAN SHERIFF SOCIETY

7-8 JUNE 2019- DULLSTROOM, MPUMALANGA



A warm thank you to all SASS members who attended the conference! and to everybody who assisted with the planning of this prestigious annual event!

SASS Mpumalanga did a spectacular job with hosting SASS, the auction, donkey derby, goodie bags and other gifts.

Training: 7 June 2019

SASS members are always eager to participate whenever there is an opportunity to raise pertinent issues. It was therefore decided to have interactive discussions with panel members leading on relevant topics.

1. Sheriffs Safety:

Due to the increasing threat to the lives and property of sheriffs it became necessary to look deeper into the security and safety of sheriffs.

As part of risk management, sheriffs must ensure that they are covered for different risks. Susan Coetzer of Protektum Brokers was invited to lead discussions on this topic. She explained the advantages of taking a policy with them and the benefits of their sheriff commercial policy. She highlighted that cover is provided for material damage to the sheriff's own property, as well as claims instituted by 3rd parties. Stated benefits on the commercial

policy include insurance against injuries of both a sheriff and a deputy and include cover for disability and partial disability. Vehicles are covered when driven by a sheriff or a deputy as long as the vehicle is specified. In the event a deputy is killed or permanently disabled, the policy will pay out to make up for loss of income. Public liability is covered and legal costs can be covered on an extension of the policy.

Panel members shared their personal experiences of daily abuse and the sometimes little respect they get from the community.

Col. Dreyer, stationed at Mpumalanga SAPS Legal Services, addressed members on the following topics:

- i. SAPS protection when Sheriffs experience resistance
- ii. the importance of attending case flow meetings at courts and
- iii. the engagement on national basis with the SAPS National Commissioner's office.



Col. Dreyer responded to questions from the floor. Some of the issues raised were the following:

i. Dealing with Evictions

- New national instructions to police were issued on the handling of evictions. The administration involved with this task is tedious and challenging. Crime intelligence and other divisions must attend meetings to plan for logistics for evictions in detail.
- Apart from evictions, there are no existing national instructions on general assistance to sheriffs. SASS Free State indicated they have engaged their provincial legal services branch to enter into a Memorandum of Understanding (MOU) and Col. Dreyer requested that same be forwarded to him for escalation.

ii. Interfering with, and failure to provide assistance to the sheriff

- He advised that members of the SAPS who interfere with the duties of the sheriff or fail to provide assistance to the sheriff, can be reported to the relevant station commander.
- The correct procedure for sheriffs to request assistance is to first arrange a meeting with the station commander. Should no cooperation be received, the sheriff may escalate the matter to the cluster commander/regional commander, who is the next upper office in the command structure.
- He recommended that legal services of the SAPS be approached for speedy resolution for certain matters.
- He advised that whenever service has to be effected on a member of the SAPS, the relevant station commander must be approached to call in the officer so that the deputy can effect service on such officer.

2. Address by the new Executive Manager of the Board for sheriffs- Advocate Rebaone Gaoraelwe

We regret to advise members that after the address by the Executive Manager of the SABFS he tendered his resignation from the Board.

He addressed and briefed members on the processes and projects of the SABFS currently in the pipeline. He highlighted them to include the following:

- Increase in the number of inspectors and inspections for greater visibility of the Board
- Inclusion of deputy sheriffs in formal structures
- Regulation of deputies
- Strengthening of the regulatory mechanisms of the Board
- CPD and training
- Protection of the turf of sheriffs

Advocate Rebaone Gaoraelwe noted questions from the floor and undertook to report back on these matters.

As a result of his departure, management decided to forward these questions in writing to the Board for Sheriffs for a formal response.

3. Do's & Don'ts of the management of Trust Accounts

Mr Murugan addressed this matter in his capacity as a board member of the SA Board for Sheriffs. He informed members that the Board is very serious that the culture of misappropriation must stop and that the behaviour of certain sheriffs put the Fidelity Fund to risk.

Mr Murugan explained that after implementation of desktop inspections, the SABFS was prompted to address the general management and handling of the trust accounts by sheriffs.

Certain general shortfalls were identified and a list of these shortfalls was compiled.

The list was handed out to members and explained in detail. It will be made available on the SASS website.

Mr Murugan further confirmed that the board is in the process of developing a more comprehensive training programme for sheriffs in the management of their trust accounts.

4. Attachment & Sale of motor vehicles

Mr Harry van Nieuwenhuizen confirmed that sheriffs are liable for damages when an attachment is made wrongfully and one of the biggest risks for sheriffs is the attachment and sale of motor vehicles.

- Regulation 53 of the National Traffic Act of 1996 provides that no vehicle may be sold if not in possession of the registration certificate and if it is not licensed.
- The title holder of a vehicle must give permission for transfer of ownership.
- When a vehicle is financed by a financial institution, the sheriff cannot normally proceed with a sale because transfer to the purchaser will not be possible.

The following advice was given to sheriffs in the attachment of vehicles:

- When a person is in possession of a vehicle, there is a presumption that he/she is the owner of such vehicle and the sheriff is entitled to make an attachment
- Obtain the E-Natis report to establish ownership and the title holder
- In the event where the vehicle does not belong to a defendant, attachment on something else is advisable
- If the defendant is not the title holder, the attachment can only be done on the right title and interest of the defendant in the vehicle, in terms of Rule 42 MCR or Rule 45(8) URC

Members were referred to the judgment of *Absa Bank v Lynette van Eeden and others* (included in the bundle) to familiarise them with the obligations of the sheriff in the attachment of motor vehicles.

5. Attachment of Bank Accounts:

This matter was again dealt with by Mr Harry van Nieuwenhuizen who discussed the correct procedure to follow for the attachment on bank accounts.

Attachment of a bank account can be effected with a Writ of Execution in the High Court, but not with a Warrant of Execution issued in the Magistrates Court.

Correct procedure for High Court attachments:

- The sheriff makes an attachment in terms of Rule 45(12) by attaching the right title and interest in the debt
- The sheriff draws up an inventory
- The sheriff serves the Writ and inventory on both the defendant and the garnishee (bank) in terms of Rule 45(8)

Banks must nowadays follow internal procedures and are unable to make payment immediately. However, should the bank fail to make payment, the creditor can act in terms of Rule 45 (12) for an explanation to the court for such non-payment.

Attachment of bank account in the Magistrate's Court can only be done in terms of Section 72, garnishee order. Attachment on a bank account cannot be done in terms of Rule 41 with a Warrant of Execution.

6. Service in terms of State Liability act.

Once again this matter was dealt with by Mr Harry van Nieuwenhuizen. He informed members of the latest amendments to Section 2 of the State Liability Act that prescribe how to serve on the State and State Departments. He indicated that this section is not applicable to service on local authorities.

It is important to note that service must be effected on:

- (1) the head of the Department, at the Head office of such Department
- (2) Within 5 days of service on the Department, service must also be effected on the State Attorney of the region

Members were also alerted to the amendments to Rule 9(3) (g) which now reads: *"In proceedings in which the State or an organ of state, a 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"*



7. Briefing session : latest developments in sales in execution:

This was also a panel discussion where members shared their experiences and challenges they encountered in the execution and sale of immovable property. The following challenges were identified for SASS to escalate:

7.1 Rule 46: Reserve Price:

When the reserve price is not achieved at the sale, no time restriction is prescribed for the court to consider the Rule 46A(9)(d) report, resulting in delay of conclusion of the sale and causing purchasers to lose interest in the sale and become reluctant to participate in future sales. The delay is also detrimental to the debtor and the property. Furthermore, the decision by court - to confirm the sale or not - is not communicated to sheriffs.

Clarity is required on the procedure to follow when the reserve price was not achieved and the sale to the highest bidder was not confirmed by court. It is not clear whether the sale must be cancelled in terms of Rule 46(11) and be re-advertised.

The wording of court orders, stipulating the reserve price and sale requirements differ between courts and can lead to multiple interpretations, exposing sheriffs to possible litigation as the contractual seller of the property. It was suggested that a standard form or template be implemented.

Members were cautioned not to allow cancellation of sales as a result of *Bona Fide* errors by the execution creditor, as there is no such provision in Form 21.

Furthermore, members were made aware of the possibility of two reserve prices when selling property in the Magistrates Court. One reserve price can be set by a preferent creditor in terms of Sec 66(2) MCA and the other reserve price can be set by court in terms of Rule 43A MCR to protect the primary residence of the debtor.

Sheriffs in rural areas generally experience difficulty when they have to file distribution accounts with the Registrar of the High Court due to the distance between their offices and the courts and attorneys are not always willing to assist.

Members were reminded that sequestration orders after the sale but before registration, can lead to the cancellation of the sale, as the transaction is only complete upon registration to the buyer.

7.2 Involvement of commercial Auctioneers:

Commercial Auctioneers & Estate Agents are not allowed to be involved with the sale of the property after judgment.

This position was confirmed in the unsuccessful application by FNB requesting an order to allow the sale of a property through an estate agent and only if not successful, be sold by the sheriff subject to a reserve price. The application was removed by the applicant when it was opposed by the sheriff and the SA Board for Sheriffs.

Rule 46(10) is clear that the property shall be sold by the sheriff.

7.3 Consideration by Court to set a reserve price:

It is important that enough effort is made to ensure all relevant facts are placed before the courts for consideration in the setting of the reserve price, if any. Sheriffs can play a more prominent role in this regard and discussions with the banks were proposed. We have furthermore noted that a reserve price is sometimes set for property that is not the primary residence of the debtor.

7.4 Practice Directive:

The Practice Directive issued by the Judge President of Gauteng does not address the challenges experienced by Sheriffs. A proposal was made to urgently escalate the matter to develop uniform practice and procedures for all courts nationally.

It was also noted that the relevant Judge President directs that Rule 46(11) applications for cancellation of sales be set down in the interlocutory court (open court) and will no longer be heard by a judge in chambers. SASS does not agree with this, due to the financial impact for the debtor and possibly the sheriff.

The Practice Directive is applicable to Gauteng High Courts as well as the Western Cape High Court.

7.5 Other

Members addressed the issue of the opening bid for sales, subject to a reserve price.

It was again confirmed that the opening bid should in fact be not lower than the reserve price and only bids higher than the reserve price can be accepted.

The conflict between the provisions for sales in execution contained in the Consumer Protection Act (CPA) vs. Rule 46 URC and Rule 43 (MCR) has been addressed with the Banking forum and a legal opinion is awaited for clarification.

**** Training session was concluded****

Gala Dinner: 7 June 2019

The gala dinner was once again a very exciting and elegant event. The AGM theme “Sheriffs...through the eyes of the people” was displayed in the events of the evening. Rural and urban people came together and explored our diversity.



The *TimbaliTemaswati* Dancers entertained guests.



The following awards were issued:

- Service Awards – The service and contribution of two members was acknowledged, Mr Thaka Seboka & Mr Chris de Wet.
- Best Run province – awarded to Mpumalanga.
- Best improved province - awarded to Gauteng
- A voucher to the value of R12 500.00 was awarded to Mr Rodney Wentzel to assist him to replace his computer system.



Our main speaker for the evening was the Public Protector, Advocate Mkhwebane, who explained the similarities between her work and that of Sheriffs. She congratulated the 24 newly appointed Sheriffs. Adv. Mkhwebane encouraged Sheriffs to do their work without fear or favour.

Fundraising:

This year live stock was auctioned off and the amount of R71 500.00 was raised. The evening was concluded with a game called “Donkey Derby” entailing virtual horse racing and betting on the horses.



8 June 2019

Breakfast Panel Discussion: Vehicle repossessions

The involvement of bank agents and tracers remain a burning issue for SASS members. It was therefore decided to have an interactive session where members can raise their concerns.

Ms. Kgomotso Mphahlele and panel members unpacked the challenges by both sheriffs and banks on the intrusion of bank agents, conflict between sheriffs and agents, overcharging of fees, the most effective communication between attorneys and sheriffs, service outside jurisdiction and the service provided to banks by sheriffs.

Sheriffs must ensure their deputies do not move out of jurisdiction for repossession of vehicles and any incidents of this nature have to be reported.

The electronic transmission of documents is now allowed in terms of Rule 44(1)(a) URC and members must ensure they have proper processes in place to facilitate swift execution, delegation and monitoring of Warrants, to ensure effective service to the Execution Creditor.

Members must ensure they charge the correct fees and where they have discretion, be cautious not to overcharge. Mr Glover reported that since the adoption of the fee guideline, most returns received are in line with the fee guide; however some sheriffs still charge exorbitant and unjustifiable fees, creating a negative perception of the sheriff profession as a whole. SASS EXCO was requested to address overcharging with guilty sheriffs.

Furthermore, members were reminded of their obligation on insurance of bank vehicles, to have a proper inventory of the vehicle, take pictures if possible and notify the bank immediately of the removal to avoid unnecessary storage cost.

Various challenges with the taxing of sheriffs accounts were raised from the floor, which will have to be escalated.

Members furthermore reported that vehicles move between different jurisdictions and the sheriff who initiated the removal is not paid for such attempt as the vehicle was eventually removed by another sheriff. Members were requested to ensure instruction letters are followed to avoid unnecessary work that will not be paid by instructor.

Mr Tarica reported that there is a process in the pipeline whereby the original Warrant for Delivery will be uploaded to a server that can be accessed by the sheriff for verification.

Members requested that the fee guide be amended to accommodate the challenges experienced by rural sheriffs and to provide for additional necessary charges for removal of trucks, such as special drivers, time spent to remove interlinks, etc.

It was again confirmed that bank agents and tracers are not allowed to have Warrants and Court Orders in their possession. Members must report any incidents to management to report to the banking forum. Debt Collectors have a Code of Conduct and must be reported for non-compliance.

Conclusion

Further engagement with stakeholders was flagged as necessary.

A newsletter for members should be drafted defining best practice on fees, electronic transmission of Warrants, the sheriff's obligation on insurance and the role of sheriffs in tracing of vehicles.

The Fee Guide must be brought to the attention of courts and the Judge Presidents.

Rationalization of Courts:

Address by Mr Makena Moagi of the Department of Justice and Constitutional Development:

Mr Moagi reported on the progress with vacant Sheriff's offices and explained that certain vacant offices were not advertised due to fact that they are affected by rationalization of Magisterial districts. He explained the criteria used and reported that they anticipate to finalize the process by the end of this financial year.

No clear indication of date of implementation could be provided to members.



Annual General Meeting:

1. Ms Petro Roodt, President, opened the meeting and the following reports were presented and approved by members:
 - 1.1 Treasurer's Report: Mr Marks Mangaba
 - 1.2 Secretary's Report: Mr Allan Murugan
 - 1.3 Provincial Report: Ms Victoria Soga
 - 1.4 President's Report: Ms Petro Roodt

2. Society for Deputy Sheriffs and Office Staff (SODESTA)

The Society for Deputy Sheriffs and Office Staff (SODESTA) was introduced to members. A need for the organization was identified whereby our deputies and staff members would enjoy the benefits of being members of SASS, receive information on the latest developments in the profession, be presented on management structures of SASS, be involved with provincial ventures, receive career advancement and development opportunities and have exposure to a social media platform for engagement with colleagues in the profession.

The following resolution was approved by members:

SASS management is mandated to facilitate the establishment of an organization for Deputy Sheriffs and staff.

3. Constitutional amendments

Mr Seboka presented the proposed amendments to the SASS Constitution that would streamline the elections procedure for management.

4. Closure

Petro Roodt, SASS President thanked members for their attendance and participation in the 2019 AGM.

The 2020 AGM will be held in Limpopo.

5. Golf

Members had the opportunity to participate in a golf game after completion of the meeting.



It was indeed a successful conference and we believe that our members gained a lot in the topics discussed. We also wish to extend our sincere gratitude to Mr Phiri who donated bags of oranges to conference attendants. Similarly we wish to extend our sincere gratitude to the organisers of the Mpumalanga conference who also donated carved granite stones to conference attendants.

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