



**KWAZULU-NATAL: HIGH COURT,  
PIETERMARITZBURG**  
Private Bag X 9014, Pietermaritzburg, 3200  
301 Church Street, Pietermaritzburg, 3201  
Tel No. +27 (33) 345 8211, www.judiciary.org.za

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## **Speech: Embracing change and transformation: SA Sheriff Society**

### **Introduction**

[1] The President and the Executive of the South African Sheriff Society, thank you for invitation to address your conference. In 2023, 29 years since the democratic dispensation came into place, one will be surprised that we still have a theme like you have today: EMBRACING CHANGE & TRANSFORMATION. But because of my background in the Legal Profession, I am not surprised because the wheels of transformation like those of Justice take time to turn. But we are making progress if we are engaging on the subject. However, I would just like to remind you that sheriffs are a part of the wider legal profession and the justice system.<sup>1</sup> As held in *Interactive Trading 115 and another v South African Securitisation Programme and others* [2019] (5) SA 174 (LP) para 14 the court held that it relies on the office of the sheriff as one mechanism in the administration of justice to ensure that the process leading up to the granting of a judgment is fair and that the legal proceedings have been brought to the attention of the other party. Sheriffs, like attorneys are required to be honest in their dealings with the court. The court should upon mere production of the return of service accept as correct the information contained therein. But, like what we experience generally in the Legal profession, more often we find it hard to just accept without scrutinizing the document to the t. It is for this reason that I would like to remind you of what is expected of the Sheriffs in their duty to uphold the values of the constitution.

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<sup>1</sup> *Interactive Trading 115 CC and another v South African Securitisation Programme and others* [2019] ZALMPPHC 10, 2019 (5) SA 174 (LP) para 14.



[2] the South African Sheriff Society,<sup>2</sup> In terms of the Sheriff's Code of Conduct,<sup>3</sup> sheriffs are required to, as a part of the pledge, execute their duties with integrity, honesty and transparency, as well as uphold the values of the Constitution, and have respect for those for whom, and against whom they execute their duties, and their rights, especially the right to human dignity, as enshrined in s 10 of the Constitution.<sup>4</sup> *Erasmus*, in the commentary on s 43 of the Superior Courts Act 10 of 2013, phrases this as follows:<sup>5</sup>

'In the discharging of a sheriff's duties in terms of this subsection, there must inevitably be interference with the private rights of others. It can, therefore, be inferred that such interference was sanctioned by the legislature, subject to the limitation that the exercise of the statutory power in such cases must be carried out with the least possible interference. Thus, a writ could in most cases not be executed unless the sheriff entered the property of the judgment debtor, an act which would, in the absence of statutory authority, be a trespass. However, other, more serious, infringements of private rights must also be taken to have been sanctioned: if a judgment debtor resists the execution of a warrant, the sheriff has, by necessary implication, the power to overcome such resistance by such force as may be strictly appropriate. An order of court, if in fact the court is competent to make such an order, authorizing a sheriff to break into and forcibly enter premises is, therefore, not only unnecessary but would also amount to an indemnity for the sheriff which the court was not prepared to grant.'

(footnotes omitted)

[3] Sheriffs, like legal practitioners, are officers of the court.<sup>6</sup> In *Interactive Trading 115 CC v South African Securitisation Programme*<sup>7</sup> the sheriff had not affected proper service on the defendants. The court held that it is trite that courts will not make an

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<sup>2</sup> The South African Sheriff Society has a similar function as the South African Law Society, they are akin to trade unions that protect the interests of its members. All sheriffs are appointed, in terms of the Sheriffs Act 90 of 1986, and must pay their professional and fidelity funds fees to the South African Board for Sheriffs. It is also the Board the issues all their codes of conduct, etc.

<sup>3</sup> These were updated on 5 January 2014, and are available on the South African Sheriffs Board website.

<sup>4</sup> The slogan of the South African Board for Sheriffs states: 'Upholding the Dignity of Those We Serve'.

<sup>5</sup> DE van Loggerenberg and E Bertelsmann *Erasmus: Superior Courts Practice* (Revision Service 18, 2022) at A2-179 to A2-180. The corresponding footnotes cite: *Ex parte Kaefer Insulation (Pty) Ltd: In re Kaefer Insulation (Pty) Ltd v Sharneck* 1984 (3) SA 533 (W); and *Johannesburg Municipality v African Realty Trust Ltd* 1927 AD 163 at 173.

<sup>6</sup> *Interactive Trading 115 CC and another v South African Securitisation Programme and others* [2019] ZALMPPHC 10, 2019 (5) SA 174 (LP) para 14.

<sup>7</sup> *Interactive Trading 115 CC and another v South African Securitisation Programme and others* [2019] ZALMPPHC 10, 2019 (5) SA 174 (LP) paras 7 – 8.



order against a person where they are not properly informed about the proceedings against them. The court, in relation to the duties of sheriffs stated:<sup>8</sup>

[9] There is, however, one matter that calls for comment. The matter relates to the purpose of the rules and the duty the sheriff owes to the court insofar as service of court documents is concerned. A sheriff is an officer of court who is required to perform his duties honestly and diligently. The code of conduct for sheriffs states clearly that sheriffs are an integral part of the justice system. As judicial officer, each sheriff is responsible for the effective service and execution of court processes. This is an important function in the administration-of-justice machinery where disputes among members of society are required to be adjudicated fairly. In *Steinberg v Cosmopolitan National Bank of Chicago* the court said that it is a cornerstone of our legal system that a person is entitled to notice of legal proceedings against such a person. The rules have reserved this job to a sheriff and rely on the return of service prepared by him that the defendant has been notified of the proceedings. If no appearance to defend or notice to oppose is filed, the court can, upon satisfying itself that the service was effected properly, grant a default judgment, as happened in this case.

...

[14] What emerges from the above is that the sheriff who prepared the returns of service did not perform his duties honestly and diligently in fulfilment of his obligations to this court. The essence of the applicants' submissions is that return of service should not be relied upon as it contains incorrect information. These are serious allegations being made against an officer of court. The court relies on the office of the sheriff as one mechanism in the administration of justice to ensure that the process leading up to the granting of a judgment is fair and that the legal proceedings have been brought to the attention of the other party. Sheriffs, like attorneys, are required to be honest in their dealings with the court. The court should upon mere production of the return of service accept as correct the information contained therein.' (footnotes omitted)

[4] The above ties in with what the court held in *Absa Bank Ltd v Mare*<sup>9</sup> in relation to the sheriff's return of service:

'A return of service, it is trite, is regarded as prima facie evidence of its content. Indeed, s 43(2) of the Superior Courts Act 10 of 2013 expressly provides that "(t)he return of the sheriff or a deputy sheriff of what has been done upon any process of a court, shall

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<sup>8</sup> *Interactive Trading 115 CC and another v South African Securitisation Programme and others* [2019] ZALMPPHC 10, 2019 (5) SA 174 (LP).

<sup>9</sup> *Absa Bank Ltd v Mare and others* 2021 (2) SA 151 (GP) para 19.



be prima facie evidence of the matters therein stated". It follows that such evidence may be challenged by adducing the clearest evidence.' (references omitted)

[5] Furthermore, sheriffs are expected to keep within the precincts of their duties to the court. Fairly recently, the Supreme Court of Appeal in *Motloung v The Sheriff, Pretoria East* remarked:<sup>10</sup>

'[30] . . . it is necessary to say something about the conduct of the respondent [ie the sheriff] in refusing to serve the summons. It is not for sheriffs to judge whether a summons is a nullity or susceptible of condonation. That is a matter for courts to decide within the context of a proper ventilation of the issues. As can be seen from this matter, some complexity may attend on that determination. The approach which was taken by the respondent was regrettable and is to be strongly discouraged.'

[6] To provide some context to the above quote, the sheriff had refused to serve a summons, as it did not display the signature of the registrar, only the registrar's stamp, thereby allowing the claim to lapse. The court worded the issue as follows:<sup>11</sup>

'The crisp issue in this appeal is whether a summons which has not been signed by the registrar of the court is a nullity or a defective pleading which is condonable under Uniform Rule 27(3).'

[7] After a long discussion of the relevant case law, the court concluded that<sup>12</sup>

'the present matter clearly falls within the ambit of a peremptory requirement whose breach can be condoned under rule 27(3). Despite not complying with a peremptory provision of rule 17(3)(c), it is not visited with nullity. It can be condoned.'

[8] Sheriff's should only charge those fees as prescribed by Uniform rule 68, even if the work is more extensive than usually required.<sup>13</sup> The court in *Deputy Sheriff, Port Elizabeth v Dorbyl Marine (Pty) Ltd*<sup>14</sup> held:

'The Rule does not in my view give the Taxing Master any discretion to depart from

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<sup>10</sup> *Motloung and another v The Sheriff, Pretoria East and others* [2020] ZASCA 25, 2020 (5) SA 123 (SCA).

<sup>11</sup> *Motloung and another v The Sheriff, Pretoria East and others* [2020] ZASCA 25, 2020 (5) SA 123 (SCA) para 1.

<sup>12</sup> *Motloung and another v The Sheriff, Pretoria East and others* [2020] ZASCA 25, 2020 (5) SA 123 (SCA) para 29.

<sup>13</sup> *Deputy Sheriff, Port Elizabeth v Dorbyl Marine (Pty) Ltd* 1985 (3) SA 427 (SE) at 428G.

<sup>14</sup> *Deputy Sheriff, Port Elizabeth v Dorbyl Marine (Pty) Ltd* 1994 (2) SA 262 (E) at 264G.



the tariff as laid down in a case such as the present. The fact that the respondent gratuitously agreed to pay a larger amount than the tariff required him to do, and that the Taxing Master allowed such larger amount on that basis, clearly cannot affect the interpretation of the Rule itself, nor has it been suggested to us that it should.' I thought let me remind of you of these duties and ethical values because almost every day we are faced with degenerating morals in various professions. Lack of ethics is ripe. I urge you to maintain your values and ethics despite pressures of society that face us everyday. Let us not be found in the midst of corruption accusations that seem to engulf all the professions. Put the constitution face in all that you do.

### **Change and transformation in the legal profession**

[9] Change has and never will be easy. However, as the saying goes 'change is inevitable', but with change there is always a tension. Simply, this tension arises out of the need to change, but there is often a strong resistance to same, where there are many that want the traditional structures to remain.<sup>15</sup> This is possibly best stated as follows:<sup>16</sup>

'transformation requires an approach that addresses more than race as an issue of visibility. Transformation of institutions must be a conscious exercise in order to be meaningful, as effective transformation essentially requires the transformation of individuals and their worldviews that animate those institutions.

...

Importantly a change in mindsets and worldviews is required from all participants of the profession. In order for this to be achieved there must be a sincere appreciation that transformation and competence are not mutually exclusive nor inherently in conflict'.

[10] In other words, change leads to transformation. There is a need to accept that the difficulty of the challenge that comes with change, is that in some instances the process is slow, and in this way allows for better adaptation to the changes. In others the process is fast, where many are taken by surprise by the changes and battle to keep up. However, the process of change and transformation should not be viewed

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<sup>15</sup> *S v Zuma and others* [1995] ZACC 1; 1995 (2) SA 642 (CC); 1995 (4) BCLR 401 (CC) para 17, see also T Matthews and C Samaradiwakera-Wijesundara 'The fiction of transformation: An analysis of the relationship between law, society and the legal profession in South Africa' (2015) 31(3) *South African Journal on Human Rights* 553 at 568 – 569.

<sup>16</sup> T Matthews and C Samaradiwakera-Wijesundara 'The fiction of transformation: An analysis of the relationship between law, society and the legal profession in South Africa' (2015) 31(3) *South African Journal on Human Rights* 553 at 566 – 569.



negatively. Change, as well as transformation, should be embraced as a new beginning, even if the journey seems daunting at first.

[11] Transformation is described as:

‘ . . . to require a complete reconstruction of the state and society, including a redistribution of power and resources along egalitarian lines. The challenge of achieving equality within this transformation project involves the eradication of systemic forms of domination and material disadvantage based on race, gender, class and other grounds of inequality. It also entails the development of opportunities which allow people to realise their full human potential within positive social relationships.’<sup>17</sup> (footnotes omitted)’

[12] How best is transformation achieved? There must be both a willingness to change, as well as a willingness to be a part of a positive change.<sup>18</sup> Positive change is achieved through embracing the values that underpin the bill of rights, especially the values surrounding human dignity and equality.<sup>19</sup>

[13] Although it is important that all professions must be transformed to be representative of society, including all aspects of the legal profession, be it judges, magistrates, legal practitioners, or sheriffs, by embracing change and transformation, a holistic approach should be relied on. In line with the Constitution, where the preamble emphasises that in acknowledging our past, we must be certain not to leave anyone behind, as we strive for a united, democratic State, based on the values of human dignity, equality, freedom, non-racialism, and non-sexism.<sup>20</sup> O’Regan J

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<sup>17</sup> C Albertyn and B Goldblatt ‘Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality’ (1998) 14(2) *South African Journal on Human Rights* 248 at 249.

<sup>18</sup> LV Theron ‘Leadership, Social Justice and Transformation – Inspire a Leader’ (2018) 21 *PER / PELJ* – DOI <http://dx.doi.org/10.17159/1727-3781/2018/v21i0a4949> at 6.

<sup>19</sup> KE Klare ‘Legal Culture and Transformative Constitutionalism’ (1998) 14(1) *South African Journal on Human Rights* 146 at 149, see also Section 1 of the Constitution, *S v Zuma and others* [1995] ZACC 1; 1995 (2) SA 642 (CC); 1995 (4) BCLR 401 (CC) para 17, C Albertyn and B Goldblatt ‘Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality’ (1998) 14(2) *South African Journal on Human Rights* 248 at 249, and S Liebenberg ‘The Value of Human Dignity in Interpreting Socio-Economic Rights’ (2005) 21(1) *South African Journal on Human Rights* 1 at 3.

<sup>20</sup> See generally the preamble and section 1 of the Constitution, *Brink v Kitshoff* 1996 (5) BCLR 752 (CC) para 42 in O’Regan J’s concurring judgment, generally *Visser v Minister of Justice and Constitutional affairs and others* 2004 (5) SA 183 (T), and C Albertyn and B Goldblatt ‘Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality’ (1998) 14(2) *South African Journal on Human Rights* 248 at 254 and 256 – 257.





highlighted this, in her discussion on equality, as follows:<sup>21</sup>

‘Section 8 was adopted then in the recognition that discrimination against people who are members of disfavoured groups can lead to patterns of group disadvantage and harm. Such discrimination is unfair: it builds and entrenches inequality amongst different groups in our society. The drafters realised that it was necessary both to proscribe such forms of discrimination and to permit positive steps to redress the effects of such discrimination. The need to prohibit such patterns of discrimination and to remedy their results are the primary purposes of section 8’.

[14] Fairly recently, the Constitutional Court held that in transforming society, there is a strong need to embrace our diversity.<sup>22</sup> It is through embracing the diversity of individuals that each and every one can be a catalyst of change, and transform an organisation from within, it is not just up to the so-called ‘powers that be’ that should be the ones to take the initiative.<sup>23</sup>

[15] The famous American poet, Maya Angelou, captured the idea that no one should be left behind where change and transformation are embraced, as well as the mindset needed to change and encourage transformation, as follows:

‘There were people who went to sleep last night, poor and rich and white and black, but they will never wake again. And those dead folks would give anything at all for just five minutes of this weather or ten minutes of plowing. So you watch yourself about complaining. What you're supposed to do when you don't like a thing is change it. If you can't change it, change the way you think about it.’<sup>24</sup>

[16] The epilogue of the Interim Constitution, although describing the Constitution and the change and transformation that is catalysed off it, describes that by embracing change and transformation, we are on a<sup>25</sup>

‘historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of

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<sup>21</sup> *Brink v Kitshoff* 1996 (5) BCLR 752 (CC) para 42 in O'Regan J's concurring judgment.

<sup>22</sup> *Qwelane v South African Human Rights Commission and another* [2021] ZACC 22, 2021 (6) SA 579 (CC), 2022 (2) BCLR 129 (CC) para 49.

<sup>23</sup> LV Theron ‘Leadership, Social Justice and Transformation – Inspire a Leader’ (2018) 21 *PER / PELJ* – DOI <http://dx.doi.org/10.17159/1727-3781/2018/v21i0a4949> at 8 onward.

<sup>24</sup> Maya Angelou, available: <https://www.whatshouldireadnext.com/quotes/maya-angelou-there-were-people-who-went> (accessed 7 June 2023).

<sup>25</sup> See also P Langa ‘Transformative constitutionalism’ (2006) 17(3) *Stellenbosch Law Review* 351.



human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the wellbeing of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.’

[17] It is encouraging to note that in 2021, the latest statistics I can find, the chairperson of the South African Board for Sheriffs set out:<sup>26</sup>

‘the end of the financial year of 2019 the SABFS had a total number of 254 sheriffs on its database, of which 63.8% were Black, 36.2% White and 31% female.’

[18] A tremendous improvement from 2001 where<sup>27</sup>

‘the profession had a total of 386 sheriffs, of which 83% were White and 17% Black. In terms of gender representation the profession had 37 females and 386 males’.

[19] This shows that there has been an effort in transforming the industry, and it has been said about change that:

‘It’s not about perfect. It’s about effort. And when you implement that effort into your life. Every single day, that’s where transformation happens. That’s how change occurs. Keep going. Remember why you started.’<sup>28</sup>

[20] It is in the spirit of embracing the journey of change and transformation, even though it is still a rocky road and there are still many steep hills to climb, that the current momentum must not be lost. We must also be patient with those that find it hard to transform or embrace transformation. In this journey, no one should be left behind, as strides are made to achieve a representative and unified sheriffs’ profession – serving all with dignity and respect.

**T P Poyu Dlwati**

**Judge President: KwaZulu-Natal Division of the High Court**

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<sup>26</sup> South African Board for Sheriff 2021 Annual Report at 9.

<sup>27</sup> South African Board for Sheriff 2021 Annual Report at 8.

<sup>28</sup> By Jillian Michaels, see ‘35 Inspirational Quotes on Transformation’, dated May 2023, available at <https://www.awakenthegreatnesswithin.com/35-inspirational-quotes-on-transformation/> (accessed 6 June 2023). Jillian Michaels is an American fitness expert, certified nutritionist, businesswoman, media personality, and author (see [https://en.wikipedia.org/wiki/Jillian\\_Michaels](https://en.wikipedia.org/wiki/Jillian_Michaels) (accessed 6 June 2023)).





