

The role of the Sheriff in the South African legal system

20 September 2023 5 min read

In the current economic climate, with rising interest rates and soaring inflation, many consumers are struggling to meet their debt obligations. This may lead to creditors instituting legal proceedings and taking judgment against defaulting consumers.

Sheriffs play an integral role in various stages of legal proceedings. This article outlines some duties and obligations of sheriffs in the South African legal system, as well as the rights and responsibilities that members of the public have when interacting with sheriffs.

Role of Sheriffs

By definition, a sheriff is an officer of the court appointed by the Minister of Justice and Constitutional Development in terms of the Sheriffs Act 90 of 1986. Amongst other things, this Act regulates sheriffs' appointments, conduct and functions.

The principal roles of sheriffs include:

Serving Court Documents

Arguably the most common role of sheriffs is to formally deliver (or "serve") court documents such as summonses, legal notices, subpoenas, warrants and court orders to individuals and entities.

Enforcing Court Orders

Sheriffs are responsible for ensuring a court's instructions (as set out in court orders) are executed in an organised, fair, and dignified manner. For example, in eviction matters, a sheriff ensures that parties who have been ordered to vacate a property by a court, do so as outlined in the court order. In some instances, sheriffs may seek the assistance of the South African Police Service to perform their duties in situations where they are prevented (or have a reasonable belief that they will be prevented) from performing their duties.

Attaching Property and Facilitating Sales in Execution

A sale in execution is a process that may take place when a court has handed down judgment for the payment of money and the judgment debtor (i.e. the person against whom the court has ruled) has failed to make payment as ordered by the court.

In this case, the sheriff may be instructed – in a court document known as either a warrant or writ of execution – to attach (i.e. to seize and take control of) property belonging to the judgment debtor and sell it on auction to satisfy the debt.

Your Rights When Interacting with the Sheriff

- In line with the Bill of Rights in the Constitution, sheriffs are required to treat the public with dignity, equality and respect.
- As far as reasonably possible, the sheriff must protect your right to privacy and refrain from sharing your confidential information with unauthorised parties.
- The sheriff may not discriminate against you based on your race, gender, religion, or any other prohibited ground of discrimination.
- You have the right to request and receive an explanation about: why the sheriff has come to see you; the nature of the documentation that is being delivered to you; and the next steps you are required to take.
- You may request a sheriff to show you their official identity card to verify that they are in fact a sheriff.

Your Responsibilities When Interacting with the Sheriff

Where there are rights, there are corresponding responsibilities. Should you encounter a sheriff, you are required to allow them to execute their duties without any interference.

Sheriffs are allowed to use reasonable and necessary force to gain access to property in order to perform their duties in instances where access is denied or there is no one present to allow the sheriff to have access to such property.

It is important to note that it is a criminal offence to obstruct the work of the sheriff. Obstruction includes conduct such as:

- disposing of goods that have been attached by the sheriff;
- refusal by a judgment debtor to point out property that is to be attached and sold to satisfy the judgment debt; or
- a judgment debtor falsely alleging that they do not own any property; or that the property they own is insufficient to satisfy the debt.

Any person found guilty of any these offences may be imprisoned for up to six months or ordered to pay a fine.

Sheriffs may not attach certain property belonging to a judgment debtor or his or her family, such as necessary clothing, bedding, beds, household utensils, food and drinks for consumption by debtor and/or the debtor's family for the month, as well as tools of trade.

Complaints Against Sheriffs

Given the nature of their duties, sheriffs must maintain honesty, good ethics, and professionalism. If you believe that a sheriff has conducted him or herself improperly, you have the right to report that sheriff to the South African Board of Sheriffs ("Board"), which is a body that is established under the Sheriffs Act. The Board is required to investigate the complaint, after which it may charge, discipline, or remove the sheriff, if found guilty.

Conclusion

Sheriffs have an indispensable role in the administration of justice. They must ensure that they execute their duties in accordance with the law. The public must know their rights and obligations, as well as where and how to lodge a complaint against sheriffs who have misconducted themselves.



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