



ADDRESS BY ADV H MOHAMED ON THE OCCASION OF THE INDUCTION TRAINING PROGRAMME FOR NEWLY APPOINTED SHERIFFS:

VENUE:

Good morning and welcome,

It is indeed a pleasure for me to be with you today on this significant/momentous occasion in the sheriff's profession as you commence your induction training programme as the newly appointed sheriffs. My appreciation also goes to the South African Board for Sheriffs for inviting me to participate in this induction programme. I bring with me the best wishes of Deputy Minister John Jeffery, MP.

The Deputy Minister was duly delegated by the Minister of Justice and Constitutional Development to exercise the power bestowed upon him in terms of the Sheriff's Act (Act No. 90 of 1986).

On 27 February 2014 the Deputy Minister appointed 18 sheriffs to various vacant sheriff offices, with effect from 1 June 2014 with the exception of Somerset East Lower Court in the Eastern Cape and Bonnievale Lower Court in the Western Cape, where these newly appointed sheriffs will assume office at 1 July 2014 and 9 September 2014 respectively.

I would like to take this opportunity to congratulate the newly appointed sheriffs on your appointment and I welcome you to the Justice family. All of you, as sheriffs, form an indispensable part of the justice system of our country, a justice system which seeks to assist all South Africans, black and white, rich and poor, urban and rural, in accessing and enforcing their constitutionally guaranteed rights.

Whilst newly appointed sheriffs for Gauteng, Limpopo, the North West and Mpumalanga, is attending their induction programme in Pretoria, newly appointed sheriffs from the Eastern Cape and Kwazulu Natal meet in East London, those from the Free State and the Northern Cape, are meeting in Bloemfontein.

This induction programme will be followed by an in house week long training programme at the offices of experienced sheriffs. I would like to extend my sincere appreciation to the sheriffs that will set time aside to provide guidance and mentorship to the newly appointed sheriffs.

The sheriffs' profession has undergone profound change since the birth of our democracy in 1994. Before 1994, sheriffs had the power to arrest and imprison people, often the poorest of the poor, for their inability to settle civil debt, often very small amounts of civil debt. To say that sheriffs were not exactly the most popular officers of the court would not be a lie. It was an overwhelmingly white male profession with, what our former Deputy Minister, Andries Nel, once referred to as a "skiet, skop en donner" and my I add, "Arrest" reputation.

Much has changed since 1994. And great strides have been made in making the sheriffs' profession more accessible and user-friendly. The sheriff, as an officer of the court, plays a pivotal role in the justice system; a system which has to be accessible to all our people, in particular the poor and marginalised who, given our country's history of injustice, have been deprived of justice for so long.

Access to justice is a fundamental right that unlocks access to all the other rights enshrined in our Constitution.

The Bill of Rights enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. In terms of sections 9 and 10 of the Bill of Rights of the Constitution of the Republic of South Africa of 1996, everyone is equal before the law and has the right to equal protection and benefit of the law and

everyone has inherent dignity and the right to their dignity respected and protected. It is my wish that as you enter the sheriffs profession that you will carry the above values, as enshrined in the Bill of Rights, not in your pockets but in your hearts and make it real as those that you interact with in the execution of your duties will very often be the poorest of the poor and the vulnerable.

Our concern is the failure to have cases or disputes processed and resolved speedily. Justice delayed is justice denied: so goes the proverb. Part of the transformation of the system is to ensure speedy access to justice. Poverty is still one of the major barriers for our people in enjoying or exercising their right of access to justice. The courts therefore remain a very hostile and traumatic experience for many of our people and this discourages many from using these forums to advance their rights or settle disputes. This is not healthy in a democratic society.

The Office of the Sheriff, through its interaction with legal practitioners, court officials, the police, judgment creditors and debtors, provides an important interface between the public and the justice system. Sheriffs and their deputies are at the coalface of service delivery and have a direct impact on the realisation of the rights of our people. As sheriffs and deputy sheriffs are also officers of the court, it is imperative that they not only share the values embodied in the Constitution, but also give effect and real meaning thereto in the execution of their duties.

We should strive to make the process easier and less daunting. Very often the first person that a defendant or judgment creditor will encounter at the start of a legal dispute is the sheriff. **The sheriff or deputy sheriff should, in the execution of his or her duties not only serve court process simply like a messenger, but should also inform the judgment debtor, who is often amongst the poorest of the poor and illiterate, of the duties and responsibilities of a sheriff and explain the contents of the summons, judgement or execution order and the rights of the judgment debtor in this regard. This becomes even more important as the summons or order of the court is most often not issued in the language of the defendant or**

judgment debtor. If a person understands the process, the process becomes less hostile and traumatic for them.

Code of Conduct and Pledge

Also of fundamental importance to the work of a sheriff is the **Code of Conduct**. The Sheriff's Code was last updated in 1990 when the Sheriff's Act was amended (23 years ago). This resulted in the Sheriff's Code not being in line with the Constitutional imperatives of our democratic dispensation. The South African Board for Sheriffs, with the approval of the Minister, adopted a new Code of Conduct and Pledge for Sheriffs with effect 1 March 2014.

This new Code seeks to explain how a sheriff should perform his or her duties, for example, that a sheriff must have regard to the rights of all citizens when performing their functions and to ensure that all citizens are treated with dignity and respect. The Code also regulates the relationships between sheriffs, for example, the Code makes it clear that a sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he or she has been appointed.

The Code of Conduct contains provisions regarding:

- The conduct of a sheriff entrusted with the service or execution of a process must act without avoidable delay in accordance with the Rules of Court and provided that any process, requiring urgent attention shall be dealt with immediately.
- A very important provision, namely that trust money must be paid out to the person entitled thereto without avoidable delay.
- A Sheriff must at all times act in an impartial, unbiased and fair manner towards all parties and must ensure that deputy sheriffs in his or her employ do the same.
- A sheriff must serve members of the public in the official language in which he or she is addressed or otherwise communicated with.

The most significant aspect of this Code is the introduction of a **Pledge** that must be taken by all Sheriffs before they can start practicing as such. In terms of this Pledge, the

sheriff undertakes to uphold the constitutional rights of all citizens and to uphold the principles of good governance by maintaining a high standard of accountability, transparency, honesty and integrity. We are also pleased that the two voluntary sheriff associations, namely the South African Sheriff's Society (SASS) and the South African National Association of Progressive Sheriffs (SANAPS), have endorsed this Pledge.

It is hoped that this new Code of Conduct and Pledge will uplift the sheriff profession and assist in renewing the public's faith in the profession.

Transformation

It is a constitutional imperative that the sheriffs, like all sectors of State and society, must reflect the demographics of South African society in respect of its racial and gender composition, among constitutional attributes. The task of advancing the transformation of the profession requires that progressive programmes be designed to improve the racial and gender profile of the profession.

Before 1994, there were 465 sheriffs operating nationally. Of these 465 sheriffs, 22 (4, 73%) were women and 443 (95, 27%) were men. The racial demographics of these 465 sheriffs were: 414 were Whites (89, 03%); 44 were Africans (9, 46%); 5 were Coloureds (1, 08%) and 2 were Indians (0, 43%).

On 22 September 2013 the Department advertised further vacant offices of sheriffs in national newspapers with a closing date of 22 October 2013.

On 27 February 2014 THE DEPUTY MINISTER appointed 18 more sheriffs to various vacant sheriff offices, of which 11 are African (61%), 3 are White (17%), 2 are Coloured (11%) and 2 are Indian (11%). Women represent 6 (33%) of the new appointees and men 12 (67%). The estimated annual income of these 19 offices is R15, 7 million and will give rise to employment opportunities for 63 people.

These newly appointed sheriffs bring the total number of permanent sheriffs currently operating in the country from 348 to 362 (the total number of sheriffs is

only affected by 14 of the 18 appointments as 4 are already permanent sheriffs in neighboring sheriff offices that are not economically viable on its own). Of these 362 sheriffs, 172 are Whites (48%), 137 are Africans (38 %), 28 are Indians (7%) and 25 are Coloured (7%). Women now represent 83 (23%) of the total sheriffs and men 279 (77%). The Department is determined to close the gender gap in the sheriff profession and enhance the economic empowerment of women. To this end, we are proud that of the 6 new women that have been appointed as sheriffs, 4 have been appointed to large sheriff offices. One of them here in the WC:

- Adv. Nonkosi Princess Cetywayo at Bellville High Court in the Western Cape;

Whilst there is still a long way to go, these appointments have gone a substantial way to making the profession more representative, in line with the transformative vision and goals of our Constitution.

Redemarcation

In 2009 Acting Justice Sardiwalla headed a task team to investigate the re-designation of courts and magisterial districts and make recommendations on establishing sheriff offices in these areas.

Following the implementation of the recommendations of the task team and subsequent representations received from sheriffs and other role players, a project manager, Mr E Petersen, was appointed to investigate approximately 22 identified areas which affected 41 sheriff offices countrywide. There have been challenges in respect of the rationalisation of sheriff offices with magisterial districts. It is anticipated that the outcome of the project manager s investigation will be concluded by June 2014; where after a comprehensive report will be submitted to Ministry advising of the outcome of the investigation.

We are also aware of a number of challenges such as the issue of tax clearance certificates and unclaimed trust funds. You can be assured that these matters are receiving our on-going attention.

SABFS

The South African Board for Sheriffs is created by law, in terms of section 7 of the Sheriffs Act No. 90 of 1986 and is empowered in terms of section 8 of the Act to perform certain functions. It is ultimately the responsibility of the Board to ensure the improvement of standards of training and the improvement of the functions performed by sheriffs. The Board is also the disciplinary authority of the profession (section 18 of the Act). It has the powers to issue or cancel fidelity fund certificates and it can launch inquiries into any alleged improper conduct by sheriffs (section 46). In short, the Board has a legal duty to discharge.

We also need the **cooperation of the role-players** if we are to enhance the status and improve the performance of the sheriffs' profession. Whilst it is so that there are various voluntary sheriffs' associations, such as SANAPS and SASS, it must be stressed that it is ultimately the SA Board for Sheriffs that is the regulatory authority.

The Sheriffs Amendment Act of 2012 now makes it obligatory for the SABFS to develop guidelines for the appointment of deputy sheriffs.

Handover process-regulation 10:

It is of critical importance that you, as the newly appointed sheriffs, during this period meet with the outgoing sheriffs, the court manager, the magistrate, the attorneys and all other stakeholders to ensure a smooth handing over and transition.

In terms of Regulation 10 of the Regulations relating to Sheriffs (1990), when a sheriff vacates his or her office all process and other documents which were in his or her possession, including such records as may be necessary to pay claims against him or her account, shall be taken into possession by the Director-General and be delivered to the sheriff's successor, who shall be responsible for the payment of claims from the moneys in the account. Sheriffs are required to retain every record or other document for a period of at least three years after the date to which it relates. The DirectorGeneral

has issued an instruction (Departmental Circular 86 of 2012) to all court managers of the court where a vacancy of a sheriff occurs, to request the sheriff who is vacating the office to complete within three days an inventory in respect of all court processes, files, movable and immovable property attached by the sheriff who is vacating office and proof of moneys deposited in the trust account in respect of the office. The Department, in consultation with the South African Board for Sheriffs, also developed a checklist to assist in the handing over procedure and it is trusted that these initiatives will go a long way in ensuring a smooth transition.

I also wish to extend the Department's appreciation to the South African Board for Sheriffs and staff, lecturers, as well the pool sheriffs that have made time available to share their experience and expertise with the new appointees over the next week. A large number of experienced sheriffs have also expressed their willingness to serve as mentors. This bodes well as we enter into a new era for the sheriff's profession.

In Conclusion, I wish you success not only in your induction and other training programmes that will follow, but also as newly appointed sheriff.

On behalf of the Minister and the DOJCD I welcome you as a key role player in the Justice Family.

I thank you for your attention and I wish you all the best for the rest of the training programme.

Thank you