

Siyanazisa

INFORMING YOU!

November 2014 | quarterly newsletter

Word from the Chairperson



Charmaine Mabuza

Chairperson of the SA Board for Sheriffs

We have completed the publication of the annual report for the 2013/14 financial year and I am pleased to report that the Board has received its second unqualified audit; a positive achievement for all involved.

In this edition of the *Siyanazisa* you will find that the Board has been very active in communicating with

our stakeholders. We have engaged the National Consumer Council (NCC) in relation to sheriffs and their compliance with the Consumer Protection Act, and we have been in discussions with the Chief Master of the High Court concerning liquidations and insolvencies.

The Board has accepted an invitation by the Chief Justice, Mogoeng Mogoeng, to serve on the National Efficient Enhancement Committee, which includes all the justice cluster partners. It is clear that sheriffs have to participate proactively in their respective courts and must be involved in finding ways of improving service and access to justice. We believe this will result in the creation of a better environment for the process of civil justice, and more importantly, for the creation of the administration of the sheriffs' profession.

I encourage you to visit our website to read more about the initiatives the Board has undertaken to better the profession for all its stakeholders, more especially our sheriffs.

The SABFS commissioned the study of the sheriffs' tariffs which resulted in the Bloom Report, which we have published on our website. We have shared this with the Rules Board and we are now waiting for the Minister's response on the adjustment of sheriffs' tariffs. The Rules Board has called for comments on the lifting of the sheriffs' commission ceiling on Sales in Execution. We will work with our partners to submit a balanced and fair position on this matter.

The SABFS has participated in many initiatives during the year and we look forward to their culmination in a final report to the Minister of Justice and Correctional Services, and to their implementation. I encourage you to visit our website to read more about the initiatives the Board has undertaken to better the profession for all its stakeholders, more especially our sheriffs.

As yet another year comes to an end, it is indeed a great pleasure to look back on 2014 with a sense of accomplishment. We acknowledge and thank all of our stakeholders for their continued support.

On behalf of the members of the Board and staff of the SABFS, I wish you a safe, happy holiday and a prosperous New Year!

In this Issue

- National Consumer Commission
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THE NATIONAL CONSUMER COMMISSION AND THE ROLE AND STATUS OF SHERIFFS

The National Consumer Commission (NCC) approached the SABFS following a number of complaints against sheriffs not being in compliance with the Consumer Protection Act (CPA) and its regulations, particularly with regard to Sales in Execution.

The SABFS met with the NCC on a number of occasions and it became clear that the rules applicable to commercial auctioneering appear to have been adopted by the CPA and its regulations. It ignored the “*sui generis*” nature of the Sale in Execution and overlooked the peculiar role that the sheriff plays in the context of a Sale in Execution auction.

As a consequence, several of the CPA regulations are irreconcilable with the Rules of Court and with the special role that the sheriff fulfills in a Sale in Execution auction.

The SABFS submitted a Position Paper to the NCC outlining the role of sheriffs in Sales in Execution as well as the position and views of the SABFS on the CPA and its regulations.

In a nutshell, the Position Paper addresses, inter alia, the following issues:

- The *sui generis* nature of a Sale in Execution
- The legal position of a sheriff and the role that he or she plays in the execution process
- Some of the problems that the sheriffs are experiencing in endeavouring to make Sales in Execution CPA compliant
- Possible solutions to these problems.

For the full story follow the link- http://www.sheriffs.org.za/literature_126017/NCC_and_the_Role_of_the_Sheriff



Relationship between the Chief Master of the High Court and the sheriffs in relation to liquidations and insolvency matters

Following a number of communications between the office of the Chief Master and the SABFS, various concerns were raised by both parties which, inter alia, are listed hereunder:

- The non-compliance of Sections 19 and 69(1) of the Insolvency Act 24 of 1936. It has become general practice that trustees take into possession the assets of the insolvent estate without the sheriff having the opportunity to compile

the inventory of the insolvent’s assets in terms of Section 19. This has lent itself towards possible corruption which, in turn, has escalated the costs of the insolvency process thereby flying in the face of the purpose of the enactment, namely that the insolvency should be to the benefit of creditors

- The master’s regular consent in allowing trustees to cancel a sheriff’s Sale in Execution of the execution debtor’s immovable property which occurred prior to sequestration even though such cancellation might not be of benefit to creditors
- The abuse of the voluntary notice of surrender by execution debtors in order to avoid the sale of their assets in execution (especially immovable property) by virtue of the provisions of Section 5 of the Insolvency Act 24 of 1936.

Following recent deliberations that took place between the Chief Master, the masters of the various sub-divisions of the High Courts, and the sheriffs a Position Paper was prepared by the SABFS with a view to making recommendations as to the manner in which the sheriffs could play a more meaningful role within the insolvency environment and, in particular, pave the way for a more inclusive development of the Section 19 procedure by the role players. The “to do” lists that were put forward during the course of these deliberations have been repeated within the Position Paper.

For the full story follow the link- http://www.sheriffs.org.za/literature_126014/Chief_Master_of_the_High_Court_and_Sheriffs_irt_Liquidations

DEPUTY MINISTER'S VISIT



The Deputy Minister of the DoJCD, the Honourable John Jeffery (MP) and the Chairperson of the SABFS, Mrs Charmaine Mabuza



Left to Right: SABFS Board Members, Mrs Petro Roodt, Mr Abel Mawela, Mrs Freda Moelets, Mr Humphrey Ntsikeni and Mr L Gqili from the office of the Deputy Minister



The Deputy Minister of the DoJCD, the Honourable John Jeffery (MP) and the Chairperson of the SABFS, Mrs Charmaine Mabuza



Left to Right: Deputy Chairperson of the SABFS, Adv Hlako Choma, Chairperson of the SABFS, Mrs Charmaine Mabuza, the Deputy Minister of the DoJCD, the Honourable John Jeffery (MP)

The Deputy Minister of Justice and Constitutional Development (DoJCD), the Honourable John Jeffery (MP) visited the office of the South African Board for Sheriffs (SABFS) on 4 August 2014 to attend a Board meeting.

The attendance of the Deputy Minister was welcomed by the Board and demonstrated the continuous relationship building between the SABFS and the DoJCD.

Important Notices

The deadline for submissions of the 2nd phase of Legal Obligations was 31 October 2014. Sheriffs are reminded of the final phase, Personal Indemnity Insurance (PII), which is due by no later than 30 November 2014.



Meeting with **THE MINISTER OF JUSTICE & CORRECTIONAL SERVICES**

On 6 October the Executive Committee of the Board met with the new Minister of Justice and Correctional Services, The Honourable Tshililo Michael Masutha (MP).

The Board met with the Minister to introduce the members of the South African Board for Sheriffs and to update him on the following issues:

- Presenting of the SABFS 2013/14 Annual Report
- Acknowledge progress on the sheriffs' tariffs
- Acknowledge that the SABFS was invited to the NEEC (National Efficiency Enhancement Committee)
- Advise that the SABFS have given their submissions on the Gauteng and North West Magisterial districts
- Brief the Minister on the forthcoming Skills Development Strategy.



Back row (left-right): Mr Thami Thembe, Mrs Petro Roodt, Adv Hlako Choma, Mr Thaka Seboka, Ms Laura Best
Front row (left-right): Adv Hishaam Mohamed, Honourable Minister Tshililo M Masutha (MP), Mrs Charmaine Mabuza, Mr Abel Mawela



Honourable Minister of Justice & Correctional Services Mr Tshililo M Masutha and Chairperson of the South African Board for Sheriffs, Mrs Charmaine Mabuza

Board's Involvement in RATIONALISATION OF MAGISTERIAL COURTS

The Department of Justice and Constitutional Development (DoJCD) aims to rationalise the current 387 magisterial districts throughout the country since these districts are still largely based on the provincial boundaries of the pre-1994 dispensation of the old RSA territory, the defunct TBVC states and Independent Territories. The DoJCD commenced with the rationalisation of magisterial districts and sub districts in Gauteng and North West provinces, which is scheduled to take effect on 1 December 2014. This process will have an impact on the jurisdiction, organization and functioning of sheriffs appointed in respect of every court or service area prior to the rationalisation of the magisterial districts in respect of the said provinces.

The overall objective of the proposed alignment of boundaries is to improve access to justice for communities served by the courts; to ensure better co-ordination and integration of services within the three spheres of government, to ensure good governance, and to improve the co-operation between the Justice Crime Prevention and Security (JCPS) Cluster, the Judiciary, and Law Enforcement agencies across the three spheres of government.

The role of the sheriffs is to serve court processes within the magisterial districts, and they play an important role in ensuring access to justice. Sheriffs are appointed for the court or an area defined by the Minister, in terms of the Sheriffs Act (Act 90 of 1986). The DoJCD is mindful of the fact that the alignment process will have an impact on the spatial distribution of the courts.

The South African Board for Sheriffs (SABFS) will need to liaise,

consult, engage and communicate with every sheriff appointed for a court or a service area within a magisterial district with a view to recommending to the Minister and the director-general of the DoJCD how the impact of the outcome of the rationalisation of magisterial districts and sub districts can be managed within the context of the Sheriffs Act No. 90 of 1986 as amended. The SABFS intends to conduct a geospatial analysis process to assist the sheriffs to determine the impact of the proposed magisterial districts of their service areas. The main objectives of this project will be to capture the sheriffs areas, determine through spatial analysis areas of change, and quantify this in relation to the population served. The results of this process can assist the sheriffs in developing their own inputs / recommendations regarding the rationalised magisterial districts.

The role of sheriffs is to serve court processes within the magisterial districts and they play an important role in ensuring access to justice.

The DoJCD and the SABFS are in the process of concluding an agreement to regulate the mentioned process. This will be driven by an established Steering Committee through a dedicated project manager who will be provided with access to the necessary technical resources to draft the relevant maps and point-to-point descriptions of sheriff service areas.

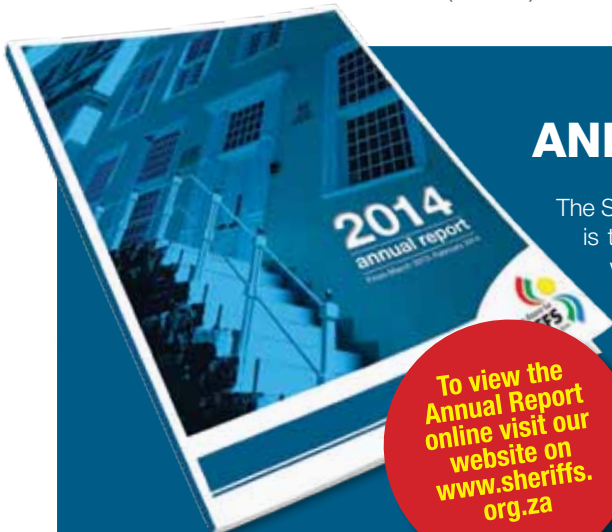
The SABFS remains committed to ensuring the maintenance of the esteem of, the enhancement of the status of, and the improvement of the functions performed by, sheriffs. We therefore call on all Sheriffs to cooperate and contribute by participating in this process.

ANNUAL REPORT 2013/2014

The SABFS has completed the publication of the 2013/2014 Annual Report. This is the second annual report reflecting the activities of the current Board that was appointed on 1 March 2012 by the Minister of Justice and Constitutional Development. The 2013/14 financial year has been a very exciting one for the South African Board for Sheriffs in that many of the plans that the current Board earmarked in its first year of appointment have come to fruition.

Great emphasis has been placed on ensuring that governance practices are adhered to in an open and transparent manner, and this is reflected in the second unqualified Annual Report.

To view the
Annual Report
online visit our
website on
www.sheriffs.org.za



Sales In Execution- Board's Recommendations to the Rules Board



The Conditions of Sale for Sales in Execution of Immovable Property in the High Court are prescribed in Form 21 of the Supreme Court Act No. 59 of 1959 and the Rules Governing Sales in Execution of Immovable Property are prescribed in Rule 46 of the Uniform Rules of Court. The clauses contained in the current Form 21 are old and have fallen behind the economic parameters of present day business practices and new legislation.

As a result, the conditions imposed by Execution Creditors in the Conditions of Sale nowadays bear very little resemblance to the current Form 21. These "new" conditions are often justified and are in line with current business practices and new legislation.

In settling the Conditions of Sale, the cumbersome and inhibiting factors under which the sheriffs have to operate in terms of the current Form 21 and Rule 46 have exposed them to severe criticism and often compromised their position as an executive of the law. If the sheriffs cling to the narrow interpretation of the prescriptions of Form 21, they are accused of being obstinate. If they allow any deviation in the Conditions of Sale that is out of tune with Form 21, they are exposed to risks and, in some instances, legal costs, with possible impact on the sheriff's Fidelity Fund.

The result has been:

- A reluctance on the part of the sheriffs to deviate from the prescribes of Form 21 because of the risks involved;
- A reluctance on the part of buyers to purchase immovable property at a Sale in Execution because of the uncertainty of such sales taking place or even getting eventual transfer of the immovable property purchased at a Sale in Execution; and
- Some execution creditors resorting to open market ventures and convincing execution debtors to have their immovable properties sold by means of private auction – largely due to the lack of understanding of the inhibiting factors that the sheriffs operate under.

The Board's Recommendations:

The proposed changes to Form 21 and Rule 46 that were presented by the SABFS to the Rules Board at its Indaba in March 2013 ensure that the judicial process of execution is carried out in accordance with current legislation and business practices and with minimal risk to the sheriffs, purchasers, execution creditors and execution debtors.

The Rules Board has, pursuant to all the proposals it received at its Indaba in March 2013, as recently as the 18th August 2014, published proposed amendments to Uniform Rule 46 and called for comments by the 10th October 2014.

The sheriffs actively participated in a consultative process with role players who are all in agreement that the Conditions of Sale have become outdated and many clauses in Form 21 need to be rephrased, scrapped or amended, some of which will require amendments to Rule 46.

The banks and the South African Board for Sheriffs were *ad idem* with each other on all issues save for the recommended change to Rule 46 (9) which related to the sheriff appointing a conveyancer to attend to the transfer of the property.

The Rules Board's proposed change is based on the fact that the sheriff and not the execution creditor is a party to the sale and that the conveyancer is supposed to act as the agent of the sheriff in Sale in Execution transfers.

The South African Board for Sheriffs accepted that in terms of common law and case law, the sheriff is the seller of the property and the conveyancer is supposed to act as his or her agent in Sale in Execution transfers. Consequently he or she should be able to appoint the conveyancer. This would prevent the possibility where, under the current rule, the conveyancer, having been appointed by the execution creditor, is placed in a potentially conflicting situation on instructions from the execution creditor. The South African Board for Sheriffs' acceptance of the Rules Board proposal was guarded in that under the proposed amended rule the sheriff would be responsible for damages suffered by the execution creditor by virtue of any of the conveyancer's acts or omissions. This will expose the sheriffs and their Fidelity Fund to greater risk of loss. The extra time and costs involved in each sheriff setting up and maintaining the required infrastructure will probably outweigh the benefit that such sheriff would derive from the right to appoint a conveyancer. This problem will no doubt be aggravated for the smaller sheriffs in rural towns who would not have forged any business relations with the conveyancer practising in the town/city where the Deeds Office is located.

The provisions of Rule 46(9) were debated extensively and the proposed change was reservedly accepted.

A copy of the SABFS proposal that was presented to the Rules Board is available on our website.



CODE OF CONDUCT AND DISCIPLINARY PROCESS IRO THE FIDELITY FUND

Sheriff's Code of Conduct

Access to justice is a fundamental right that unlocks access to all the other rights enshrined in our Constitution. 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 is an important interface between the public and the justice system. The sheriff or deputy sheriff should, in the execution of his or her duties not only serve court process simply like a messenger, but is expected to 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, judgment 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. It is for these reasons that the Code of Conduct was created.

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. We adopted a new Code of Conduct and Pledge for Sheriffs with effect from 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 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.
- A sheriff entrusted with the service or execution of a process must act without avoidable delay in accordance with the Rules of Court and provide that any process requiring urgent attention shall be dealt with immediately.
- Another important provision in the Code is that trust money must be paid out to the person entitled thereto without avoidable delay.
- A sheriff may not perform any act as sheriff in any matter in which he or she has a direct or indirect interest.
- 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.

- Furthermore, a sheriff may not act in any way that will bring the good name and esteem of the office of the sheriff in particular and the administration of justice in general into disrepute or cause it to appear in a bad light.

Central to the new Code is the requirement for all sheriffs to constantly hold in high regard the rights of all citizens in performing their functions. The need to respect and protect the citizen's rights in the administration of the sheriff's work will also be inspired by a pledge committing to constitutional rights. In terms of the new Code, sheriffs will be expected to undertake a pledge before they can start practising. 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. The South African Board for Sheriffs is currently in the process of training all sheriffs on this new Code of Conduct and in ensuring that all sheriffs have taken this pledge.

Nature of Complaints against the Sheriffs

The SABFS in its mandate to uphold the dignity of the sheriff's profession strives to intervene on matters of dispute between the Legal Profession and members of the public that instruct sheriffs to execute court documents on their behalf. These disputes arise when the Execution Creditors/Instructing attorneys are not satisfied with the service rendered by the sheriff, justifiably or unjustifiably so.

The complaints that the SABFS receives range in nature and include the following:

- Failing to respond to the instructing attorneys.
- Failing to pay over trust monies.
- Failing to execute the warrant without avoidable delay.
- Failing to respond to the SABFS.
- Failing to tender return of service timeously.
- Rudeness from the sheriff or deputy sheriffs.

The complaint must be in writing and it should be in the form of a sworn affidavit and be commissioned by a commissioner of oaths.

Central to the new Code is the requirement for all sheriffs to constantly hold in high regard the rights of all citizens in performing their functions. The need to respect and protect the citizen's rights in the administration of the sheriff's work will also be inspired by a pledge committing to constitutional rights.

What sheriffs need to know when dealing with complaints

- A sheriff needs to know which procedures are to be followed when dealing with complaints and or receiving complaints or when the sheriff has breached the Code of Conduct for Sheriffs.
- The Code of Conduct for Sheriffs –Section 16(k) of the Sheriff's Act 90 of 1986; A sheriff must reply and be efficient to all correspondence received and shall act without avoidable delay. All sheriffs must comply with the Code of Conduct for Sheriffs. (Time frame; 14 days is the prescribed period to respond)

On receipt of the complaint the SABFS will inform the sheriff in writing that a complaint has been lodged against him or her and they must be given 14 days within which to respond. If the sheriff does not respond in 14 days, a letter will be written to the sheriff, informing him/her that s/he has 7 days to respond. If the sheriff fails to respond within the 7 days, the complaint will then be forwarded to the Standing Disciplinary Committee for a finding and ruling.

The Standing Disciplinary Committee, Independent Chair, & Appeal Process

Establishment of the Standing Disciplinary Committee (SDC)

- The Standing Disciplinary Committee (SDC) was established by the SABFS in terms of Section 18 of the Sheriffs Act (Act No. 90 of 1986 as amended).
- The Standing Disciplinary Committee which is a sub-committee of the Board comprises of 3 members, one of which will be chairperson.
- The Board shall appoint one of the members of the SDC as chairperson of the SDC.
- The SDC is answerable to the Board.

The Disciplinary Process

The Board may establish a Disciplinary Committee as per the provisions of the Sheriffs' Act (Act 90 of 1986 as amended). Section 18 – (1-3) clearly outlines the powers and duties of that committee, and these are:

- 1) (a) The Board may establish one or more disciplinary committees, each consisting of at least three members of the Board.
 - (b) One of the members of a Disciplinary Committee shall be designated by the Board as chairperson of the Disciplinary Committee.
 - (c) A Disciplinary Committee shall be invested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV.
- (2) (a) Notwithstanding the provisions of subsection (1), the Board may appoint an independent and impartial person as and when necessary who shall be vested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV.

(b) A person appointed in terms of paragraph (a) shall be a person who is suitably qualified in law.

(c) A person appointed in terms of paragraph (a) may, subject to the approval of the Board, summon to his or her assistance one or two persons of skill and experience in the matter to which the action relates who are willing to sit and act as assessors in an advisory capacity.

Functions of the Standing Disciplinary Committee

- Report to the Board on the status of all valid and outstanding disciplinary matters.
- Keep proper records and statistics of all transgressions by sheriffs, and to report to the Board when required.
- Recommend proposed disciplinary actions to the Board with regards to any disciplinary matter under investigation.
- Thoroughly investigate all allegations of improper conduct against sheriffs.
- Ensure that inspectors follow the Code of Conduct as laid down and report to the Board as required.
- Ensure that disciplinary enquiries are conducted professionally and confidentially in terms of the Act and the Constitution.
- Ensure that all disciplinary procedures are applied in a legal, consistent and equitable manner.
- Maintain a representative pool of well trained and efficient inspectors.
- Review, update and implement the disciplinary code and guidelines as and when required.
- Ensure that all sanctions imposed by the SDC are implemented and concluded.
- In the case of a complaint against a member of the Board, apply the Policy on Complaints against members of the Board.

Appeals process

- A sheriff (hereinafter referred to as "the Appellant") who appeals to the Board under Section 18 (3) (a) of the Act shall within 30 days after the date on which the disciplinary authority concerned has made a finding or imposed a penalty, lodge a notice of appeal in writing with the Board in which he shall set out, with the appropriate particulars, the grounds of the appeal and state whether the appeal is against the finding or the penalty.
- As soon as may be practicable after the Board has received a notice of appeal, the Board shall notify the Minister of the appeal and of the grounds on which the appeal is based.
- Within 30 days after receipt of the notice of appeal the Board shall make a certified copy of the record of the proceedings of the disciplinary authority available to every member of the Board and to the appellant.
- At the consideration by the Board of such an appeal a certified copy of the record of the proceedings of the disciplinary authority shall be *prima facie* proof of the contents thereof.

- The chairperson of the Board or a person appointed by him or her shall determine the time, place and date on which the appeal shall be heard and shall notify the members of the Board, the appellant and his or her representative, if any, and the Minister by registered post thereof: Provided that the appeal shall be heard by the Board within 60 days after copies of the record referred to in sub regulation (3) were made available.
- The Board shall keep a record of the proceedings.
- The Board may allow further evidence to be led by the prosecutor or the appellant.
- If the appellant is present or represented, he or his representative shall thereafter be given the opportunity to argue the grounds of appeal, where after his case shall be closed.
- The prosecutor, authorised by the Board, shall thereafter be given an opportunity to argue the grounds of appeal, where after his or her case shall be closed.
- After the cases of both parties have been finally closed, the prosecutor shall address the Board with regard to the evidence, if any, and the legal position.
- The appellant or his or her representative shall thereafter likewise address the Board.
- The Board may in its discretion allow the prosecutor to reply to questions of law raised by the appellant of his or her representative in his or her address.

The Board may, after consideration of the appeal and if the appellant concerned was unsuccessful or partially successful in his or her appeal against the finding or penalty of the disciplinary authority, order the appellant to pay the essential costs incurred by the Board in connection with the consideration of the appeal, and costs may include the following:

- The cost of recording, transcribing and preparing copies of any record;
- The costs of procuring the attendance of witnesses and their witness fees;
- The costs incurred by the Board in respect of an auditor or auditors or other person appointed to conduct an examination and report on the appellant's process of court and other documents, including accountancy notes relating to the appellant's practice; and
- The costs of procuring the attendance of members of the Board to consider the appeal.

The SABFS' approach to the Audi Alteram Partem Rule

- Natural justice is another name for common sense justice. Rules of natural justice are not codified but they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense rather liberal way.

Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

- The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, or logical prevarication. It supplies the omissions of a formulated law. The purpose, form or procedure should ever be permitted to exclude the presentation of a litigants' defence.
- The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *Audi Alteram Partem* Rule: It says that no one should be condemned unheard. It must be precise and unambiguous. It should appraise the party determinatively to the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

Why should sheriffs strive to be in compliance

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 realization 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.

The conduct of the sheriff or deputy sheriff therefore plays a big part in how people perceive the law and the legal system. If people view the law and the justice system as hostile, negative and ineffective, there will be no respect for the rule of law. All of our people must be able to have confidence in the justice system and have the belief that the system will protect their rights and that they will be treated fairly and equally.



KHAYELITSHA IMBIZO

30 OCTOBER 2014



Deputy Minister of Justice and Constitutional Development (DOJCD) Mr John Jeffery, MP, visited the community of Khayelitsha during public awareness and education Imbizo hosted by the South African Board for Sheriffs (SABFS) on 30 October 2014.

The Imbizo was aimed at engaging with the community, stakeholders and non-governmental organisations in order to clarify the role of the sheriff of the court in terms of the civil justice system and to improve the relationship between the community and the area's newly-appointed sheriff, Mr Mkhululi Ngxumza.

In addressing the community at the Thusong Centre in Khayelitsha, the Deputy Minister highlighted the importance of understanding the role of the sheriff who is also an officer of the court. He appealed to the community not to take the law into their own hands when in dispute with someone. "Sheriffs have to carry out a court order, not decide whether it is right or wrong," Deputy Minister Jeffery said.

Western Cape Regional Head of the DOJCD, Adv. Hishaam Mohamed, reiterated the sentiments of the Deputy Minister and added that "the sheriff is not the enemy". "We can assure you that our new Sheriff, Mr Ngxumza won't do anything illegal which is not sanctioned by law," Mr. Mohamed said.

During her address, Ms Charmaine Mabuza, chairperson of the Board, said the sheriffs' profession was one of the critical components of the justice system and contributed immensely in the quality and accessibility of justice. "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, in the execution of his or her duties, not only serves court process but also informs the judgment debtor - who is often amongst the poorest of the poor and in some instances illiterate - of the sheriff's responsibilities and explain the contents of the court document being served. The judgment debtor is also entitled to have his or her rights explained in a language that he or she understands," Mrs Mabuza said.

During the Imbizo, the community was also informed that the sheriff must treat everyone with dignity at all times.

Communities were further informed that:

- The sheriff is appointed by the Minister of Justice and Constitutional Development;
- The Minister may also suspend or remove a sheriff from office for misconduct;
- The sheriff is an officer of the court, and is therefore impartial and must exercise their duties without fear or favour;

- The sheriff generates his/her own income in terms of the prescribed tariffs approved by the Minister after the recommendation of the Rules Board for Courts of Law;
- The sheriff is prohibited from performing any functions of a sheriff unless he/she is in possession of a fidelity fund certificate;
- The sheriff must have a trust account and must subscribe to the Code of Conduct for Sheriffs; and
- The sheriff has sole competence in the execution of civil judgments.

The community was familiarised with the Code of Conduct for Sheriffs which came into effect on 1 March 2014. The 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 Board has trained all 362 sheriffs nationwide on the Code of Conduct.

The Imbizo, with the participation of the various stakeholders and role players such as the National Consumer Commission, Banking Council, Legal Aid SA, Law Society, Public Protector, South African Human Rights Commission, DOJCD, Khayelitsha Development Forum, SABFS, Ward Councillors and most importantly the community of Khayelitsha, enhanced and strengthened the relationship between the community and its sheriff, Mr Mkhululi Ngxumza.





Rental Housing Tribunal exhibiting at the event



Legal Aid-SA exhibiting at the event



Mr OC Thupayatlase from the National Consumer Commission addressing the community



The Honourable Deputy Minister of Justice and Constitutional Development, Mr John Jeffery (MP) addressing the community



The Department of Justice and Constitutional Development exhibiting at the event



Mr Igshaan Higgins, member of the Rental Housing Tribunal, addressing the community



KHAYELITSHA IMBIZO

30 OCTOBER 2014 *continued*



Members of the community engaging the panellists during the question and answer session



Left-right: Honourable Deputy Minister of the DoJCD John Jeffery (MP); Chairperson of SABFS, Mrs Charmaine Mabuza; Khayelitsha Cluster Commander, Major General Johan Brand



Khayelitsha Court Choir entertaining the community



SKILLS ASSESSMENT & TRAINING STRATEGY

The SABFS is partnering with PwC on an exciting new journey to create a learning path for the sheriffs' profession. PwC will assist us in identifying the roles and responsibilities within a sheriff's office so as to provide the necessary learning paths that will assist sheriffs to run sustainable offices. We wish to provide sheriffs and their offices with career and learning mobility so that they are able to further their studies and achieve success.

Our aim is to provide a training strategy to ensure that sheriffs and their staff remain current in their profession and have the skills to impact on the required service delivery standards and legislative mandate within the civil justice system. We ask for your support and commitment in achieving this. Over the next four months, PwC will be engaging with a representative sample of individuals from sheriffs' offices across the country and work closely with the SABFS staff to develop a training strategy by the end of February 2015.

We hope that you share the same enthusiasm for this journey as, after all, it is for the benefit of our sheriffs and their staff.

For any further information, please contact Lubabalo Mdekazi (Training Officer) on 021 426 0577 or lubabalo@sheriffs.org.za.

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