



13 November 2015

## **DEADLINES AND TIMEFRAMES FOR URGENT SERVICE OF COURT PROCESS IN RESPECT OF CLAIMS WHICH MIGHT PRESCRIBE**

When a civil claim arises, it is under general circumstances necessary for the plaintiff to have a summons successfully served on the defendant, within three years, to be able to enforce the claim. The prescription of debts are inter alia regulated by the Prescription Act.

These claims which are contained in urgent summonses are mostly requested to be served on late Friday afternoons, just before the sheriff's offices closes. These claims stem from matters like vehicle accidents, medical negligence, statutory negligence, defamation claims etc.

Given that Sheriffs are the kingpins in the justice system in ensuring that justice is accessible to all litigating parties, and the sheriff is the sole person who the justice system can rely on for service of civil matters, they are often faced with a situation where a claim is about to prescribe and an instruction is received that the summons must be served before / on a certain date in order to eliminate prescription of the claim.

## ***NEGLIGENCE BY SHERIFFS TO COMPLY WITH SERVICE LEVELS REQUIRED BY THE FUNCTIONAL ADMINISTRATION OF JUSTICE DEMANDS AS WELL AS PUBLIC AND LEGAL PRACTITIONER'S EXPECTATIONS OF AN EFFICIENT OFFICER OF COURT.***

### **THE RESULT OF A SHERIFFS FAILURE TO SERVE A SUMMONS TIMEOUSLY**

Sheriffs must be aware that, in the event when a sheriff fails to serve such summons timeously and the claim prescribes, action can then be instituted against the sheriff him or herself for payment of the debt, resulting from the fact that the sheriff's negligence caused the plaintiff's claim against the defendant to lapse due to the non-compliance with the timeframe allowed for substantiating service. Although, It is true that a claim can be lodged by the sheriff against professional Indemnity insurance policy for his or her negligence it is also true that sheriffs are obliged to act in accordance with the code of conduct, which code directs precautionary steps to be taken by a sheriff to prevent negligence through proper training.

The very reason why the sheriff's integrity of professional service must be undisputable is based on the strict compliance and adherence to requirements to the sheriff's service standards, gauged by the Fidelity Fund for Sheriffs Insurance Company.

## **THE IMPLICATIONS OF LODGING CLAIMS AGAINST THE FIDELTY FUND**

Insurance companies insure risks. Sheriffs are at risk of being negligent. This is the reason why all sheriffs are obliged to engage in obtaining professional indemnity insurance. (If the practical comparison is made with a sheriff having to travel a long distance, the sheriff normally has only one spare wheel on the vehicle. The spare wheel is your insurance to continue with your route. If you drive carelessly or negligently through thorns there might be second flat tyre, causing a problem to get another spare wheel available timeously to continue with your route).

Likewise the Insurance Company in the event of the sheriff continuously lodging negligence claims against the Fidelity Fund, it might refuse to insure the risk of a particular sheriff's conduct, which could effectively force the sheriff to resign, due to a the SABFS not being able to re-issue a Fidelity Fund Certificate to that particular sheriff (If the sheriff keeps on driving through thorns, the route is discontinued).

In order to make ends meet in respect of claims the insurance Company will have no option but to raise the premiums to untenable higher amounts to the detriment of the whole profession.

## **WHAT CAN THE SHERIFF DO TO PREVENT NEGLIGENT CONDUCT IRO DEADLINES AND TIMEFRAMES**

As explained above, if the summons was served in time, it would not be necessary for the sheriff or attorney to lodge a claim against the insurance; every claim lodged against the Professional Indemnity group scheme impacts the claims history, the risk for the insurer, and may result in premium increases in future.

Therefore it is important for all sheriffs to apply preventative measures in place in their offices to deal with claims that might prescribe.

Herewith some tips to sheriffs:

1. When the process containing the claim which is about to prescribe, is delivered to the sheriff, it will usually have an instructing letter accompanying the process, which will clearly indicate the claim is about to prescribe and will indicate a certain date, before which service must take place.
2. Attorneys can be requested to complete a receiving register for urgent services required by the sheriff's office.
3. Please ensure that all staff members understand what it means when a claim prescribes (especially those receiving documents over the counter and in the post).
4. Sheriffs should have a notice board in the reception area informing and displaying a clear message, for example: "Kindly arrange with receptionist for urgent service of claims that are about to prescribe and complete the register for urgent service"  
This will create awareness for attorneys and the public and can avoid later disputes.
5. Sheriffs should provide mechanisms to facilitate urgent service; these include "same day service" or "urgent service before (date)" This means, when a process is received that must be treated urgent, the document should follow a different shortened route to the deputy, than the ordinary documents that are served in the normal course of business.

6. It is suggested that the registration sheet contains a highlighted “urgent” stamp that would catch the eye. You can also make the registration sheet a different colour than usual – it will put emphasis on urgency or special treatment.
7. Sheriffs should have a “report back” arrangement in their offices for matters where prescription is at stake. The sheriff himself/herself or a senior staff member can attend to quality check of the service, for example: was the service proper in terms of the Rules? Is the service date and time correctly recorded? Is the return of service correct?
8. Furthermore, sheriffs must have mechanisms in place for instances where a claim prescribes and the instructing attorney’s account is in arrears. It is important to note that the service must be done before prescription date, thereafter arrangements can be made for payment of the account of the attorney or the release or availability of the return of service.
9. Sheriffs must take personal responsibility for claims that might prescribe; it cannot be argued that the deputy acted irresponsible when he or she failed to serve, therefore liability can be denied by the sheriff. All occurrences in a sheriff’s office remain the responsibility of the sheriff.
10. Sheriffs can delegate duties to deputies or office staff but sheriffs can never delegate responsibility or accountability vesting in the appointment as sheriff.

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