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PREFACE

Module: EJECTMENTS

LEARNING OUTCOME

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5. CRITICAL OUTCOMES
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REFLECTION

REFERENCES

LEARNING OUTCOME

After studying this module, you should be able to:

- Apply the relevant law and procedures needed for the execution of an ejectment

1. WELCOME

Welcome to Module 6: Ejectments.

This guide covers ejectments performed by sheriffs. We trust you will find working through the guide a learning experience that is very interesting and rewarding, and that it will add value not only to your studies but also to your personal life in general.

We believe in the importance of developing a culture of learning and are therefore committed to helping you develop your capacity to perform to the best of your potential and to become not only a successful sheriff, but also an independent life-long learner.

In terms of the Autonomy of your learning, the facilitator expects of you to:

- Take personal responsibility and initiative
- Learn within a structured environment
- Critically evaluate your own performance against set criteria
- Identify your own learning needs within defined contexts

2. PURPOSE

The information in this guide reflects the need of the sheriffing community for competencies that will enable the learner to take responsibility for the serving of documents and execution of judgements within the legal framework within which they operate. In addition, it will improve the quality with which sheriffs' duties are exercised and enhance the professional image of the sheriffing community while contributing towards greater confidence in the sheriffs' profession as a core part of the civil justice system.

This course provides learners with opportunities for professional development as a law enforcement officer or as a sheriff.

3. DESIGN OF THE MATERIAL

We followed an outcomes-based approach during the design of this module, which means that, after having worked systematically through the module — doing what is required — you will have achieved some very specific learning outcomes determined by the industry of the sheriff.

These learning outcomes have been broken down into smaller chunks that we call assessment criteria. These appear in the introduction of each module or unit. If you focus on achieving these criteria, you will achieve success.

4. SUBJECT CONTENT

The content is divided into various sections.

Once you have worked through all the sections you will be able to:

- Discuss the responsibilities of the sheriff when executing an ejection
- Explain the extent of a sheriff's authority when executing an ejection
- Relate ejection with the Constitution
- Discuss the rights of individuals when executing ejections
- Describe how sheriffs can overcome practical problems that may occur during the execution of an ejection

The sum of the above assessment criteria will be equal to the learning outcome.

The content of this module was put together specifically to guide you through the assessment activities. Do put in the extra effort to consult other sources. You will reap the benefits.

5. CRITICAL OUTCOMES

Other crucial outcomes, you also have to achieve, are those we refer to as critical outcomes. These are the outcomes that will help you develop as life-long learners in your studies, work and personal lives. The critical outcomes are summarised as follows:

-
- 5.1 Identifying and solving problems in which responses display that responsible decisions, using critical and creative thinking, have been made during the:
- performance of the duty of service
 - utilization of the various manners of service
- 5.2 Working effectively with others as a member of a team or group or organisation or community by:
- liaising and establishing relationships with stakeholders and community members
- 5.3 Organising and managing oneself and one's activities responsibly and effectively by:
- following processes, procedures and protocols
- 6.4 Collecting, analysing, organising and critically evaluating information to better understand and explain when:
- gathering information and undertaking research
 - applying relevant laws
- 5.5 Communicating effectively using visual, mathematical and/or language skills in the modes of oral and/or written persuasion when:
- Generating documents
 - Communicating with diverse clients
 - Performing administrative duties
- 5.6 Using science and technology effectively and critically, showing responsibility towards the environment and health of others when:
- sourcing information on legislation, policies and procedures
 - using computers where available
 - distributing and administering reports
- 5.7 Demonstrating an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation when:
- distributing and managing information and reports
 - solving complex problems with a number of actors and factors
 - explaining the relationship between stakeholders and sheriffing
 - demonstrating an understanding of cultural diversity in dealing with clients

6. MODULE LAYOUT

Each chapter comprises the following sections:

- **An introduction**

This serves as an orientation on the particular theme of the module.

- **Assessment activities**

A number of assessment activities appear in each module. These activities were designed for evaluation purposes and form part of the learning and teaching strategy. They will assist you to monitor your own progress in achieving the stated outcomes.

The assessment activities will help you to:

- focus on the subject matter
- measure whether and/or to what extent learning outcomes and objectives have been achieved
- measure whether and/or to what extent knowledge, skills, values and attitudes are understood and applied
- present ideas and information in an appropriate format
- stimulate your thinking
- summarise the content

- **Content**

Guides you through the prescribed and recommended material for the subject, and gives explanations of specific concepts and terms that are complex.

- **Reflection**

Here a summary or conclusion to each module is provided.

- **References**

A record of all material and sources that were used during the development of the module appears here. Feel free to consult these sources as well as other relevant sources.

You will be required to engage actively with the content of all material and to record the answers to activities.

Each module begins with the learning outcome and ends with a conclusion. Remember to also consider the assessment criteria as you work through the module and make sure that you reach these.

7. GRAPHIC ILLUSTRATIONS AND ICONS

Where possible, we have included graphic illustrations, mind maps, tables and diagrams to assist you in your learning. We have also highlighted the meaning of certain concepts through the use of specific symbols called icons. The purpose of these icons is to emphasise and draw your attention to important aspects of the work and to highlight activities. The various icons have the following meaning:



Example: This indicates that an example has been given in the text to help you understand the point made, solve similar problems or clear up uncertainties.



Activity: This icon indicates that you must perform an activity. This will help you to think about a particular aspect of the work and to apply or practice it. Performing the activities will help you monitor your own progress towards achieving the assessment criteria.



Reference: This icon refers to previous or other study material, cases or sources that relate to the content with which you are busy.



Reflection: This icon indicates an opportunity to reflect whether you have achieved the assessment criteria.



Definitions: This icon indicates that an important explanation or formula is being given. Study the definitions carefully and take care to interpret them correctly, as this will help to keep you on the right track.



Take note: Additional notes are given for further clarification.

NB! Please study these icons carefully and make sure you can apply them effectively.

REFLECTION POINT TO PONDER

You might want to write a short essay about your understanding of ejectments with reference to the South African Constitutional Framework.

Please do not hesitate to contact your facilitator if you have any problems regarding the content of the subject.

We hope that you will enjoy the challenge of taking an active part in acquiring new skills through this course. Remember one learns best when one enjoys what one is doing.

Most people, looking at a newly-ploughed field, simply see a barren landscape. To a farmer though, this is a sight full of promise. An artist feels the same way about a blank canvas. A musician gets inspired by the silence of an empty hall. What you've got, at the moment, is the perfect space in which to create something.

We wish you success in your studies.

References

1. *South African Board of Sheriffs Learning Guide*. First Edition. Unisa Print Production. Johannesburg. 2003

Module: EJECTMENTS

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Learning outcome

Learning objectives

Introduction

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 - G. Rent Control Act 80 of 1976
 - H. Rental Housing Act 50 of 1999
 - I. By-laws of Local Authorities
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Ejectment by Service, but 'Instructed' to not remove the Goods

Ejectment in Rural Areas

Ejectment of Illegal Squatters

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Payment of sheriff's fees

Conclusion

EJECTMENTS

Learning Outcome

At the end of this module you should be able to:

- Apply the relevant law and procedures needed for the execution of an ejectment

After working systematically through the content and activities for this module, you will be able to monitor your progress in achieving each of the following assessment criteria:

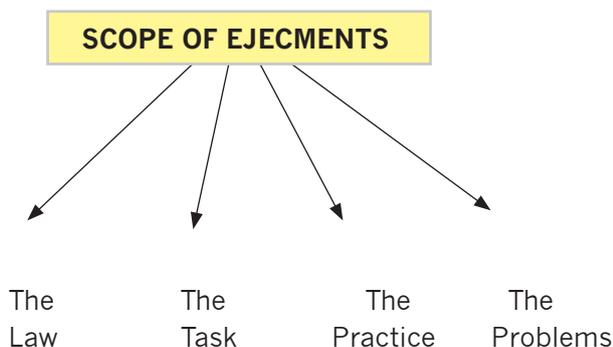
- Discussing the responsibilities of the sheriff when executing an ejectment
- Explaining the extent of a sheriff’s authority when executing an ejectment
- Relating ejectment with the Constitution
- Discussing the rights of individuals when executing ejectments
- Describing how sheriffs can overcome practical problems that may occur during the execution of an ejectment



When studying this module you will be required to do some research using the Sheriff’s Handbook, Magistrate’s Court Act 32 of 1944 and the Supreme Court Act 50 of 1959.

INTRODUCTION

The sheriff, due to the nature of his work, is not the bearer of good news and one of the most unpleasant tasks he/she has to perform is ejectments. This subject matter has a wide scope which can be illustrated as follows:



The majority of Warrants of Ejection dealt with by sheriffs are issued out of the Magistrate's Court and, unless otherwise stated, this module deals with the matter from that perspective.

PART 1: THE LAW

One of the obligations imposed by law on the lessee is that he must pay the lessor the rent agreed upon, failing which the latter may claim it by the *actio locati* (action brought by the lessor). Failure by the lessee to pay the rent timeously substitutes *mora debitoris* (default of the debtor), and should therefore, in principle, give rise to the normal remedies for that form of breach. In the absence of a clause in the contract entitling the lessor to cancel for non-payment of rent, the courts accept that the lessor may, after giving sufficient and reasonable notice to the defaulting lessee, cancel the lease and apply for the ejection of the lessee. Under the Rent Control Act a statutory tenant who fails to pay his rent within seven days after the due date may be summarily ejected.

A. The Magistrate's Court

The Magistrate's Court is specifically empowered in section 29(1)(b) to hear actions for ejection.



Jones and Buckle have the following comment relating to the actions for ejection:

Where there is a provision in an Act which limits the jurisdiction of a Magistrate's Court in certain circumstances, e.g. section 22(4) of the Land Reform (Labour Tenants) Act 3 of 1996, the Magistrate's Court has jurisdiction to enquire and decide whether its jurisdiction is in fact limited in the particular case. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, which provides for procedures for the eviction of unlawful occupiers of land, came into operation on 5 June 1998. It is submitted that in view of the apparent purpose of the Act, namely to regulate the eviction of illegal squatters, neither the common law relating to eviction nor the provisions of section 29(1)(b) have been changed by it. To hold otherwise would lead to an absurd result which could never have been the intention of the legislature. The position as set out in the notes below therefore remains unaffected.

Section 29(1)(b) defines the material limits to a magistrate's jurisdiction and does not purport to lay down procedure in regard to who can be lawfully removed from the premises under a warrant pursuant to a judgement

obtained against any occupier. An action for ejectment under this paragraph does not constitute a claim for specific performance in terms of 46(2)(c)(ii).

There is no need in actions for ejectment to state in the summons the value of the right of occupation: all that is necessary for the plaintiff to allege in an ejectment action is that he is the owner of the property and that the defendant was in occupation of his property at the time of the institution of the action.

Section 48(e) allows an order to be suspended for a specific period; for example to give the occupier time to vacate.

B. The High Court

The High Court has discretion to suspend the operation of an ejectment order granted by it in order to give a wrongful occupier time to vacate.



See *Beyers v Mlanjeni* 1991 (2) SA 392 (C) at 397-8
Kent v South African National Life Assurance Company 1997 (2) SA 808 (D) at 808 D

In looking at the other statutes, it must be noted that in the land claims court Judge J. Dodson in *Khuzwayo v Dlodla* 2001 (1) SA 714 said:

“Ideally, the entire statutory and common-law regime relating to evictions ought to be reviewed and dealt with by way of simplified and, as far as possible, uniform legislation. The current situation, with a range of different statutes applicable in different areas and conferring jurisdiction on different courts against the backdrop of a variety of potentially relevant constitutional provisions, is fraught with uncertainty and the potential for injustice”.

(paragraph (13) at 719C/D-F)

The sheriff does not need to know the provisions of these statutes and they are therefore not discussed in any detail, unless they are relevant to the work of the sheriff.

C. Land Tenure Act

No specific requirements or directions for the sheriff are stipulated.

D. Land Reform (Labour Tenants) Act 3 of 1996

It covers those labour tenants who are residing on land for a substantial period of time prior to the commencement of the Act. It also protects from eviction labourers who have attained the age of 60 years and who lived on farms for many years. It does not cover labour tenants who have been evicted and who may have claims for restitution under the Restitution of Land Rights Act.

No specific requirements or directions for the sheriff are stipulated.

E. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

This Act applies in respect of unlawful occupiers of land. The purpose of the Act is to regulate the eviction of illegal squatters and to provide procedures for the unlawful occupiers of land.

No specific requirements or directions for the sheriff are stipulated.

F. Extension of Security of Tenure Act 62 of 1997 (ESTA)

Sheriffs should deem of this Act highly important. The Act applies in respect of occupiers who occupy non-urban land or land in an urban area that has been designated for agricultural use, and on or before 4 February 1997 had consent or other right in law to do so. In terms of the ESTA, a person may only be evicted in terms of a court order issued under the Act. Limited grounds for eviction of the various classes of occupier protected by the Act are provided.

The ESTA stipulates that the Magistrate must give a ruling on what must happen to the buildings and crops of the person to be evicted and where to the evicted person must be removed.

If a warrant of ejectment was obtained under the common-law, no directions are stipulated. The person and his family must simply be evicted from the land and vacant possession must be given to the owner.

Problems are being experienced in certain areas where judgements are given in terms of the common-law for ejectment in cases where it appears that the ESTA applies.

It appears that where the defendant does not plead that the ESTA applies or where the judgement is given by default, some courts are reluctant to

determine, or even enquire, whether ESTA does in fact apply.

In the Lands Claims Court, *Khuzwayo/Dludla* 2001 (1) SA714, Judge J. Dodson said persons who are in fact occupiers but failed to defend eviction proceedings brought in terms of common law remedy of the *rei vindicatio* (recovery of property by the owner from any person in possession of it) are vulnerable to eviction in contravention of the ESTA. The Land Claims Court had no power to review orders where the pleadings did not state that the Act applies.

G. Rent Control Act

No specific requirements or directions for the sheriff are stipulated.

H. Rental Housing Act 50 of 1999

This Act regulates matters between landlords and tenants and provide inter alia for the establishment of a “Rental Housing Tribunal” in the Provinces to resolve complaints regarding ‘unfair practices’. The Tribunal investigates and hears the complaint, and make such a ruling as it may consider just and fair in the circumstances.



A Magistrate’s Court may refer matters relating to a dispute regarding an unfair practice, to the Tribunal. In terms of section 13(13) of Act 50 of 1999 a ruling by the Tribunal is deemed to be an order of a Magistrate’s Court and made in terms of the Magistrate’s Court Act 32 of 1944.

It is therefore important to note that Rule 36 of the Magistrate’s Court will apply to any ruling made by the Tribunal. The process for the execution of any judgment for the payment of money, for the delivery of property, or for ejectment shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff

I. By-laws of Local Authorities

Sheriffs should be aware that Local Authorities have by-laws making the obstruction of a pavement an offence.

J. Road Traffic Ordinance and National Road Transportation Act

Sheriffs should be aware that the obstruction of a road is an offence. Section 16(1) provides that action may be taken against a person who contravenes the National Roads Transportation Act. The road reserve is defined as being part of the road.

K. Constitution of the Republic of south Africa Act 108 of 1996: Human Rights

The Bill of Rights protects the rights of people in South Africa and it confirms the democratic values of human dignity, equality and freedom that must be respected, protected and promoted. Sheriffs are aware of these requirements and although process of the court is served or executed firmly, defendants and debtors are always treated with respect and dignity.

In the majority judgement of Harms J.A. in *Ndlovu v Ngcobo*, handed down by the Supreme Court of Appeal on 13 August 2002, it was ruled that in terms of section 26(3) of the Bill of Rights, the plaintiff is now required to meet further requirements if he wanted to evict a tenant from residential premises.

The effect of the ruling is that, even if the matter was undefended, the warrant of ejectment can no longer be issued by the clerk of the court or the registrar. The unlawful occupier must be given 14 days notice of the hearing of an application or an action for his eviction. Service of the notice must be effected by the sheriff in terms of the rules of the court hearing the matter.

The municipality having jurisdiction must also be given at least 14 days notice of the hearing, which must also be served by the sheriff. The notice to be served must state that proceedings are being instituted for an order for the eviction of the unlawful occupier; must indicate on what date and time the court will hear the proceedings; must set out the grounds for the proposed eviction, and must state that the unlawful occupier is entitled to appear before the court and defend the case, and where necessary, has the right to apply for legal aid.



ACTIVITY:

Briefly mention the acts or ordinances that have an effect on ejectments and briefly discuss the effect of each on the sheriff.

A large rectangular area with a gradient top and horizontal lines for writing.

THE TASK OF THE SHERIFF

The sheriff is an officer of the court and his function is to give effect to judgements, decisions, orders and warrants of the court. If the sheriff cannot give effect thereto and obtain compliance, all the effort of the plaintiff is wasted. In addition the sheriff could be charged by the Board for Sheriffs for misconduct or he could be sued by any party who suffered a loss.



ACTIVITY

Where does the Sheriff obtain his authority and power from to carry out an ejectment?

The sheriff obtains his/her authority from the Warrant of Ejectment (or Order) itself. The Warrant of Ejectment states the following (Form No 30):



To the Sheriff.

. . . . This is to authorise and require you to put the said plaintiff into possession of the said premises or land by removing therefrom the said defendant for which this shall be your warrant.'

In Afrikaans :

'Aan die Balju.

. . . . So word u hierby gemagtig en beveel om genoemde eiser in besit van genoemde perseel of grond te stel deur die genoemde verweerder daaruit te verwyder waarvoor dit u lasbrief is.'

The sheriff's task is very clear and unambiguous: he must remove the defendant from the property.

The sheriff must take care in the execution of process and must carry it out strictly in terms of the instructions of the court and the rules of court; not in terms of the 'instructions' of the attorney. Any party who suffered a loss through the sheriff's negligence may sue the sheriff for damages. The sheriff is not only liable for his own actions, but is also liable for the actions of his deputies and other employees or contractors. They are, of course, also responsible personally.



If the sheriff transgresses the limits of the warrant, he enjoys no protection against an action for damages.

To protect himself, the sheriff should always act within the four corners of the order or warrant and do no more or no less. If he acts strictly in this way, he is not liable, even though damage is caused to another person by his actions.

Where action is brought against the sheriff by a judgment creditor who has suffered loss through the act of the sheriff, either negligence or dolus (deceit, fraud) is the basis of the action, and one or the other, depending upon the case, should be alleged. If the summons does not allege clearly the respects in which the sheriff has failed in his duty (which must also be set out) or has been negligent, it will be presumed that the sheriff's actions was in accordance with the law and the summons will be dismissed as disclosing no cause of action (*Zuser v Lewinsohn* 1914 CPD 697; *Ndonga v Crous* 1962 (2) SA 591 (E) at 594).

If the sheriff is still not sure how to handle a Warrant of Ejectment, the Oxford Dictionary says the meaning of *the word 'eject' is - 'to expel (from place, office etc.); evict from property; throw out from within'*. **The word 'evict' means - '(law) recover (property, title) of, from, by judicial process . . . expel (person) by legal process; eject (tenant) from his holding.'**

If the sheriff is still not sure how to handle a Warrant of Ejectment, the Oxford Dictionary says the meaning of *the word 'eject' is - 'to expel (from place, office etc.); evict from property; throw out from within'*. **The word 'evict' means - '(law) recover (property, title) of, from, by judicial process . . . expel (person) by legal process; eject (tenant) from his holding.'**

THE PRACTICE



Reflection

Consider the following question and answer it after you have studied this module.

What is the first thing you do when you receive a document?



ACTIVITY:

Use your Rule Book and list the requirements that a Warrant of Ejectment must meet before you will execute it. Write short explanatory notes next to each requirement.

If it is a Warrant of Ejectment issued by the Magistrate's Court, check the following :

1. Form 30

The warrant shall be as near as may be in accordance with Form 30.



The process for the execution of any judgement for the payment of money for ejectment shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff. Rule 36(1)

2. The Original Document

In terms of Rule 9(1) the original shall be delivered to the sheriff together with as many copies as is required for service. The sheriff also needs the original to comply with Rule 9(4) which states that the sheriff shall on demand by the person upon or against whom process is served, exhibit to that person the original of the process.

If the Warrant of Ejectment was issued out of the High Court, the sheriff does not require the original although it is highly desirable that he should have the original.

3. Person to be evicted



Any such process shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date — Rule 36(6).

4. To the Sheriff of the Court

It must be addressed to 'The Sheriff'. If it is addressed to "The Sheriff for Alberton" and the recipient is the Sheriff for Germiston, the latter will not execute it and it will have to be amended.

5. Date of Judgement

The date of the judgement must be stated. The warrant is to be executed within three years. After three years the warrant is superannuated and must be re-issued by the clerk of the court.

6. Address of Property from where person must be evicted

The address must be clearly stated and the property from which the person must be evicted must be clearly described and identifiable, e.g. must the sheriff eject him from the house or must he eject him from the property? It must be contained in the warrant and not in a covering letter.

7. Issued by the Court

Check for the signature of the clerk of the court, the date stamp as well as the case number.



The clerk of the court may re-issue — Rule 36(5). Any alterations in such process shall be initialled by the clerk of the court before it is issued by him - Rule 36(4).

8. Check for Warrants of Execution against the defendant in the office

The sheriff may already have attached some of the defendant's property. If the document is defective or invalid, it is returned to the attorney under cover of a suitable return.

Rule 8(2) requires the sheriff to serve or execute the process of the court without any avoidable delay. In *Heugh & Fleming v The High Sheriff (1856) 2 Searle 280*, a sheriff has been held liable in damages to the judgement creditor where the latter has suffered loss on account of the sheriff's negligent delay.

The sheriff must now proceed to the premises and serve the Warrant of Ejectment on the Defendant in terms of Rule 9(3). If it is not possible to serve the warrant in terms of Rule 9(3), service of process may be effected in terms of Rule 9(7) by affixing a copy thereof to the outer or principal door of such premises or on some other conspicuous part of the premises or land in question.

See Rule 9(7): Where the relief claimed in any action is limed to an order for ejectment from certain premises or land or a judgement for the rent thereof and for the costs of such proceedings and it is not possible to effect service in the manner prescribed in sub-rule (3), service of process may be effected by affixing a copy thereof to the outer or principal door of such premises or some other conspicuous part thereof.

Notice has to be given to the tenant, not to the subtenants. It is, however, advisable to serve copies on all the subtenants as well.

After service of the writ, the ejectment is carried out by removing all the goods of the defendant from the premises and by placing it next to the boundary of the property, outside the premises sited in the warrant. If the sheriff is obstructed, he has the power in terms of Rule 8(2) to call upon any member of the Police as defined in section 1 of the Police Act 7 of 1958) to render him aid.

The sheriff is compelled to carry out the Order or the Warrant and to do the ejectment.

SOME PRACTICAL HINTS:

1. Make sure you are at the right address.
2. For many years, even before the new Constitution, the standing instruction in Sheriff Offices has been that we do not eject people without warning. We go to the Defendant and serve the Warrant of Ejectment and we tell the person that we have to eject him. We explain to him that it is a very humiliating experience, but we give him the opportunity to remove himself in a dignified manner, before a certain hour. Almost all of them co-operate and it is very seldom that we have to remove a defendant by force.
3. Get open security from the attorney and the plaintiff before you do anything Rule 38(1).
4. You may use a locksmith to gain entry.
5. If there are special risks, take out special insurance cover with Primak Insurance Brokers.
6. If it is high tech equipment, consult a specialist or get the service of a specialised technician.
7. If you place goods on the pavement or road reserve, make sure you do not obstruct the pavement or road reserve and that there is ample room for pedestrians to get passed the goods without having to walk on the roadway. Tell the defendant to remove it as soon as possible.

8. If you are concerned about obstructing the pavement or road reserve, hand the evicted defendant a letter explaining to him that you have placed his goods on the pavement, it is his responsibility to remove it as soon as possible before he gets charged for obstruction.
9. If you see any 'Red Lights', be extra careful. You can even ask the court for a Declaratory Order to clear any uncertainties.
10. Never make assumptions. Do what the court has commanded you to do; nothing more and nothing less. If the attorney has additional requirements and directs you to do things not provided for in the Order, ask him to have the Order amended.
11. The sheriff is not bound to carry out private instructions not contained in his warrant (*Bier v Van der Spuy* (1886) 3 CLJ 325).
12. The sheriff was held liable through his having released validly attached goods because of his own mistaken (though bona fide) view of the law and because the attorney of the judgement debtor had threatened him with an empty threat of an action for damages if he did not release the goods (*Venn v Friedman* 1933 OPD 202 at 209).
13. Make sure you evict the person from the property described in the Order or Warrant. If it requires you to evict a person from a house, you cannot evict him from the property.
14. The sheriff must remove the person, not only the Defendant, but also his family, any persons who occupy under him and all their belongings.
15. The owner must be put in full possession of the property. The owner must be put in full control and he must be able to let the property to another person or take occupation of it himself.
16. If the defendant or occupier is absent and money or valuables are found on the premises, like cash or jewellery, the sheriff should remove it for safe keeping.

PROBLEMATIC SITUATIONS REGARDING EJECTMENTS

Warrant of Execution and a Warrant of Ejectment simultaneously

Where a Warrant of Execution is received together with a Warrant of Ejectment, the sheriff must make sure the Warrant of Execution is certified for immediate removal in terms of Rule 41(7)(a). If not, the attorney must be requested to obtain such endorsement from the clerk of the court.

It is then a simple matter of attaching the goods in terms of the Warrant of Execution first, and to remove it to the storeroom of the sheriff. Thereafter the Warrant of Ejectment is attended to and the remaining goods are ejected from the premises if the defendant did not respond to the sheriff's request to remove himself from the premises by a certain hour.

Sometimes one may find that the attorney does not want to obtain the endorsement for the immediate removal of the goods, because he wants the sheriff to leave the goods on the premises in the care of the execution creditor. It is then accompanied by an 'instruction' to do the ejectment by service of the warrant, but to leave the goods on the premises.

Ejectment by Service, but 'Instructed' to not remove the Goods

When a sheriff receives an 'instruction' to serve the Warrant of Ejectment, but to leave the goods on the premises, he should see red lights all over. This happens quite often.

The sheriff should, in the opinion of the authors, return the Warrant of Ejectment to the attorney with a suitable return stating that it is not possible to do an ejectment without removing the defendant and his goods from the premises. If the attorney was happy for the sheriff to carry out the ejectment by removing the defendant and his goods from the premises, he could return the warrant of ejectment to you for execution.

Some sheriffs are happy to comply on condition the attorney gives them an open security. The authors wonder how many sheriffs realise that the security is hardly worth the paper it is written on. The sheriff is the one who will be sued, and only after damages have been awarded against him (and he has paid) can he sue the plaintiff (if he can find him) and attorney for payment in terms of the security. If he is a man of straw, the sheriff may be wasting his money, anyhow.

The security must be obtained, but sheriffs are strongly advised not to think they are indemnified and protected by a security, and that they can

therefore agree to all sorts of irregular requests. If the authors cannot do what the court requires of them, they do nothing.

If the execution creditor and attorney have particular requirements, they must ask the court to specify it, and instruct the sheriff accordingly.

The second problem is how to deal with the goods attached in terms of a Warrant of Execution that is not endorsed for immediate removal, when you eject the defendant. As the law now stands the attachment by a sheriff has the effect that a *pignus iudiciale* (judicial pledge) vests in the sheriff. The sheriff, knowing that the goods were under attachment, would be totally irresponsible if he left the attached goods in the street. It will result in claims from both execution creditor and execution debtor.

Sometimes the attorney will suggest that the sheriff eject the defendant by putting all the goods outside and then to return the goods under attachment to the premises where it will be left in the care of the plaintiff (his client).

For obvious reasons, the law nowhere allows the plaintiff to be left in charge of goods attached. This will be grossly irregular. It is either left in the care of the execution debtor or the Sheriff must take it in his custody. Rule 41(7) is very clear that the Execution Creditor may request the Sheriff to remove the attached property to ‘... a place of security or left upon the premises in the charge and custody of the execution debtor . . .’.

Even in the High Court, where immediate removal is a requirement by law, the goods may be left on the premises on the undertaking of the person whose goods were attached, not of the plaintiff (Rule 45(5)).

In such an instance the sheriff has to remove the goods under attachment to his storeroom. The only other alternative is for the Execution Creditor to request the sheriff to leave the goods in the custody of the Execution Debtor, if the sheriff knows where his address is. There is no provision for the goods to be left with the execution creditor.

Ejection in Rural Areas

Sheriffs are sometimes placed under pressure to remove the persons ejected to a site many kilometres away. If the sheriff transported the evicted persons and their belongings to a point further than the boundary of the property from which he had to eject the persons, he would be doing so in his private capacity without any authority.

Should a person or child fall off a truck, he will be faced with action against him in his private capacity acting without authority. The sheriff's function stops where the order or warrant stops. The sheriff's professional negligence and other sheriff's insurances will not cover him in such an instance.

**ACTIVITY**

How prevalent is this problem? Support your views with some practical cases or media extracts.

Where a written notice of proceedings for eviction had been given in the English language to occupants, the overwhelming majority of whom were Xhosa-speaking and many illiterate, it was held that the notice had not been effective; it should have been accompanied by a translation in the home language of the majority of the respondents, and the contents of the notice should have been broadcast, in Xhosa, throughout the community at times when most occupants were likely to be present.

Where the court granted an ejectment in terms of common-law instead of the ESTA, the sheriff may be ordered to reinstate the persons on the land.

Ejection of Illegal Squatters

Make sure people are informed in their own language what is happening. Use a loudhailer. Again, the sheriff should arrange with the plaintiff that he will persuade the persons to vacate the land themselves, even if the plaintiff has to provide the transport. Usually orders of the court dealing with illegal squatters are very clear and cover all the aspects of security firms and where they have to be taken.

Security Firms

With dangerous ejections where there is fear for loss of life or limb, sheriffs are sometimes tempted to employ a security company to protect their employees. This is very risky because if any person gets shot by a security guard contracted by the sheriff, the sheriff could be faced with serious charges and claims. Sometimes the plaintiff suggests that the sheriff engage a security company and undertakes to pay the cost. Unless the order states otherwise, the sheriff will be liable for anything that goes wrong during the eviction, including the actions of his own staff and those working for persons or firms engaged by him.

The sheriff should not allow persons other than the SAPS on site when he does an ejection, because he could be held responsible for their safety.

If the order states that a security company must be employed and it specifies what their responsibilities are, the sheriff will obviously not be liable for their actions.

Payment of sheriff's fees

Ejections can be very costly affairs in cases other than an ordinary single household ejection. Commercial and industrial ejections may require specialised machinery and equipment to be dismantled. Some of these may only be moved under supervision of specialist technicians.

The sheriff may have to hire cranes or large trucks, even bulldozers. If the cost appears to be high, he should call for a deposit sufficient to cover all his costs and that of his contractors.

Conclusion

After studying this module you will have a clearer understanding of:

- What an ejectment is;
- The requirements of the various Acts with regard to ejectments;
- How to check a Warrant of Ejectment for validity;
- How to do an ejectment in a dignified manner not humiliating the individual (recognising his human rights);
- How to handle problems the sheriff may encounter;
- The risks the sheriff faces when doing an ejectment;
- How to handle unreasonable instructions;
- How to deal with an ejectment accompanied by a Warrant of Execution.

This module was developed and designed to equip you with a basic knowledge of ejectment and to enhance the knowledge and skills of staff members in the sheriff's office.

It is further designed to form a basis for further learning that will become essential once you find yourself within the profession.

We wish you success in your studies!

Answer on the reflection question at the beginning of the module: *The first thing one always does when one receives a document in one's office is to register it and to check it to make sure it is valid and legal. This is very important.*

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