

PAGE OF CONTENTS

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CONTRIBUTORS

PREFACE

MODULE: EXECUTION: MOVABLE AND
IMMOVABLE PROPERTY

CONCLUSION

REFERENCES

ANNEXURES

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PREFACE

Module: EXECUTION: MOVABLE AND IMMOVABLE PROPERTY

LEARNING OUTCOME

1. WELCOME
2. PURPOSE
3. DESIGN OF THE MATERIAL
4. SUBJECT CONTENT
5. CRITICAL OUTCOMES
6. MODULE LAYOUT
7. GRAPHIC ILLUSTRATIONS AND ICONS

REFLECTION

REFERENCES

LEARNING OUTCOME

After studying this module, you should be able to:

- Apply procedures and execution processes in compliance with relevant legislation and standards

1. WELCOME

Welcome to Module 5: Execution: Movable and Immovable Property. This guide covers execution as performed by sheriffs. We trust you will find working through the module 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:

- Describe conditions under which execution is carried out
- Delineate ‘manner of execution’
- Describe the attachment process and the powers of the Magistrate’s court in this regard
- Describe the steps for the execution of a warrant of execution
- Discuss rule 43 and the procedure for execution by creditors

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 sherriffing
 - demonstrating an understanding of cultural diversity in dealing with clients

6. MODULE LAYOUT

Each module 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.

8. 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 financial management in the sheriff's profession.

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: EXECUTION — MOVABLE AND IMMOVABLE PROPERTIES

Learning Outcome

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

- Apply procedures and execution process in compliance with relevant legislation and set standards

The assessment criteria for this module include:

- Describing conditions under which execution is carried out
- Delineating 'manner of execution'
- Describing the attachment process and the powers of the Magistrate's Court in this regard
- Describing the steps for the execution of a warrant of execution
- Discussing rule 43 and the procedure for execution by creditors

What learning resources do you need?

- This guide
- Legislation

INTRODUCTION

In this module we will discuss the task or duty of the sheriff to execute judgements. We will discuss this important function of sheriffs as outlined in the relevant legislation.

As in the other modules, we will indicate the relevant sources to you as well as give practical examples of relevant documentation and real work situations.



'Any court, which has jurisdiction to try an action, shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.'

(SECTION 62(1) of the Magistrate's Court Act 32 of 1944)

1. PROCESS IN EXECUTION

Execution is the process whereby a judgement may be enforced. It is a continuing process and is not complete until the judgement amount has been settled.

In this section we will consider the execution against property which is resorted to when the debtor fails to satisfy a judgement ordering him to pay a debt.

2. STAGE IN EXECUTION

Before it can be said that execution has been levied on the property of a judgement debtor or obtained against him, three essential requirements must have been complied with:

- (a) The issue of a valid warrant
- (b) The attachment of the debtor's property and
- (c) The sale by public auction by the sheriff of the property attached.

A mere attachment puts nothing in the judgement creditor's pocket and does not make available to him the fruits of his judgement. The process of execution is, therefore not complete until the judgement creditor is placed in possession of that which the court has awarded him. Thus in a judgement for money, execution is not complete until the goods of the judgement debtor has been attached, removed, the sale in execution is advertised, the goods sold and the proceeds, if sufficient, paid over to the judgement creditor.



The process of execution takes the form of a warrant or writ of execution. The terms warrant and writ are used indiscriminately, but warrant usually connotes a warrant of arrest while a writ is used for the attachment of goods. The word writ is commonly used in the Supreme Court. In this module we will use the term warrant throughout for process of execution.

A warrant of execution is a document under the hand of the clerk of the Magistrate's Court or the registrar of the Supreme Court and addressed to the sheriff authorising and requiring him to raise on the property of the judgment debtor an amount sufficient to satisfy the judgment debt, cost, and the cost of the sheriff.

2.1 Points to consider when levying a warrant of execution on property:

- (a) **Prerequisites for the issue of a warrant:** There must be a judgement liability in which the debt or other obligation of the judgement debtor, which is to be enforced by the sheriff, is specifically set out and described. A valid judgement is a prerequisite. Neither the Magistrate's Court Act nor the Rules authorise or even contemplate the sale of property in satisfaction of any debt, which is not due by virtue of a judgement of a court.
- (b) **Who may sue out a warrant?** The judgement creditor may sue out a warrant of execution, if the judgement is not satisfied. In terms of section 64 of the Magistrate's Court a cessionary or other person who has by operation of law obtained the benefits of the execution creditor. A judgement creditor will then lose his right to issue a warrant.
- (c) **Against whom may a warrant of execution be issued?** A warrant of execution may only be issued against the judgement debtor. Where the judgement has acted in a representative capacity warrants can be issued against him in his representative capacity.
- (d) **When may a warrant be issued?** Except where judgement has been entered by consent or default, a warrant may not be issued without the leave of the court. At the time of granting of the judgement, before the day on which the judgement was granted. In the Supreme Court there is also no obligation on the judgement creditor to wait for a reasonable time. However, in *Perelson v Druain*, Solomon J appeared to regard a period of 5 hours as being a reasonable time to allow the judgement debtor to pay.
- (e) **Number of warrants:** As a rule only one warrant of execution may be issued in respect of one judgement.
- (f) **Form of the warrant:** A warrant is issued in accordance with the provisions of rule 36 and form 32 in the Magistrate's Court and in the Supreme Court in terms rule 45(1) and form 18.

3. MANNER OF EXECUTION

The following statutes have reference:

SECTION 66 (MAGISTRATE'S COURT) Act 32 of 1944

(1)(a) Whenever a court gives judgement for the payment of money or makes an order for the payment of money in instalments, such judgement, in case of failure to pay such an amount of money forthwith, or such order in case of any failure to pay instalments at the time or manner ordered by the court, shall be enforceable by execution of the movable property.

RULE 45(1) (SUPREME COURT) Act 59 of 1959

The party in whose favour any judgement of the court has been pronounced may, at his own risk, sue out of the office of the registrar one or more writs for execution thereof.

4. PROPERTY EXEMPTED FROM EXECUTION

SECTION 67 (MAGISTRATE'S COURT) Act 32 of 1944

SECTION 39 (SUPREME COURT) Act 59 of 1959

In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, namely

- (a) The necessary beds, bedding and wearing apparels of the execution debtor or his family;
- (b) The necessary furniture (other than beds) and the household utensils in so far as they do not exceed in value the sum of R2000;
- (c) Stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R2000;
- (d) The supply of food and drink in the house sufficient for the needs of such debtor and his family during the month;
- (e) Tools and implements of trade, in so far as they do not exceed in value the sum of R2000
- (f) Professional books, documents or instruments necessarily used by such debtor and his profession, in so far as they do not exceed in value the sum of R2000;

Such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment

Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the sums referred to in paragraphs (b), (c), (d), (e) and (f), to the extent of not more than twice such sums.

Other property exempted from execution:

- (a) In terms of section 3 of the State Liability Act 20 of 1957 no execution, attachment or the like process shall be issued against the State in any action or proceedings against the State or against any property of the State. The amount which may be required to satisfy any judgement or order given or made against a nominal defendant or respondent in any such action or proceedings may be paid out of the Consolidated Revenue Fund or the Railway and Harbours Fund as the case may be.
- (b) The General Pensions Act 29 of 1979 provides in section 2(1) that no annuity or benefit or rights in respect of an annuity or benefit payable under a pension law shall be liable of attachment or subjected to any form of execution under a judgement or order of a court of law. Similar provisions are contained in a number of other Acts: section 37A of the Pension Funds Act 24 of 1956; section 2(1) of the Statutory Pensions Protection Act 21 of 1962; section 14 of the Aged Persons Act 8 of 1967; section 11 of the Blind Persons Act 26 of 1968; section 9 of the War Veteran's Pension Act 25 of 1968; section 9 of the Disability Grants Act 27 of 1968.
- (c) A right to a benefit or gratuity to which any person is entitled under the Occupational Diseases in Mines and Works Act 78 of 1973 is not subject to execution of a judgement or order of court, except at the instance of the Compensation Commissioner for Occupational Diseases in proceedings to recover an amount to which the payee is not entitled.
- (d) Section 2(3)(a) of the Matrimonial Affairs Act 37 of 1953 provides that no remuneration, compensation, deposit, share, dividend, proceeds, amount, right, tool, or implement belonging to the wife shall be attached or sold in execution for any liability incurred by the husband for or in connection with the supply of intoxicating liquor. In terms of section 2(3)(b) property which the wife acquired after her husband has deserted her and is shown not to be residing with her is also exempted from attachment.

5. PROPERTY EXECUTABLE

The Supreme Court has inherent jurisdiction, which means that it can authorise the attachment of anything.

Section 68 of the Magistrate's Court Act 32 of 1944 is applicable.

Section 68(1) states that in the messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.

Rule 42 (1) Magistrate's Court Act 32 of 1944

Where the property attached in execution is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, attachment shall not be complete until after notice to the lessor, lessee or person liable on the bill or other security, as the case may be.

The attachment shall not be valid unless and until the instrument in question is taken into possession by the sheriff and notice has, in the case of a registered lease or bond, been given to the registrar of deeds concerned.

Section 68(1) distinguishes between a bill of exchange and a cheque. Rule 42(1) does not refer to a cheque. It is therefore not necessary, when cheques are attached that notice in this subrule be given to the drawer of the cheque.

The sheriff may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledge or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

The Magistrate's Court is a creature of statute and as such does not have any inherent powers such as the Supreme Court. It has therefore been held that the only incorporeal capable of being executed is those enumerated in section 68 and 72 of the Magistrate's Court.

Rule 42(2) of the Magistrate's Court Act 32 of 1944

Where the moveable sought to be attached is the interest of the execution debtor in property pledged leased or sold under a suspensive condition to or by a third person or is under the supervision or control of a third person.

Attachment shall be effected by service by the sheriff on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice were a summons: Provided that where service cannot be effected in any manner prescribed the court may make an order allowing service to be effected in a manner stated in the order.

The sheriff may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser, seller or other third person, enter upon the premises where such property is and make an inventory and valuation of the said property.

Rule 45(8) of the Supreme Court Act 59 of 1959

If incorporeal property, whether moveable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner herein after provided:

(a) Where the property or right to be attached is a lease or bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be completed only when-

- Notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be.
- The sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note bond or other security as the case may be and in the case of a registered lease or registered right, notice has been given to the registrar of deeds.

Where movable property sought to be attached, is the interest of the execution debtor in property pledge, lease or sold under a suspensive condition, to or by a third person, the attachment shall be complete only when the sheriff has serve on the execution debtor and the third person notice of the attachment with a copy of the warrant of execution. The sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said

interest.

In the case the attachment of all other incorporeal property or incorporeal rights in property aforesaid, the attachment shall only be complete when notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property right is registered, and the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document

(b) The sheriff may upon exhibiting the original of the warrant of execution the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

6. Property Pledged

In terms of this section only the interest of an execution debtor may be attached and not the actual property which has been pledged. However, in order for the pledge property to be exempted from attachment there has to be a valid pledge perfected by delivery. Where there has been no delivery or the property has been returned to the possession of the debtor then the property is capable of attachment. In the absence of delivery the holder of a registered notarial bond over the pledged moveable does not acquire a real right in the movable property sufficient to prevent an attachment.

7. Interest in Moveable or Immovable Property

An interest in immovable property amounts to a mere personal right to receive transfer thereof, it is not one of the incorporeal immovable enumerated, and cannot be attached.



What is a personal right?

8. Incorporeal Property

What is incorporeal property?

Section 68(1) authorises the attachment of moveable property and also the other items listed in this section, but nowhere does the act use the

terms “incorporeal property, incorporeal rights or incorporeal moveable.” The Magistrate’s Court Act also does not mention the phrase “right title and interest”.



What must be determined, however, is what incorporeal property is. The term incorporeal is a Latin term that simply means ‘without a body.’ So an incorporeal is a thing that cannot be touched. Property on the other hand is something that is capable of being touched and attached.

9. Sold to him under any hire-purchase contract or under a suspensive condition

This section makes express mention of a hire-purchase agreement only where the execution debtor is a buyer. Where the execution debtor is a buyer under a hire-purchase agreement or under a term suspending ownership, his interest may be attached and sold in execution. The purchaser in execution does not acquire ownership in the goods, but the execution debtor’s interest in the goods, i.e. the rights to possess and use the goods and to become the owner when he/she paid the instalments due.

10 PROCEDURE IN RESPECT OF A WARRANT

Rule 41 of the Magistrate’s Court Act 32 of 1944 refers.

10.1 Attachment

(a) The sheriff shall upon receiving a warrant directing him to levy execution on movable property:

- Repair to the residence, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where moveable property is to be attached as soon as circumstances permit, and there demand payment of the judgement debt and cost,
- Or else require that so much moveable property be pointed out as the said sheriff may deem sufficient to satisfy the warrant,
- The sheriff shall make an inventory and valuation of such property, if such request, mentioned above, be complied with,
- If the property pointed out is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory of so much moveable property as may be pointed out in part execution of the warrant.



NB! The word 'shall' makes the adherence to the provision of the rules imperative and unless there is strict compliance to the rules, there will be no valid attachment.

An attachment can be made at any other place where the execution creditor points out goods that are to be attached. Jones and Buckle say that a failure to demand payment if a demand would clearly be nugatory (worthless), will not render an attachment invalid. However, in the light of the case of *Reichenberg v Deputy Sheriff Johannesburg 1992(2) 381*, it is believed that a demand must also be made in the Magistrate's Court. J & B again states that because the words 'point out' are used the goods must be something that can be physically pointed out. It is further suggested that the goods may also be of an incorporeal nature and may not be in a physical state. However care must be taken with instruction from attorneys who insist on attachment of goods, which the debtor may have but is not immediately present.

- (b) If the execution debtor does not point out such property, the sheriff shall immediately make an inventory and valuation of so much of the moveable property belonging to the execution debtor as he may deem sufficient to satisfy the warrant or of so much of the moveable property as may be found in part execution of the warrant.
- (c) If on demand the execution debtor pays the judgement debt and cost (or part thereof) the sheriff shall forthwith endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him and counter signed by the execution debtor or his representative.
- (2) So far as may be necessary to the execution of any such warrant, the sheriff may open any door on any premises or of any piece of furniture, if opening be refused or if there be no person there who represents the person against whom such warrant is to be executed then the sheriff may, if necessary, use force to that end.

This subsection allows the sheriff to use force where necessary to execute a warrant, however, the force use must always be reasonable in the circumstances.

- (3) The sheriff shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.

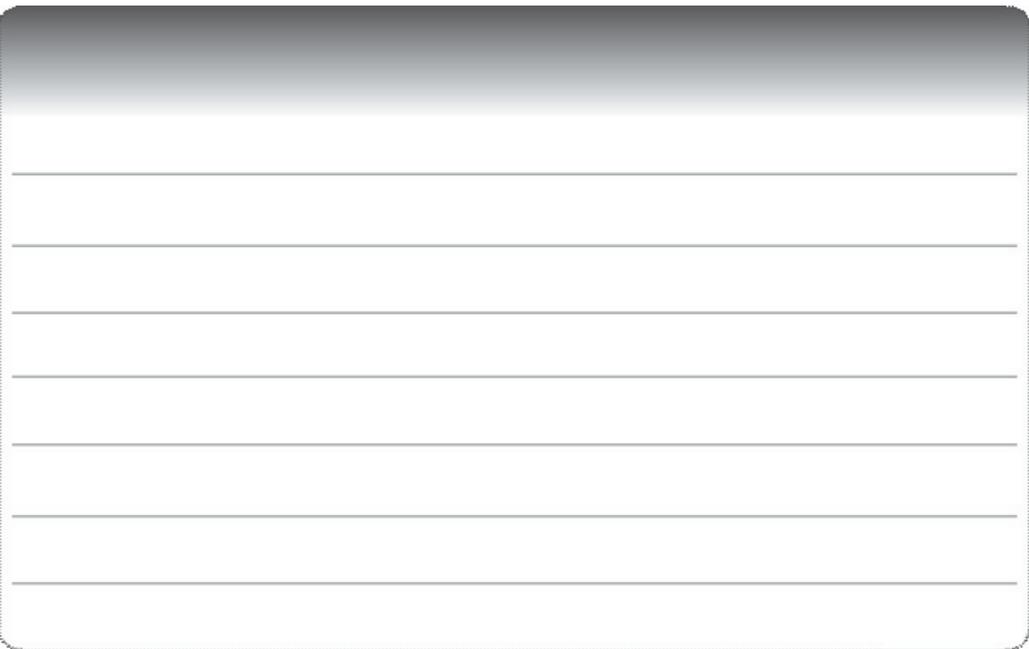


exhibit the original attachment invalid.

ing requirements of emed to be judicially

signed by himself to hich copy shall have

ttached the number ad in any such specie th be removed to the

10.2 Removal

The execution creditor or his attorney shall, where moveable property, other than specie or documents has attached,

- After notification of such attachment, instruct the sheriff in writing whether the property shall be removed to a place of security or left on the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the sheriff.
- Unless so instructed, the sheriff shall leave the moveable property, other than specie or document on the premises or in the possession of the person in whose possession the said moveable property is attached.
- Provided that the execution creditor or his attorney may, upon satisfying the clerk of the court, who shall grant his approval on the document containing the instruction, of the desirability of immediate removal of the warrant of execution, instruct the sheriff in writing to remove from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to in the possession of the execution debtor.
- Where a sheriff is instructed as aforesaid to remove the movable property, he shall do so without any avoidable delay, and he shall in the meantime leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his behalf.
- Any person in whose charge or custody movable property which has been attached, has been left, shall not use, let or lend such property, or permit it to be used let or lend, nor shall he any way

- do any thing which will decrease its value, and if the property attached shall have produced any profit or increase the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the property originally attached.
- If such a custodian, other than the execution debtor makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody, unless an order of the court is produced to the sheriff requiring him to detain any movable property under the attachment for such further period as may be stipulated in such order the sheriff shall, if a sale in respect of such property is not pending release from attachment in terms of rule 41 (7)(e) any such property which has been detained for a period exceeding four (4) months. If such order was made on application made ex-parte such order shall not be subject to confirmation.

10.3 Sale

Any movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff, or with the approval of the magistrate by an auctioneer or other person appointed by the sheriff to the highest bidder at or near to the place where the same was attached or to which the same has been removed as aforesaid as may be advantageous for the sale thereof.

The execution creditor shall after consultation with the sheriff prepare a notice of the sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later than 10 days before the sale on the notice board or door of the court house or another public place where the said court is held and the other as near as may be to the place where the said sale is to take place.

In the opinion of the sheriff the value of the goods exceeds R3000 he shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper no less than 10 days before the date appointed for the sale in addition to complying with paragraph and to furnish him with a copy of the edition of the newspaper in which the publication appeared not later than the day preceding the date of the sale.

- (9) The day appointed for the sale shall be not less than 14 days after attachment, provided that where the goods attached are of perishable nature or with the consent of the execution debtor the

court may upon application reduce any period referred to in this subrule or subrule (8) to such extent and on such conditions as it may think fit.

- (10) A sale in execution shall be stop as soon as sufficient money has been raised to satisfy the said warrant and any warrant refer to in rule 39(2) and the cost of the sale.
- (11) Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him on or before the day immediately preceding the date of the sale and of all costs he shall pay the same to the execution debtor if he can be found, otherwise he shall pay such balance into court and the provision of rule 18(10) shall mutatis mutandis apply to any balance paid into court.

See the flow charts below for further details on the steps to be followed in the levying of a warrant of execution against property.

See flow charts at the end of the section

CONCLUSION

Well done, you have reached the end of this module. Execution of movable and immovable property is a very important function that sheriffs perform in the South African Law Enforcement System. Practice what you have learned on the subject thus far in order to sharpen your skills with regard to this function. Also interact with other sheriffs to gain more information and knowledge.

We wish you success in your studies.

REFERENCES

The Magistrate's Court Act 32 of 1944
The Supreme Court Act 59 of 1959

ANNEXURES

(Attached)