



**RULES BOARD FOR COURTS OF LAW  
REPUBLIC OF SOUTH AFRICA**

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19 November 2021

Our ref: 13/3/2/6 – Nov. 2021 JB/Z Mbombo

Your ref:

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULES 2, 41 AND 43: ON-LINE AUCTIONS AND THE ISSUING OF WARRANTS**

The Rules Board for Courts of Law (Rules Board) received representations pertaining to on-line auctions and the issuing of warrants. On investigation, the Rules Board considers that certain proposed amendments to Magistrates' Courts Rules 2, 41 and 43 appear to be necessary and accordingly proposes amendments to those rules.

The proposed amendment to rule 2 is aimed at inserting a definition of the term "public auction" to align with the proposed amendments pertaining to on-line auctions contained in both rules 41 and 43.

The proposed amendments specifically contained in rule 41(1) are intended at clarifying that a "warrant" of execution, instead of "one or more warrants" may be issued by the registrar or clerk of the court.

The proposed amendments are contained in the annexure hereto.

**[ANNEXURE A]**

As part of its consultative process in rule making and amendment, the Rules Board hereby invites your comments on the proposed amendments to the aforesaid rules contained in Annexure A. Submissions should be sent to the Secretariat of the Rules Board by no later than **31 January 2022**.

Submissions can be sent via hand delivery, post, facsimile or email as follows:

**PHYSICAL ADDRESS:** 2<sup>nd</sup> Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

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Further enquiries may be directed to (012) 326 8014 / 8045.

The Rules Board looks forward to receiving your comments (if any) and thanks you therefor.

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**Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985**

Justice N Dambuza (Chairperson) | Justice F E Mokgohloa (Vice-Chairperson) | Adv.L Haupt SC | Adv. M Sishuba | Adv. S Makoasha | Ms J Wessels | Mr. T Thupaatlase | Mr. P Hundermark | Mr. G Bellairs | Mr. R R Titus | Ms. N S Khanyile | Mr. V P Maluleke | Ms. M O Phahlane

Yours sincerely,

*JK Balkishun*

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**J BALKISHUN**

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**PROPOSED AMENDMENTS TO CERTAIN MAGISTRATES' COURTS RULES – PERTAINING TO ON-LINE AUCTIONS AND THE ISSUING OF WARRANTS, NAMELY: MAGISTRATES' COURTS RULES 2, 41(1), 41(14), 41(18), 41(19) AND 43(7)**

**GENERAL EXPLANATORY NOTE:**

[        ] Expressions in square brackets in bold indicate omissions from the existing rules.

\_\_\_\_\_ Expressions underlined with a solid line indicate insertions into the existing rules.

**Substitution of rule 2 of the Rules**

1. Rule 2 of the Rules is hereby amended by the insertion of the following definition after the definition of '**plaintiff**', '**defendant**', '**applicant**', '**respondent**' and '**party**':

“‘**public auction**’ means an auction at which the public shall have access to, and includes an auction held in person or via the internet or other electronic medium or platform;”.

**Amendment of rule 41 of the Rules**

2. Sub-rules (1), (14), (18) and (19) of rule 41 of the Rules are hereby substituted for the following sub-rules:

**"Execution against movable property**

(1) An execution creditor may, at his or her own risk and subject to the provisions of rules 36 and 37, issue out of the office of the registrar or clerk of the court [**one or more warrants**] a warrant of execution in a form corresponding substantially with form 32 of Annexure 1.

(14)(a) Where movable property, other than money or documents, has been attached, the execution creditor or his or her attorney shall after notification of such attachment, instruct the sheriff in writing, whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the judgment debtor or in the charge and custody of some other person acting on behalf of the sheriff.

(b) Upon the execution creditor or his or her attorney satisfying the registrar or clerk of the court in writing of the desirability for the immediate removal of goods attached or to be attached, either upon issue of the warrant of execution or at any time thereafter, the registrar or

clerk of the court shall endorse his or her approval on the document containing the instructions, and authorise the sheriff in writing, to remove immediately from the possession of the judgment debtor all or any of the movable property attached.

(c) In the absence of any instruction under paragraph (a) or authorization under paragraph (b), the sheriff shall leave the attached property, other than money or documents, on the premises and in the possession of the person in whose possession the said movable property is attached.

(18)(a) Unless an order of court is produced to the sheriff requiring him or her to **[detain]** retain any movable property under attachment for such further period as may be stipulated in such order, the sheriff **[shall]** must release from attachment such property which has been **[detained]** retained for a period exceeding **[four]** six months unless a sale in execution of such property is pending.

(b) If such order was granted in terms of an *ex parte* application, such order shall not require confirmation.

(c) In the event of a claimant lodging an interpleader claim with the sheriff in accordance with rule 44, the period of **[four]** six months referred to in paragraph (a) shall be suspended from the date on which the claimant delivers his or her affidavit to the sheriff until the final adjudication of the interpleader claim, including any review or appeal in respect of such interpleader claim.

(19)(a)(i) Any movable property to be sold in execution **[of process of the court]** shall be sold **[publicly]** by public auction for cash to the highest bidder by the sheriff who removed the goods in terms of sub-rule (17)(a) or, with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, at or as near to the place where same was attached or to which same had been so removed as aforesaid.

(ii) The provisions of rule 43(10) shall apply with appropriate changes to the sale in execution of movable property under this rule.

(b)(i) The execution creditor shall, after consultation with the sheriff, prepare a notice of 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 day appointed for the sale on the notice board or door of the court-house or other public building in which the said court is held and the other at or as near as may be to the place where the said sale is to take place; and

(ii) if the sale in execution is a public auction to be conducted partly or wholly

via internet or other electronic medium or platform the notice of sale must also contain the following information —

(aa) how, where and when registration for the auction may take place;

(bb) the date for the opening of the registration process and the date and time for the closure of such process;

(cc) that the auction will be via internet or other electronic medium or platform;

(dd) how and when a copy of the conditions of sale and rules of auction can be obtained; and

(ee) the amount of the registration deposit, how it is payable and refundable.

(c) In addition to the requirements of paragraph (b), if in the opinion of the sheriff the value of the goods attached exceeds an amount equivalent to the monetary jurisdiction of the Small Claims Court, the sheriff shall indicate and direct the execution creditor to publish the notice of sale in a local or other newspaper circulating in the region or district not later than 10 days before the date appointed for the sale and to furnish the sheriff with a copy of the edition of the paper in which the publication appeared not later than the day preceding the date of sale.

(d) In lieu of paragraph (c), the sheriff may post the notice of sale on the sheriff's office's website, upon being so instructed in writing by the execution creditor: Provided that the sheriff shall not later than 10 days before the appointed date of sale, affix on the notice board, the door of the court-house or other public building in which the said court is held, and the other, at or as near as the case may be, to the place where the said sale is to take place, a notice stating the date of the sale in execution and the website on which the full details of the sale may be inspected.”.

### Amendment of rule 43 of the Rules

3. The following sub-rule is hereby substituted for sub-rule (7) of rule 43 of the Rules:

#### "Execution against immovable property

43. (7)(a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being, except by special leave of a magistrate, not less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b)(i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.

**[(ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.]**

(ii) If the sale in execution is a public auction to be conducted partly or entirely via internet or other electronic medium or platform the notice of sale must also contain the following information—

(aa) how, where and when the registration for auction may take place;

(bb) the date for the opening of the registration process and the date and time for the closure of such process;

(cc) that the auction will be via internet or other electronic medium or platform and/or in person;

(dd) how and when a copy of the conditions of sale and rules of auction can be obtained; and

(ee) the amount of the registration deposit, how it is payable and refundable.

(c) The execution creditor shall—

(i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the *Gazette*

not less than five days and not more than 15 days before the date of the sale;  
and

(ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the *Gazette*, respectively.

(d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

(e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix—

(i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property is situated in the district where the court out of which the warrant was issued is situated, then on the notice-board of such court; and

(ii) one copy at or as near as may be to the place where the said sale is actually to take place.”.