



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

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05 April 2022

Our ref: JB/ASebola/SCC

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO UNIFORM RULE 45 (EXECUTION—GENERAL AND MOVABLES) AND UNIFORM RULE 46 (EXECUTION—IMMOVABLE PROPERTY): ON-LINE PUBLIC AUCTIONS

The Rules Board for Courts of Law (Rules Board) received a representation to amend the Uniform and Magistrates' Courts rules to provide for the conduct of on-line public auctions for sales in execution.

Proposed amendments to the Magistrates' Courts rules were previously submitted for comments on 22 November 2021. The Rules Board now seeks comments and inputs on the proposed draft amendments to Uniform Rule 45 (Execution-general and movables) and Uniform Rule 46 (Execution-Immovable property).

The main object of the proposed amendments is to regulate the contents of notices of sale, to regulate the procedure for online auctions and to provide for matters incidental thereto.

The following draft amended rules are attached for consideration:

- (a) Draft amended Uniform Rule 45
- (b) Draft amended Uniform Rule 46

[ANNEXURE A]

[ANNEXURE B]

As part of its rule-making and consultation process, the Rules Board invites your comments on the draft amendments proposed to Uniform Rule 45 (ANNEXURE A) and Uniform Rule 46 (ANNEXURE B).

Your comments and inputs should be submitted to the Secretariat of the Rules Board on or before 03 June 2022 and may be sent via hand delivery, post or email to:

Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume (Andries) Street, Pretoria

Postal: P.O. Box 13106, The Tramshed, 0126

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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) | Adv L Haupt SC | Ms J Wessels | Mr P Hundermark | Adv M Sishuba | Mr G Bellairs | Mr T Thupaatlase
Ms N S Khanyile | Mr R R Titus | Mr V P Maluleke | Adv S Makoasha | Ms M O Phahlane

The Rules Board looks forward to receiving your inputs (if any) and thanks you for same.

Yours sincerely,



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RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

PROPOSED AMENDMENTS TO UNIFORM RULE 45 (EXECUTION-GENERAL AND
MOVABLES): PROVISION FOR ON-LINE AUCTIONS

GENERAL EXPLANATORY NOTE:

Expressions in square brackets in bold [] represent omissions from the existing text

Expressions with solid underline represent insertions into the existing text

45 Execution—general and movables

(1) A judgment creditor may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof corresponding substantially with Form 18 of the First Schedule.

(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff before the day of the sale, such costs shall be excluded from his or her account and plan of distribution.

(3) Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, **[he] the sheriff** shall forthwith [himself] or by **[his] such sheriff's** assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there—

(a) demand satisfaction of the writ and, failing satisfaction,

(b) demand that so much movable and disposable property be pointed out as **[he] the sheriff** may deem sufficient to satisfy the said writ, and failing such pointing out,

(c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5), shall be taken into the custody of the sheriff: Provided—

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his or her satisfaction to save him or her harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by **[him]** such sheriff, unless **[his]** the judgment debtor's whereabouts are unknown.

(4) The sheriff shall file with the registrar any process with a return of what he or she has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

(5) Where any movable property has been attached by the sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 19 of the First Schedule.

(6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

(7) (a) Where any movable property is attached as aforesaid the sheriff shall where practicable and subject to rule 58 sell it by public auction to the highest bidder after due advertisement by the execution creditor in a newspaper circulating in the district in which the property has been attached and after the expiration of not less than 15 days from the time of seizure thereof.

(b) Where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the sheriff against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as seems expedient.

(c) The sheriff shall not later than 15 days before the date of sale either in terms of paragraph (a) or paragraph (b), forward a notice of sale to all other sheriffs appointed in that area.

(7)(A) For the purposes of this rule a 'public auction' means an auction to which the public shall have access and includes an auction held in person or via electronic medium or platform.

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

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

(i) 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, and

(ii) 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

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property 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, the attachment shall be complete only when the sheriff has served on the execution debtor and on 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.

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,

(i) the attachment shall only be complete when —

(a) 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 or right is registered, and

(b) 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 or she has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the sheriff may upon exhibiting the original of the warrant of execution to 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.

(9) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-paragraph (b) of subrule (8).

(10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless **[he]** such third person otherwise agrees.

(11)(a)(i) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with any sheriff appointed for a particular area or any other sheriff before or on the day of the sale in execution shall rank *pro rata* in the distribution of proceeds of the goods sold, in the order of preference referred to in paragraph (c) of subrule (14) of rule 46.

(ii) The sheriff conducting the sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed in the district in which he or she has been instructed to conduct a sale in respect of the attached goods[.]: Provided that where a sale by public auction is to be conducted wholly or partly via electronic medium or platform, the notice of sale shall also contain the following information—

(aa) how, where and when registration to bid at 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 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

(iii) The sheriff conducting the sale shall accept from all other sheriffs appointed in that district or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

(b) If there should remain any surplus, the sheriff shall pay it over to the judgment debtor; and the sheriff shall make out and deliver to **[him]** the judgment debtor an exact account, in writing of **[his]** the sheriff's costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the sheriff shall refund such sum to the judgment debtor.

(12)(a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by **[him]** such garnishee to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why **[he]** such garnishee should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him or her to the party against whom execution is issued, or he or she does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his or her liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.

(d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.

(e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) Where the sheriff is of opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, **[he]** the sheriff may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with **[his]** such judgment creditor's consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) to (k) inclusive...

(13) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for **[himself]** such sheriff or for any other person.

“ ANNEXURE B ”



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

**PROPOSED AMENDMENTS TO UNIFORM RULE 46 (EXECUTION-IMMOVABLE
PROPERTY): PROVISION FOR ON-LINE AUCTIONS**

GENERAL EXPLANATORY NOTE:

Expressions in square brackets in bold [] represent omissions from the existing text

Expressions with **solid underline** represent insertions into the existing text

46 Execution—Immovable property

(1) (a) Subject to the provisions of rule 46A, no writ of execution against the immovable property of any judgment debtor shall be issued unless —

(i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the writ; or

(ii) such immovable property has been declared to be specially executable by the court or where judgment is granted by the registrar under rule 31(5).

(b) A writ of execution against immovable property shall contain —

(i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and

(ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.

(2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a writ corresponding substantially with Form 20 of the First Schedule.

(3) (a) Notice of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

(b) Any notice referred to in paragraph (a) shall —

(i) draw attention to the provisions of subrule (8)(a)(iii); and

(ii) be served according to the provisions of rule 4, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4) (a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements: Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

(b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) Subject to rule 46A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless —

(a) the execution creditor has caused notice of the intended sale to be served upon —

(i) preferent creditors;

(ii) the local authority, if the property is rated; and

(iii) the body corporate, if the property is a sectional title unit,

calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed, or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

(6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.

(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] shall furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

(iii) Where a sale by public auction is to be conducted wholly or partly via electronic medium or platform, the notice of sale shall 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 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 writ 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.

(8) (a) (i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.

(iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.

(v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008), and the Regulations promulgated thereunder.

(b) (i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.

(ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

(c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.

(d) Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon 24 hours' notice to all known affected parties, apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.

(9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

(10) Immovable property attached in execution shall be sold by the sheriff by public auction.

(10)(A) For the purposes of this rule a 'public auction' means an auction to which the public shall have access and includes an auction held in person or via electronic medium or platform.

(11) (a) (i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached and immovable property may be put up for sale again.

(ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.

(iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a judge given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a judge for the aforesaid purpose.

(c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.