



OFFICE OF THE CHAIRPERSON

25 Thornhill Office Park, 84 Bekker Rd, Vorna Valley, Midrand, 1686 (Head Office)
88 Loop Street, Cape Town, 8001 or PO Box 15223, Vlaeberg, 8018 (Regional Office)
T: 021 426 0577 • F: 021 426 2598 • E-mail: chair@sheriffs.org.za

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CIRCULAR NO 3 OF 2024

TO:

- SHERIFFS
- ALL VOLUNTARY PROFESSIONAL ORGANISATIONS AND ANY OTHER ASSOCIATION REPRESENTING SHERIFFS AND DEPUTIES
 - South African Sheriff Society (SASS)
 - South African National Association of Progressive Sheriffs (SANAPS)
 - Deputy Sheriffs Forums

RE: CCT CASE NO. 21/2024 - SOUTH AFRICAN BOARD FOR SHERIFFS // BG BOJOSINYANE & ASSOCIATES AND ANOTHER

1. On 12 August 2024, the Constitutional Court under case number CCT 21/2024 in the matter between the *South African Board for Sheriff's and BG Bojosinyane and Associates & one other inter alia*, refused the South African Board for Sheriffs ("SABFS") application for leave to appeal. This matter concerned the practice adopted by Sheriffs on whether a sheriff is entitled to refuse to serve or execute a court process unless a deposit in respect of the sheriff's fees and charges relating thereto is paid upfront.
2. Furthermore, the matter also concerned the practice adopted by Sheriffs on whether, once the process is served or executed, a sheriff is entitled to withhold

the return of service until payment of his fees and charges specified therein have been paid.

3. Consequently, the judgement of the Supreme Court of Appeal (“SCA”) found on the link below now legislates and governs the position concerning the payment of Sheriff’s fees:

<https://lawlibrary.org.za/akn/za/judgment/zasca/2023/174>

4. The practical effect of the judgement and order of the SCA is that: -
 - a. Unless authorised by a magistrate in terms of section 14(7) of the Magistrates’ Court Act, No. 32 of 1944, a sheriff is required to effect service and to execute any court process emanating from an attorney without any unreasonable delay.
 - b. Sheriffs can no longer insist on payment of any part of their fees or charges in respect of the service or execution of a court process before serving and executing such process.
 - c. After the service or execution of any court process the sheriff is required without delay and without first requiring prior payment of any part of his fees and charges relating thereto, to return to the instructing attorney and to the court concerned whatever he has done by virtue of such process, specifying his fees and charges on the original and all copies of the returns of service.
5. The Board has noted the detrimental effect of the situation, and has already begun to engage the Department of Justice and Constitutional Development (“DoJCD”) regarding legislative and regulatory measures to protect Sheriffs from defaulting attorneys, who risk being reported to the Legal Practice Council (“LPC”) for misconduct.
6. Please be guided accordingly.

THANK YOU

SOUTH AFRICAN BOARD FOR SHERRIFS