

No. R. 592

9 July 2010

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the Rule in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

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

— Expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule "the Rules" mean the rules published under Government Notice No. R. 1108 of 21 June 1968, as amended by Government Notices Nos. R. 3002 of 25 July 1969, R. 490 of 26 March 1970, R. 947 of 2 June 1972, R. 1115 of 28 June 1974, R. 1285 of 19 July 1974, R. 689 of 23 April 1976, R. 261 of 25 February 1977, R. 2221 of 28 October 1977, R. 327 of 24 February 1978, R. 2222 of 10 November 1978, R. 1449 of 29 June 1979, R. 1314 of 27 June 1980, R. 1800 of 28 August 1981, R. 1139 of 11 June 1982, R. 1689 of 29 July 1983, R. 1946 of 9 September 1983, R. 1338 of 29 June 1984, R. 1994 of 7 September 1984, R. 2083 of 21 September 1984, R. 391 of 7 March 1986, R. 2165 of 2 October 1987, R. 1451 of 22 July 1988, R. 1765 of 26 August 1988, R. 211 of 10 February 1989, R. 607 of 31 March 1989, R. 2629 of 1 December 1989, R. 186 of 2 February 1990, R. 1887 of 8 August 1990, R. 1928 of 10 August 1990, R. 1967 of 17 August 1990, R. 1261 of 30 May 1991, R. 2407 of 27 September 1991, R. 2409 of 30 September 1991, R. 405 of 7 February 1992, R. 1510 of 29 May 1992, R. 1882 of 3 July 1992, R. 871 of 21 May 1993, R. 959 of 28 May 1993, R. 1134 of 25 June 1993, R. 1355 of 30 July 1993, R. 1844 of 1 October 1993, R. 2530 of 31 December 1993, R. 150 of 28 January 1994, R. 180 of 28 January 1994, R. 498 of 11 March 1994, R. 625 of 28 March 1994, R. 710 of 12 April 1994, R. 1062 of 28 June 1996, R. 1130 of 5 July 1996, R. 419 of 14 March 1997, R. 492 of 27 March 1997, R. 570 of 18 April 1997, R. 790 of 6 June 1997, R. 797 of 13 June 1997, R. 784 of 5 June 1998, R. 910 of 3 July 1998, R. 1025 of 7 August 1998, R. 1126 of 4 September 1998, R. 569 of 30 April 1999, R. 501 of 19 May 2000, R. 1087 of 26 October 2001, R. 37 of

18 January 2002, R. 38 of 18 January 2002, R. 1299 of 18 October 2002, R. 228 of 20 February 2004, R. 295 of 5 March 2004, R. 880 of 23 July 2004, R. 1294 of 5 December 2008, R. 1341 of 12 December 2008, R. 1342 of 12 December 2008, R. 1344 of 12 December 2008, R. 515 of 8 May 2009 and R. 517 of 8 May 2009.

Amendment of Part II of Table C of Annexure 2 to the Rules

2. Part II of Table C of Annexure 2 to the Rules is hereby amended as follows:

“PART II

SHERIFFS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

1A. For registration of any document for service or execution upon receipt thereof: **[R5,00]** R6,00.

1B. (a) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2, the journey to and from the place of service of any of the above-mentioned documents –

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R25,00]** R28,00;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R30,00]** R33,00;
- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: **[R40,00]** R44,00;
- (iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 1B(a)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.

(b) For the attempted service of the documents mentioned in paragraph (a), the journey to and from the place of attempted service of any of the above-mentioned documents –

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R21,00]** R23,00;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R25,00]** R28,00;

- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: **[R36,00]** R39,00;
 - (iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff in item 1B(b)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.
- (c) (i) Where a document must be served together with a process of the court and is mentioned in such process or is an annexure thereto, no additional fees shall be charged for service of the document, otherwise R6,00 may be charged for every separate document served.
- (ii) No fees shall be charged for a separate document when process in criminal matters are served.
 - (iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.
2. (a) For the execution of a warrant, interdict or garnishee order, the journey to and from the place of execution of the above-mentioned documents –
- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R36,00]** R39,00;
 - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R40,00]** R44,00;
 - (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: **[R51,00]** R55,00;
 - (iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.
- (b) For the attempted execution of the documents mentioned in paragraph (a), the journey to and from the place of attempted execution of the above-mentioned documents –

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R30,00]** R33,00;
 - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: **[R36,00]** R39,00;
 - (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: **[R46,00]** R50,00;
 - (iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), (ii) and (iii) respectively, which costs shall be paid by the mandator, save where the court orders otherwise.
- (c) (i) For the ejectment of a defendant from the premises referred to in the warrant of ejectment: **[R21,00]** R23,00 per half hour or part thereof (except extraordinary expenses necessarily incurred).
- (ii) A further fee of **[R14,00]** R15,00 shall be paid after execution for every person over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to complete the execution, the fee laid down in item 1B(a) may be charged in respect of each such service.
- (d) For the arrest of a defendant *tanquam suspectus de fuga* to found jurisdiction, shall, in addition to the tariff in item 2(a), an amount of **[R21,00]** R23,00 per half hour or part thereof be payable for waiting time during negotiations between the several parties.

3. Compilation of any return in terms of rule 8, in duplicate: **[R10,00]** R11,00.

4. If it is necessary for the sheriff to travel further than 20 kilometres from the court-house of the district for which he or she is appointed, a travelling allowance of R3,00 per kilometre for each kilometre or part thereof travelled further than the aforesaid distance to and from the place of service or execution shall be allowed in addition to the fees mentioned in item 1B(a)(iii), 1B(b)(iii), 2(a)(iii) or 2(b)(iii) as the case may be.

5. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, a travelling allowance of R3,00 per kilometre for every kilometre, or part thereof, shall be payable to the sheriff for going and returning, and it shall be calculated from the court-house of the district for which the sheriff is appointed.

(b) A travelling allowance shall include all the expenses incurred in travelling, including train fares.

(c) A travelling allowance shall be calculated in respect of each separate service, except that –

- (i) where more services than one can be done on the same journey beyond a radius of 20 kilometres from the court-house, the distance from the radius of 20 kilometres to the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
- (ii) where service of the same process has to be effected on more than one person by a sheriff within the area served by him or her, only one charge for travelling shall be allowed.

(d) When it is necessary for the sheriff to convey any person under arrest for any distance of more than 20 kilometres, an allowance of R3,00 per kilometre in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person shall be allowed.

6. (a) Making an inventory, including the making of all necessary copies and time spent on stock-taking: **[R21,00]** R23,00 per half hour or part thereof.

(b) For assistance, if necessary, with the making of an inventory, **[R21,00]** R23,00 per half hour or part thereof.

7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: **[R5,00]** R6,00.

8. Charge or custody of property (money excluded):

(a) (i) For each officer necessarily left in possession, a reasonable inclusive amount not exceeding **[R76,00]** R83,00 per day.

(ii) Travelling allowances, to include board in every case.

(b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.

(c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.

9. (a) 'Possession' shall mean actual physical possession by a person employed and paid by the sheriff, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.

(b) 'Cost of removal' shall mean the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the sheriff him-or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.

(c) 'Cost of storage' shall mean the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the sheriff provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.

10. (a) Where a warrant of execution or garnishee order is paid in full, or in part, to the sheriff or moneys attached in execution against movables, 9 per cent of the amounts so paid or attached, with a minimum of **[R40,00]** R44,00 and a maximum of **[R405,00]** R440,00.

(b) Notice of attachment to defendant and to each person to be notified: **[R5,00]** R6,00.

11. Where property is released from attachment in terms of rule 41(7)(e), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestrated after the attachment, but before the sale, 2,3 per cent of the value of the goods attached, subject to a maximum of **[R122,00]** R133,00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so paid shall be deducted from the commission payable under item 12.

12. Where the warrant of execution against movables is completed by sale, 9 per cent for the first R15 000, 00 or part thereof and thereafter 6 per cent, with a maximum of **[R5 405,00]** R5 875,00.

13. For the insurance of attached property if deemed necessary and on written instructions of the judgment creditor to the sheriff, in addition to the premium to be paid, an all inclusive amount of **[R21,00]** R23,00.

14. (a) When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of **[R122,00]** R133,00 shall be payable to the sheriff or the person in fact authorised to act as auctioneer, as the case may be.

(b) The drawing up of a report of the improvements on the property for the purpose of sale, **[R21,00]** R23,00 per half hour or part thereof.

(c) Written notice to the purchaser who has failed to comply with the conditions of sale: **[R30,00]** R33,00.

(d) Consideration of conditions of sale: **[R61,00]** R66,00.

15. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: **[R31,00]** R39,00.

16. When an execution against immovable property is completed by sale, the following fees shall be allowed to the sheriff on the proceeds of the sale:

(a) On the sale of immovable property by the sheriff as auctioneer 6 per cent on the first R30 000, 00 of the proceeds of the sale and 3,5 per cent on the balance thereof, subject to a maximum commission of **[R8 050,00]** R8 750,00 in total and a minimum of **[R405,00]** R440,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.

(b) If an auctioneer is employed as provided in rule 43(9), 3 per cent on the first R30 000,00 of the proceeds of the sale and 2 per cent on the balance thereof, subject to a maximum commission of **[R4 600,00]** R5 000,00 total and a minimum of **[R405,00]** R440,00 (inclusive in all instances of the sheriff's bank charges and other

expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.

17. In addition to the fees allowed by items 10 to 15, both inclusive, there shall be allowed –

(a) the sum actually and reasonably paid by the sheriff or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution;

(b) the sum of **[R15,00]** R16,00 to the sheriff for giving transfer to the purchaser.

18 . Where the sheriff is in possession under more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.

19. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.

20. The fees and expenses of the sheriff in execution of a garnishee order shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.

21. If it is necessary for the sheriff to return a document received by him or her for service or execution to the mandator because –

(a) the address of service which appears on the process does not fall within his or her jurisdiction; or

(b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her, an amount of **[R5,00]** R6,00 shall be payable.

22. For the conveyance of any person arrested by the sheriff or committed to his or her custody from the place of custody to the court on a day subsequent to the day of arrest: **[R21,00]** R23,00 per journey and **[R40,00]** R44,00 per hour or part thereof for attending at court.

23. For the examination of indicated newspapers and the *Gazette* in which the notice of sale has been published as referred to in rule 43(6)(c) and Rule 41(8)(c): **[R5,00]** R6,00.

24. For forwarding a copy of the notice of sale to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: **[R5,00]** R6,00.

25. (a) For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building referred to in rule 43(6)(e) and rule 41(8)(b): **[R15,00]** R16,00.

(b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a) above and travelling costs referred to in item5(a).

26. For the drawing up and issuing of an interpleader summons: **[R61,00]** R66,00.

27. In addition to the fees prescribed in this Table, the sheriff shall be entitled to the amount actually disbursed for postage and telephone calls.

28. For the writing of each necessary letter, excluding formal letters accompanying process or returns: **[R5,00]** R6,00.

29. Each necessary attendance by telephone (in addition to prescribed trunk charges and cellular charges): **[R5,00]** R6,00.

30. Sending and receiving of each necessary facsimile per A4 size page (in addition telephone charges): R3,00.

31. For the perusal of the records of the Registrar of Deeds in terms of rule 43(3) to determine the order of precedence of creditors:

- (a) If investigated by the sheriff him- or herself: **[R36,00]** R39,00 per case.
- (b) If the sheriff utilises the services of a third party for the investigation, the actual cost as required by the third party, provided that it is reasonable.

32. For the making of all necessary copies of documents: R2,00 per A4 size page.

33. (a) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed, has been rendered.

(b) For the drawing up of the bill for taxation and attendance of the taxation by the sheriff: **[R40,00]** R44,00.

34. Bank charges: Actual costs incurred relating to bank charges and cheque forms.

35. (a) Drafting of notice to the judgment debtor in terms of section 65A(8)(b) of the Act: **[R10,00]** R11,00.

(b) Service of notice referred to in paragraph (a): Tariff as prescribed in item 1B(a).

(c) Attempted service of notice referred to in paragraph (a): Tariff as prescribed in item 1B(b).

(d) The tariff as prescribed in item 4 shall apply to paragraphs (b) and (c).

36. (a) For the arrest or attempted arrest of a judgment debtor in terms of section 65A(6) of the Act:

(i) The tariff as prescribed in item 2(a) or item 2(b), as the case may be.

(ii) The tariff as prescribed in item 4 shall apply to this item.

(b) For the handing over of the judgment debtor to the South African Police Service, prisoners' friend or clerk of the court or other lawful place of detention:

(i) The tariff as prescribed in item 2(a).

- (ii) Travelling costs from place of arrest to place of handing over to the relevant authority referred to in paragraph (b), per kilometre or part thereof: R3,00.
- (iii) Waiting time in regard to handing over the judgment debtor to the relevant authority referred to in paragraph (b): **[R21,00]** R23,00 per half hour or part thereof with a maximum of **[R80,50]** R88,00."

Commencement

3. These rules shall come into operation on **13 August 2010**.