Guidelines for sheriffs:
EVICTIONS



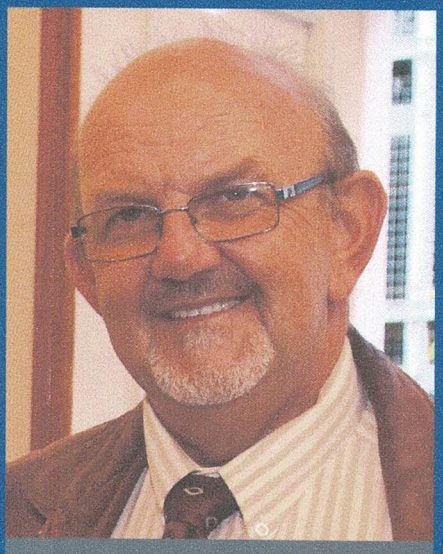
South African Board for
SHERIFFS
Upholding the Dignity of Those We Serve

FOREWORD

The South African Board for Sheriffs has prepared this ***Guideline for sheriffs: Evictions*** for the use of the sheriff's profession.

The execution of eviction orders is a very sensitive aspect of the sheriff's duties. Evictions of informal settlements involve contestations and emotions at various levels and the danger of injury to persons, death or damage to property is always a possibility. The sheriff is expected to give effect to an Order of Court. Legislation and specifically the Constitution of South Africa has an effect on the execution of an eviction order. It is therefore necessary to provide guidelines which will assist sheriffs and relevant stakeholders with the execution of eviction orders.

Mass evictions are very newsworthy as they are usually accompanied by conflict, resistance and human suffering. In South Africa the constitution protects citizens from being evicted from their homes without a valid court order. By its very nature, evictions threaten a range of human rights such as the right to human dignity, security of the person, privacy, health and access to adequate housing, etc. It is for these reasons that the SABFS mandated a special programme to be implemented in 2016, to involve all stakeholders to engage this topic. We have further requested Mr Harry van Nieuwenhuizen to prepare this guideline to assist us when executing our duties as sheriffs and deputies.



Mr. Harry van Nieuwenhuizen

About the Author

The author of the Guideline is Mr. Harry van Nieuwenhuizen, Sheriff Witbank in Mpumalanga. He is a sheriff of many years standing and who has many years of experience on conducting evictions. Harry is known as the academic of the sheriffs' profession and is always available to assist the Board as he did with the recent publication, Sheriffs Guide: Practice and Procedure. The SABFS would like to extend our appreciation to Mr. van Nieuwenhuizen who spent many days preparing this guideline at no cost to the Board.

South African Board for SHERIFFS
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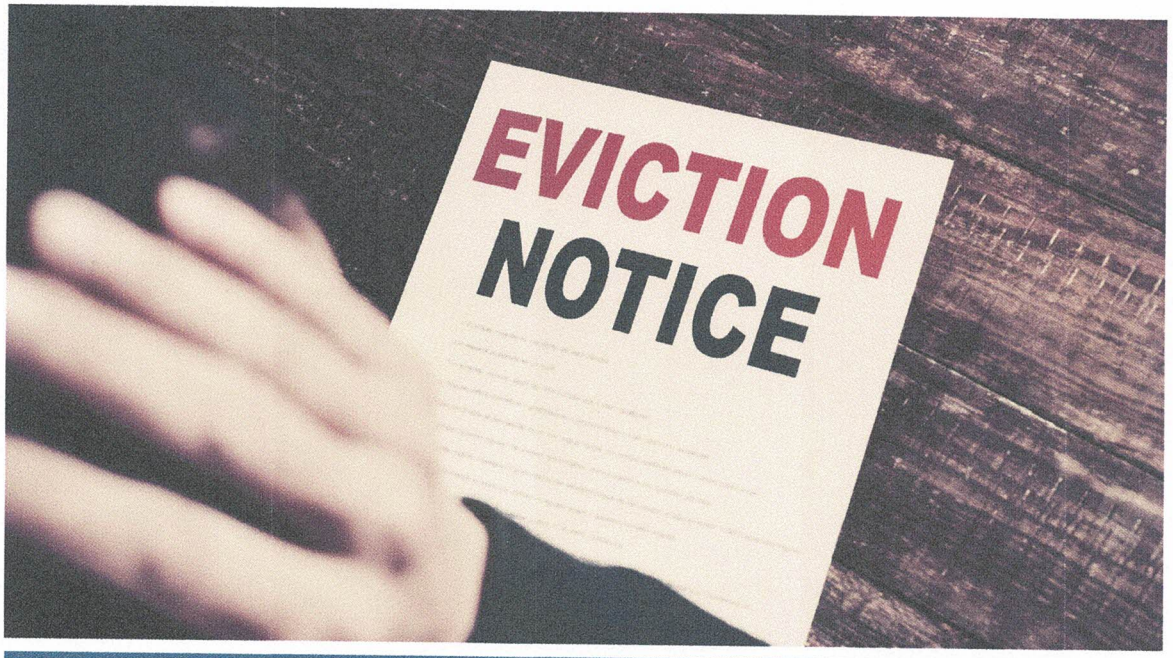

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EJECTMENTS (EVICTIONS)

1. INTRODUCTION

The execution of eviction orders is the most sensitive aspect of the sheriff's duties.

It is therefore necessary to provide guidelines which will assist sheriffs with the execution of eviction orders.

It is impossible to provide for each and every eviction. The circumstances of every eviction differs.

The guide should be regarded as a guide for good practice. Circumstances may occur where this guide cannot be followed to the letter or at all.

2. STATUTORY PROVISIONS: JURISDICTION

2.1 Statutory provisions relating to actions in the Magistrate's Court

2.1.1 Magistrate's Court Act. 32 of 1944 (MCA)

Section 29(1)(b) of the MCA states:

Subject to this Act and the National Credit Act 34 of 2005, a court in respect of causes of action shall have jurisdiction in:

(b) *Actions of ejectment against the occupier of any premises or land within the district or regional division. The jurisdiction is further limited to the quantum limitations of the Courts. (Magistrates Court R200 000 and Regional Court R400 000).*

Numerous other statutes confer jurisdiction upon Magistrates Courts in respect of evictions. (For information on these acts see Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 and Extension of Security of Tenure Act 62 of 1997). These acts are commonly referred to as PIE and ESTA. It is beyond the purposes of this guide to discuss these jurisdiction issues.

2.1.2 Rules promulgated under Magistrates Court Act 32 of 1944.

Rule 36 of the Magistrates Court Rules describes the process to be issued to give effect to an ejectment order.

Rule 36)(1) Magistrates Court Rules:

The process for the execution of any judgment for payment of money for delivery of property movable or immovable or for ejectment shall be by warrant issued and signed by the Registrar or Clerk of the Court and addressed to the sheriff.

A warrant of ejectment conforming with form 30 of the Forms of the Magistrates Court, will be the process, the sheriff will execute (by evicting the defendant).

PIE and ESTA caused the preferred method of obtaining an ejectment order to be motion procedure. Ejectment are made because motion proceedings often contain terms and conditions for the execution of the ejectment order. The process that the sheriff receive under these circumstances will be an order of Court.

2.1.3 Formal requirements the process must comply with:

(i) The process must have been issued and signed by the Clerk of the Court or the Registrar of the Court.

Rule 36(1) is clear on this issue. An unsigned warrant of ejectment or order for ejectment cannot be executed. The rules state that the signature of the Clerk of the Court and the Registrar can be done manually (by physically signing) or by machining a facsimile of his or her signature. (Rule 3(1).

The Magistrates Court Act and Rules are silent as to what the act of issuing a document entails. It could be the subjective intention of the officer to issue the document which is confirmed with his/her signature.

The Act and Rules are silent as to the requirement of an official stamp. The fact that an official date stamp does not accompany the signature of the Clerk or Registrar do not render the document unissued. The best practice would be to sign and date the process with an official date stamp.

(ii) The warrant of ejectment must be addressed to the sheriff. The use of Form 30 would not pose a problem. The Form clearly directs the process to the sheriff.

Court orders do not always specifically direct the process to the sheriffs. As the Court orders are in many instances drafted by the applicant's attorney and issued in that form by the Court, the content and form differs.

It is sufficient if the order contains words indicating clearly that it is for the attention of the sheriff.

Few examples are: The sheriff is ordered; the sheriff is authorised; the sheriff shall etc.

SUMMARY

To give effect to an ejectment order issued under the Magistrates Court Act attend to:

(i) Be in possession of the process, be it a Warrant of Ejectment or a Court order.
(ii) Signed and issued by the Clerk or Registrar of the Court.
(iii) If the process is signed it can be assumed by the sheriff it has been issued.
(iv) Best practice would be to obtain a warrant or Court order which has been signed by the Clerk or Registrar and dated with an official date stamp.
(v) Any amendments additions or omissions to the Warrant or Court order must be initialed by the Clerk or the Registrar.
(vi) The warrant of ejectment or Court order must be addressed to the sheriff.
(vii) In case of a warrant of ejectment it must conform with Form 30.
(viii) No prescribed form exists for the content of a Court order.

2.2 Statutory requirements for order of ejectment issued in terms of the Superior Court Act 10 of 2013

The Magistrates Court and Regional Court are created by Statute and derives its authority and jurisdiction from Statute.

Superior Courts have inherent jurisdiction.

2.2.1 Section 43(1) Superior Courts Act 2013

The sheriffs must, subject to the applicable rules, **execute** all sentences, **judgments, writs,** summonses, rules, **orders, warrants commands** and **processes** of any Superior Court directed to the sheriff and must make a return of the manner of execution thereof to the Court and party at whose instance they were issued.

Rule 43(4)

A **refusal by the sheriff** or a **deputy sheriff** to **do any act** which he or she is **by law required to do,** is **subject to review** by the Court concerned on application ex parte, or on notice as the circumstances may require.

The Superior Court Rules do not have a rule equivalent to rule 36(1) in the Magistrates Court Rules. Instead the documents, the sheriff must execute are mentioned to such an extent in Sec 43(1) that is hard to think of any document emanating from a Superior Court that is not covered by the documents mentioned in Sec 43(1) of the Superior Courts Act. Which means that the Superior Court can issue orders with a variety of content.

2.2.2 Section 43(1) Superior Courts Act 10 of 2013

The requirements for the issue and signature of a document out of the Magistrates Court can be applied to the documents issued out of the Superior Courts.

(See 2.1.3 above).

The term "directed to the sheriff" needs attention.

The Uniform Rules of the High Court in the second addendum Form E does contain a prescribed form for ejectments. The writ is strange enough not directed to the sheriff as are other writs in the prescribed forms. The content of Form E however is clearly directed at the sheriff.

It seems not to be a requirement that a writ for ejectment needs to be obtained in the Superior Courts. The wording of Sec 43(1) supra is wide enough to allow the sheriff to execute an order or judgment or a command.

It is necessary to make sure that process to be executed is directed to the sheriff.

If the document is not directed to the sheriff, it does not comply with Sec 43(1). Return the document and ask for it to be amended.

SUMMARY

(i) Be in possession of a document described in Sec 43(1). It can be a warrant of ejectment or a Court order.
(ii) Superior Court document can be one of those mentioned in definition in Sec 43(1).
(iii) In case of a warrant of ejectment or Court order issued, it must be signed by a Registrar.
(iv) In case of any other Superior Court process authorised by signature of a Judge or the Registrar.
(v) Signature of Registrar or Judge is sufficient to constitute the document.
(vi) Date and stamp indicating date and office of signatory not necessary.
(vii) The best practice is to be in possession of a process bearing both the signature and date stamp of the official who issued the process.

(viii) The document must be directed to the sheriff, Sec 43(1). The document can be directed to the sheriff in any way. Normally it will be addressed to the sheriff with words "to the sheriff". It can also be directed to the sheriff by containing the words" The sheriff is ordered". "The sheriff is authorised". It can also be directed to the sheriff by words contained in the order e.g. "duly assisted by the sheriff".

Note: Make sure the document is directed to the sheriff.

(ix) Any amendments or omission to the order must be signed by the issuing authority.

2.3 The effect of Pie on the eviction process

2.3.1 Introduction

The effect of Sec 25 and 26 of the Constitution have major consequences for the right of landowners to evict unlawful occupiers from land. The Constitution was the direct cause for statutes to regulate evictions namely, Prevention of Illegal Eviction and Unlawful Occupation of Land Act 9 of 1998 (PIE); Extension of Security of Tenure Act 62 of 1997 (ESTA); Interim Protection of Informal Land Rights 31 of 1996 and the Land Reform (Labour Tenants Act 3 of 1996).

PIE and ESTA embodies the essence of Sec 25 and 26 of the Constitution. It provides new procedural and substantive requirements before an eviction order can be granted.

2.3.2 Application of PIE and ESTA

Any doubt that could have existed as to applicability of PIE in applications for evictions of unlawful occupiers has been settled by the Supreme Court of Appeal in Ndlovu v Ngcobo and Bekker v Jika 2003 (1) SA 113 SCA where the Court held that PIE applies to all unlawful occupation for residential purposes within municipalities.

The situation of the land is relevant to determine whether PIE or ESTA applies. Although Sec 2 of PIE states that PIE applies in respect of all land throughout the R.S.A. some authorities state that PIE only applies to residential properties within the area of a municipality. ESTA and the other Acts referred to apply to evictions from land not within the jurisdiction of a municipality.

2.3.3 Evictions orders under PIE and ESTA

The Supreme Court and Magistrate's Courts in whose area of jurisdiction the land in question is situated has jurisdiction in terms of PIE. Relief sought under ESTA can, depending on the relief sought, apply to a Magistrate's Court, the Land Claims Court or the Supreme Court.

2.3.3.1 Eviction orders under PIE

The common law rights of an owner of property to claim his property with *rei vindication* still exist, but only in so far as the eviction from premises which are not covered by PIE and the other legislation referred to above. An example would be an eviction from a business premises. It can with certainty be said that evictions of people from any residential property situated within the jurisdiction area of a municipality is covered by PIE.

The Court, prior to the granting of an order in terms of PIE have to be satisfied that it is just and equitable to do so. All circumstances have to be taken into account. Section 4(7) of PIE provide a list of considerations i.e. is land available or can land be made available by a local municipality, a state organ or the landowner for relocation of the person to be evicted. This requirement does not have to be complied with if the property in question has been sold in execution after a mortgage bond has been foreclosed.

The rights and needs of the elderly, children, disabled and households headed by woman need to be considered by the Judge or Magistrate.

2.3.3.2 The Content of the order in terms of PIE

When the court has considered the evidence and is satisfied that the requirement have been complied with it can grant an order for eviction.

The order must determine a date by when the unlawful occupier must vacate the land.

The order must determine a date that the eviction order can be executed by the sheriff.

The order can make provision for the demolition and removal of buildings or structures that were occupied by the unlawful occupier.

The Court may determine any condition deemed reasonable for the eviction of the unlawful occupier or demolition of structures. The possible conditions a Court can set are vast. As the facts differ from case to case the Court may determine a condition to be complied with before the eviction or demolition order can be executed.

2.3.3.3 The role of the sheriff

The sheriff executes the order of the Court.

The sheriff have to comply with any conditions for the execution of the eviction order e.g. date when execution or ejectment order is enforceable.

A provision contained in PIE Sec 4(11) and ESTA Sec 12(3) is of great importance for sheriffs. A Court may at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the Court; Provided that sheriff must at all times be present during such eviction, demolition or removal.

It is important that the above right is reserved for the sheriff. The landowner or other applicant has no authority to either force the sheriff to apply, or to put pressure on the sheriff not to apply for the relief stated above.

The benefit of the above mentioned relief for the sheriff is in my opinion huge, specifically in case of evictions of communities.

In practice it often happens that the security companies (e.g. The Red Ants) are contracted by the applicant. During the execution process the sheriff does little more than observing the eviction. These security companies have a proven process to do evictions. The input of the sheriff in this process is limited. The security companies insist to follow their own procedure.

The sheriff in executing the eviction order does, however, remain the responsible person. The security company has no authority to be part of the eviction process other than acting on behalf of the sheriff. In practice it means that the sheriff is liable for damage caused by the

security company. The potential liability is vast.

Sheriffs should in these cases make use of the provisions of PIE and ESTA. The sheriff can apply to the Court to authorise such a security company to assist the sheriff and to determine conditions for the eviction or demolition.

The effect of obtaining a Court order authorizing a person to assist the sheriff is that the security company becomes a party to the order. The security company is not necessary an employee or authorised contractor of the sheriff. The Court can also determine conditions in terms of which such a security company must operate.

It could well be that the sheriff if relieved from potential damages caused by the actions of such a security company. It the Court orders a person to assist the sheriff the vicarious liability for damages is on the employer or principal of the security company.

The sheriff must at all times be present during the eviction process.

The sheriff can only be liable if he acts negligently. The sheriff will be liable if he does not act as a reasonable sheriff as would have in the said circumstances. Should the security company act beyond its authority as stated in the order the sheriff should still object to such action and attempt to stop such action. The sheriff will be free from liability if he acted reasonably to prevent actions not provided for in the order. The benefit is that actions by the security company might not be regarded by actions by a sheriff employee or agent.

Application to authorise a security company is only one example, the section can be useful to the sheriff. Other examples are: asking the local council to indicate a place where assets removed during the eviction process can be removed to; direction how to remove disabled people; contractors to do demolishing work, etc.

The benefit of obtaining assistance by means of a Court order is vast. Firstly the sheriff might not be liable for unlawful actions of a contractor. Secondly it clears any doubt that might exist as to what the tasks of the different roll players during the eviction process are.

The SAPS can also be ordered to assist the sheriff. The SAPS duty is bound to assist the sheriff. It would however strengthen the hands of the SAPS if they are ordered by Court to act in a particular way.

Sec 12(3) of ESTA is similar to provision under PIE.

Evictions under ESTA can therefore be dealt with in the same way.

2.4 Warrant or ejectment or Court order

Rule 36(1) of the Magistrate's Court Rules states that the process for execution of judgment for eviction is a warrant. The Uniform Rules of Court of the Supreme Court does contain a similar Rule.

Rule 36(1) preceded PIE, ESTA and other legislation relating to evictions.

Rule 36(1) was adequate for judgment for ejectments obtained in terms of the common law (*Rei vindication*)

In the Supreme Court it is accepted practice that the process the sheriff receive to do a evictions is an Order of Court.

The provisions in PIE an ESTA changes the content of the order previously obtained under the common law. Eviction orders are made with content that cannot be included in the prescribed form of the warrant of ejectment.

The compulsory minimum content of an order under PIE and ESTA namely a date by which the unlawful occupier must vacate the property and the date by which the sheriff may execute the eviction order cannot be included in the present prescribed warrant of ejectment.

The Court can furthermore order conditions it deems reasonable on which the eviction must take place. These condition can be varied by the Court. It is difficult to see how the prescribed form for a warrant of ejectment can make provision for such conditions.

The Court is authorised to order the demolition and removal of structures.

The warrant of ejectment cannot contain such orders.

The Court can on request of the sheriff, order any person to assist the sheriff during the eviction process. The present form of the warrant of ejectment do not provide for such content.

The issue is thus whether the sheriff can act on a Court order presented to him to evict unlawful occupiers or insist on a warrant of ejectment.

It is suggested that sheriffs insist on a warrant of ejectment in evictions originating from the Magistrate's Court. If necessary request the Magistrate's Court in terms of sec 4(11) of PIE or 12(3) of ESTA for assistance.

It is uncertain whether a sheriff can refuse to execute a Court order originating from the Magistrate's Court when it is directed to a sheriff and contains terms and conditions which cannot be included in a warrant of ejectment. The Rules Board should address the matter urgently.

3. INTERPRETATION OF THE EJECTMENT ORDER

If a warrant of ejectment has been issued interpretation should not be an issue.
The warrant should comply with the prescribed forms mentioned above.
It is sometimes a challenge to determine the sheriff's obligation from Court Orders.

3.1 How should a Court order be interpreted

It is useful to know that the opinions and interpretation of third parties should not be followed to influence interpretation of the Court order.
The content of the order should be obtained by reading the order and apply to words and sentences to its ordinary meaning.
Sheriffs are often confronted with statements by lawyers or applicants to the effect that the Judge stated A in the order, to but he meant B.
Even the opinion of the Judge who made the order is irrelevant if the wording of the order does not support that opinion.

The following guidelines are provided.

3.1.1 **Read the Court order properly.**

3.1.2 **Make sure the Court order is addressed to the sheriff e.g.: "The sheriff is hereby ordered, instructed or authorised to .....**

3.1.3 Read the whole order to make sure the ejectment or eviction is not suspended until a future event takes place eg: the person is granted a period to vacate the premises, the person may only be evicted after a determined date or the expiration of a certain time or the eviction may only take place after it had been served in a manner described in the order (served by reading it out over a loudhailer, etc).

3.1.4 Be aware that Court orders sometimes authorise the applicant to take certain steps. Do not act on an order that does not clearly authorize the sheriff. The action of the sheriff should be to refuse action until an order is presented that clearly authorise the sheriff. (Remember you are entitled to refuse as you are protected by Sec 43(1) of the Superior Courts Act 2013).

3.1.5 Do not exceed the action ordered in the Court order e.g., Do not break down structures if you are not ordered to do so. Stay within the limits of the order. Applicants or lawyers often insist on certain actions. If it is not in the order, refuse. Remember the opinion of the lawyer or applicant or any other person is irrelevant. It remains useful to listen to opinions of third parties or your lawyer or a colleague, but remember the sheriff has to make sure that his action is authorised.

4. THE EJECTMENT

It is necessary to deal with ejectments of a single unit and ejectments of communities from land separately.

It is also useful to understand what is expected of the sheriff when ejectments are done.

4.1 Code of Conduct for sheriffs

It would be to voluminous to deal with the whole Sec 43 of the Sheriffs Act 1986 and the whole of the Code of Conduct for Sheriffs. Item 2 and 14.1 of the Code of Conduct are the most relevant when dealing with evictions. Sheriffs should however, familiarise them with the Act and Code.

Item 2.2

Section 10 of the Constitution of South Africa (Act 108 of 1996) records specifically that each citizen has inherent dignity and the right to have his/her dignity respected and protected.

Item 2.3

As such all sheriffs are obliged to respect the rights of citizens of South Africa when performing their functions.

Item 2.4

As such by signature hereto each sheriff undertakes to respect the dignity of all those persons who the sheriff serves. A sheriff must perform his or her function fairly and impartially .

Item 14.1

A sheriff may not act in a way that will bring the good name and esteem of the office of the sheriff in particular and the administration of Justice in general in disrespect.

Evictions are by nature an unpleasant experience for both the sheriff and the person to be evicted.

Evictions often create a situation where third parties feel that their human rights have been infringed.

To deal in practice with evictions one should distinguish between small evictions (one house or business premises) and larger evictions where parts or whole communities are to be evicted.

See also par 6. The sheriff and human rights hereunder.

4.2 Smaller evictions

These evictions normally result from failure to pay rent, foreclosure by banks for non-payment of bonds and matters of inheritance.

A good practice will be to

(i) Visit the premises from where a person or persons are to be ejected.
(ii) Serve the ejectment order. If it is not possible to serve it, to leave a copy at the premises.
(iii) Discuss and explain the ejectment process.
(iv) Grant the person an opportunity to leave the premises on his own.
(v) Advise the persons to be ejected to arrange for protection of their property after ejectment.
(vi) Arrange to be accompanied by the SAPS. Compliance with the above will indicate the sheriff is sensitive to aspects of human rights

When a warrant of execution accompanies an ejectment order a sheriff should not follow above guidelines as the person to be ejected might leave the premises and will result in the warrant of execution not being served.

It is advisable to inform the SAPS of an intended ejectment. Community involvement during the ejectment is common practice. The SAPS should be involved to protect the safety of the sheriffs staff, any property and safety of the community.

4.3 Ejectment of Communities or many people

Ejectments falling under this definition normally affects informal settlements erected without the necessary rights on land belonging to a third party.

Ejectment of informal settlements requires much more preparation by the sheriff. Emotion is involved from both the owner of the land, the persons to be evicted and surrounding communities. The danger of injury to persons, death, riots or damage to property is very real.

4.3.1 The sheriff preparation should include:

1. Obtain the order and make sure that it has been issued properly.
2. Read the whole order and make sure that it is addressed to the sheriff.
3. Make sure the actual ejectment is not suspended by an event or action first to take place e.g., certain date, an amount of days to pass, service of the order, etc.
4. Set up an operational meeting and involve.
   a) SAPS. Normally the Station Commander or a Senior Officer.

b) Commander of Special force of SAPS. (POPS).
c) Representative of City Police.
d) Tribal authority (if applicable).
e) Ambulance services.
f) City Council members for the relevant area.
g) Community representatives.
h) Provincial or National staff from Department of Land Affairs.
i) Contractors engaged.
j) The applicant or his representative.

4.3.2 At the operational meeting discuss:

1. As the safety of all concerned is most important. The SAPS should guide the sheriff as to the date and time of the ejectment.
2. Necessity of other security and medical personnel to be on standby.
3. The content of the order.
4. Ensure that everybody understand the ejectment process.
5. Strategy and operational plan e.g. Where will the SAPS be, an emergency withdrawal plan.
6. The responsibilities of the sheriff.
7. The actions of security firms.
8. Identification of sheriffs staff.
9. Where the ejectment process will start.
10. The role of the contract workers.
11. How structures will be identified.
12. How to identify property.
13. Where property will be taken to.
14. Where ejected people will be taken.
15. An emergency plan.
16. Any other relevant arrangements to be made.
17. That the assessment of a situation is in the discretion of the Commander of the SAPS.
18. The meeting should be followed up by a shorter operational meeting the day before or morning of the actual eviction to confirm previous decisions and any changes.

4.3.3 On the day of the ejectment

On the day of the ejectment the sheriff must:

1. Have the ejectment order in your possession.
2. If necessary to serve it again. Serve the order. Ensure that you have complied with the requirements of the Court order before you execute it.
3. Engage with the people to be evicted. If possible speak to a community leader. Read the order out aloud with the use of a loudhailer or other electronic sound system and explain the content of the Court order in English and a language probably understood by the majority of the community. Attempt to assure that questions that might exist is answered as far as it is relevant to the execution of the order.

4. Give the persons to be ejected the opportunity of leaving with their possessions. Whenever possible assist them with transport.
5. Keep the SAPS informed of any confrontation.
6. Adhere to the agreed plan when doing the ejectment.
7. Inform all of any change of plan.
8. On completion do a debrief at a safe place.

5. MISCELLANEOUS ASPECTS OF THE EJECTMENT

5.1 Outside agencies or persons authorised to give effect to ejectment order

The Superior Courts frequently issue orders authorising the applicant or other parties to take part in the ejectment process.

Should the order provide for the applicant to do the ejectment and orders the sheriff to assist, abide by it. A sheriff has no authority over persons who are authorised by the order and cannot control the ejectment process. Should the sheriff take part he may become liable for actions of such a third party.

The sheriffs action should not take part in the ejectment process unless specifically ordered. When the sheriff is ordered to do the ejectment and the applicant engages a third party e.g., a security company, the sheriff must ensure that the third party clearly understands and accepts that the sheriff is in control.

Good practice is to inform the applicant in writing of the above and to set out the terms upon which the ejectment will take place.

A sheriff can refuse to allow any institution or person take part unless he complies with the sheriffs terms.

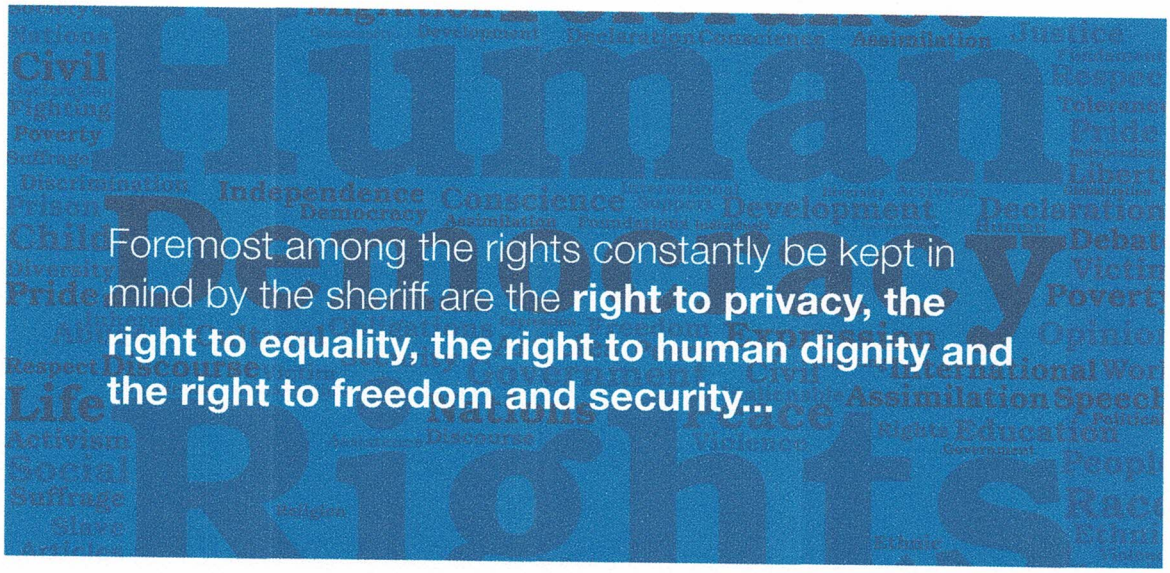
The sheriff should be open minded when taking these decisions. Normally the sheriff do not have staff and equipment to do the ejectment of whole communities. Consider the suggestion by applicant to use a security firm for whom the applicant pays. Remember the sheriff remains the responsible party.

Sec 4(11) of PIE – Sec 12(3) of ESTA provides:

A Court may, at the request of the sheriff in question, authorize any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to the conditions determine by the Court as to the execution thereof. Provided that the sheriff shall at all times be present during such execution, demolition or removal.

These provisions are helpful to sheriff in that:

1. He may at any time approach the Court for assistance.
2. When the applicant, the SAPS or a security company is ordered to assist the sheriff, they become co-responsible.
3. The sheriff is no longer solely responsible for the actions of the third parties.
4. The Court will determine the conditions under which the third parties take part in the ejectment process.



5.2 The draft order

The word "draft" in an order does not make it invalid.

6. THE SHERIFF AND HUMAN RIGHTS

The nature of the sheriffs activity is that it have an effect on human rights. The position of the sheriff cannot be better expressed than in an article in the executor where it states. " Foremost among the rights constantly be kept in mind by the sheriff are the right to privacy, the right to equality, the right to human dignity and the right to freedom and security, which also include the right not be detained without trial. The official duties of the sheriff is of such a nature that these rights will always to lesser or greater extent be infringed upon. Sheriffs should, however not be anxious about this, since the inherent risk of infringement is not in the first instance caused by the conduct of the sheriff but by the statutory provisions (Acts and Rules) in terms of which he performed his duties.

As explained above, these provisions remain the authoritative source for the duties that have to be performed by sheriffs and sheriffs have no option but to act in terms thereof. What is however the concern of the sheriff is the way in which the powers in terms of this statutory provisions are exercised. It is quite conceivable that a statutory provision is perfectly compatible with all the principles underlying fundamental rights; yet the way in which these powers are implemented may constitute infringement upon fundamental rights. Whereas the constitutionally of the statutory provisions are not of concrete concern to the sheriff, the conduct that takes place in terms of statutory provisions is evidently of crucial importance to him. Stated differently: the sheriff is not in the position to do anything about statutory provisions that might be inconsistent with fundamental rights principles, but the sheriff can do everything to ensure that the conduct that takes place in terms of statutory provisions does pay due recognition to fundamental rights. In fact, the constitutionality of the sheriffs conduct depends solely upon the sheriff himself".

7. CONCLUSION

As stated above in circumstances sheriffs might experience challenges not covered herein. As these challenges emerge this practical guide will be extended.

Guidelines for Sheriffs:

EVICTIONS

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