

Impact of the Supreme Court of Appeal's Decision on Sheriff's Fees and Charges

BG Bojosinyane & Associates v Sheriff: Smith and Another

INTRODUCTION

The South African legal system heavily relies on the efficient execution of court processes by sheriffs, who play a critical role in not only serving legal documents but enforcing court orders as well. However, recent disputes have highlighted a contentious issue surrounding the practices of these officials. The Supreme Court of Appeal of South Africa recently delivered a significant judgment in the case of *BG Bojosinyane & Associates v Sheriff: Smith and Another*¹. This ruling has substantial implications for the procedures and financial practices of sheriffs in South Africa. This article explores the implications of this case on how sheriffs operate within the legal system, particularly concerning their fees and the execution of court processes.

BACKGROUND

The Sheriff of Vryburg had closed its due to payment disputes and insisted on upfront payments before serving any process from their office because it was not being paid timeously by the clients. BG Bojosinyane & Associates, a law firm, initiated legal action against the Sheriff of Vryburg due to his practice of demanding upfront payment before serving court processes. The law firm complained that the sheriff's demands for payment before service resulted in delays because not all of the clients could afford the high fees and because it caused administrative delays. They argued that this practice was against the Magistrates' Courts Rules, Magistrates' Courts Act, Uniform Rules of Court, and the Sheriff's Act.

The Magistrate declined the Sheriff's application for authorisation to refuse service to the law firm. The Sheriff then closed Bojosinyane's account and required upfront payment for any process. The law firm then launched an urgent application in the High Court for a declaratory interdict. The High Court dismissed the application, which led to the appeal to the Supreme Court of Appeal.

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KEY ASPECTS OF THE JUDGEMENT

The Court addressed whether sheriffs are entitled to demand payment of their fees and charges before rendering their services. The Supreme Court of Appeal judgment clarified that, unless specifically authorized by a magistrate under section 14(7) of the Magistrates' Court Act 32 of 1944, sheriffs cannot require upfront payment for their services. The court's decision included the following orders:

- Service Without Delay:** Sheriffs must effect service and execute any court process without unreasonable delay.
- No Upfront Fees:** Sheriffs are interdicted from demanding payment of their fees before serving or executing court processes.
- Prompt Return of Service:** After executing a court process, sheriffs must promptly return the process to the applicant and the court, specifying their fees and charges without requiring prior payment.

IMPACT ON LEGAL AND FINANCIAL PRACTICES

This judgment has several important implications:

- Access to Justice:** By prohibiting sheriffs from demanding upfront fees, the court has removed a potential barrier to accessing justice. This ensures that individuals and entities can have court processes served without the immediate burden of paying fees, which can be particularly beneficial for those with limited financial resources.
- Operational Efficiency:** The requirement for sheriffs to act without unreasonable delay and promptly return executed processes enhances the efficiency of legal proceedings. This can lead to faster resolution of cases and reduce backlogs in the judicial system.
- Financial Management for Sheriffs:** Sheriffs will need to adjust their financial management practices to comply with the new requirements. They must now rely on post-service payment collection, which may necessitate changes in their billing and accounting processes.

4. **Legal Precedent:** This decision sets a legal precedent that could influence future cases involving the interpretation of the Magistrates' Court Act and the duties of sheriffs. It provides clear guidance on the limits of sheriffs' authority to demand fees and the procedural expectations for executing court processes.

Overall, the Supreme Court of Appeal's decision promotes fairness and efficiency in the legal system, ensuring that financial constraints do not impede the administration of justice.

ENHANCED ACCESS TO JUSTICE FOR FINANCIALLY DISADVANTAGED INDIVIDUALS

Removal of Financial Barriers

One of the most critical aspects of the ruling is the prohibition on sheriffs demanding upfront payment for executing eviction orders. This change is particularly beneficial for tenants who are already struggling financially and may not have the means to pay large sums before an eviction is carried out. By removing this requirement, the court ensures that the execution of eviction orders is not contingent on the tenant's ability to pay, thereby preventing undue delays in the legal process.

Prevention of Unlawful Evictions

Without the burden of upfront fees, tenants are less likely to face unlawful evictions due to their inability to pay sheriffs' fees. This ruling helps protect the rights of tenants, ensuring that evictions are carried out lawfully and in accordance with due process. It also reduces the risk of tenants being evicted without proper notice or legal proceedings, which can occur when financial barriers prevent the execution of court orders.

Increased Legal Support

The ruling may also encourage more tenants to seek legal assistance, knowing that they won't be immediately burdened with additional costs. Legal aid organizations and pro bono lawyers can now assist tenants without the concern of upfront sheriff fees, making it easier for tenants to access legal representation and advice. This support can be crucial in navigating the complexities of eviction cases and ensuring that tenants' rights are upheld.

Broader Implications for Social Justice

By addressing the financial barriers associated with eviction orders, the court's decision contributes to broader social justice goals. It promotes fairness and equality in the legal system, ensuring that all individuals, regardless of their financial status, have access to justice. This ruling aligns with the principles of equity and non-discrimination, reinforcing the idea that justice should be accessible to everyone.

Overall, the Supreme Court of Appeal's decision is a significant step towards ensuring that financial constraints do not impede the administration of justice. It provides crucial protections for vulnerable tenants and promotes a more equitable legal system.

This article was written with the use of Microsoft Co-Pilot AI, by Karabo Kupa and Chantelle Gladwin-Wood, March 2025.

¹*G Bojosinyane and Associates v The Sheriff Vryburg and Another (1072/2022) [2023] ZASCA 174 (8 December 2023).*



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