

Recourse Against a Municipality in Respect of Non-Payment of Costs Flowing From a Successful Court Order

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INTRODUCTION

When litigating against a Municipality and a successful court order is obtained, an order for costs usually follows. A bill of cost is usually drawn up by the successful party's legal representative which bill is then taxed before a Taxing Master of the High Court (per the court rules). This bill may become opposed but only in as far as the rules make provision for the specific objections to specific items – it is by no means a further court application, simply a sort of audit before a referee allowing, disallowing or reducing items on the bill. Upon completion of the Taxation an Allocatur is issued by the Taxing Master, which is to be served on the unsuccessful parties' legal representatives together with a reasonable demand for payment of the Allocatur. An Allocatur carries the same weight as a court order and a Writ of Execution may be issued (by the Registrar upon request) so that the Sheriff of the High Court may be given instructions to recover the cost by way of attachment of immovable or moveable property with the intention of then satisfying the amount owed per the Allocatur. As with most things to which a Municipality is a party, any demand for action is often just ignored.

WHAT HAPPENS WHEN A DEMAND FOR PAYMENT IS IGNORED?

At this point, as mentioned above, the successful party may then elect to have a Writ of Execution issued and to give the Sheriff an instruction to attach the property of the Municipality. Ordinarily, one would attach moveable property such as office furniture, electronics, appliances, etc. These items are then to be sold at a public auction, the proceeds of which should theoretically satisfy the amount owed. This is rarely the case as the resale value of these items is simply not enough.

Another option is available to the successful party in these circumstances. The successful party may elect to instruct the Sheriff to attach the moveable property of the Municipality in the form of its bank account to the satisfaction of the amount owed per the bill of cost and subsequent Allocatur.

Parties who elect to follow this process are warned that it will involve a great deal of correspondence, follow ups and eventual demands to the Sheriff and the Bank - a venture well worth taking when the entire amount is satisfied at the end of the day.

ATTACHMENT OF MUNICIPAL BANK ACCOUNT

The attachment of a Municipality's bank accounts is governed by the Uniform Rules of Court, particularly Rule 45. The process begins with the issuing of a Writ of Execution, which authorises the Sheriff to attach the Municipality's assets, including funds held in bank accounts. The Sheriff is then instructed to effect the attachment.

One of the primary challenges in this process lies in identifying the banks at which the Municipality holds accounts and, more specifically, obtaining the relevant account numbers. Municipalities often maintain accounts with multiple banking institutions, and this information is not always readily accessible to judgment creditors. Considerable investigation and correspondence may be required to ascertain where the Municipality's funds are held before the attachment can proceed effectively. This aspect of the process frequently proves to be the most demanding, requiring persistence and resourcefulness on the part of the practitioner.

Once the relevant bank or banks have been identified, the Sheriff prepares and serves a Notice of Attachment on the banking institution. This notice instructs the bank to secure the funds owed to the judgment creditor. The bank is typically required to respond within a specified timeframe, confirming whether sufficient funds are available in the accounts.

SERVICE ON THE JUDGMENT DEBTOR

A critical aspect of the attachment process is compliance with the notification requirements set out in Rule 45(8)(c) of the Uniform Rules of Court. The attachment is only completed once notice has been given in writing by the

Sheriff to all interested parties, including the judgment debtor. Jurisdictional considerations may arise where the Sheriff who effected the attachment is not the same Sheriff within whose area the judgment debtor is located, in which case the matter must be coordinated accordingly.

Upon confirmation that the judgment debtor has been duly notified, the bank will be instructed to pay over the attached funds to the Sheriff, who will then distribute the amount to the judgment creditor's legal representative for payment to the client.

CONCLUSION

Attaching the bank accounts of a Municipality is a viable mechanism for enforcing judgment debts where conventional attachment of moveable property proves insufficient. The process requires careful adherence to the procedural requirements of the Uniform Rules of Court, with particular attention to identifying the relevant banking institutions and ensuring proper notification to the judgment debtor. Regular communication with the Sheriff throughout the process is essential to ensure a successful outcome.

Legal practitioners considering this avenue of enforcement should be prepared for an exercise that demands persistence and meticulous attention to procedural compliance.



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