



16 APRIL 2014

Our Ref:
P Livanos
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BOARD OF SHERIFFS

HIGH COURT RULE 46 FORM 21 CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

We refer to our correspondence that was addressed to you, last year, 30 January 2013. We have attached hereto for ease of reference and must please be read as if incorporated herein.

We deem it necessary to record the following:

1. It appears, as if some Sheriffs are still "*not settling*" the Conditions of Sale as defined in Rule 46(8)(a):

"The conditions of sale shall, not less than 20 days prior to the date of the sale, be prepared by the execution creditor as near as may be in accordance with Form 21 of the First Schedule, and the set conditions shall be submitted to the Sheriff to settle them."

2. Certain Sheriffs, unfortunately, are still not complying with the Rules of Court as well as the Conditions of Sale, that have been approved by the Board of Sheriffs.

- 2.1. We are extremely concerned that some Sheriffs may be exposing themselves if they do not comply with the Board of Sheriffs approved Conditions of Sale. The Sheriff must not allow themselves to be intimidated by the Creditors/Attorneys.

3. The situation has worsened to such proportions that certain firms of Attorneys are now even trying to cancel sales to purchasers, when purchasers are refusing to be held ransom for infinite municipal arrears.

- 3.1. We attach a court order against the Sheriff and the Bank, where the Attorney threatened to cancel the sale to the purchaser.

- 3.2. The purchaser knew their rights that they only had to pay the municipal arrears in order to "effect transfer" (in terms of Section 118(1)).
- 3.3. The Court ordered the Attorney/Bank to pay the said money back to the purchaser
4. It is to be remembered that as soon as the Sheriff signs the Conditions of Sale, he/she is personally binding themselves to the contract and we humbly request that the Sheriffs please ensure that the Conditions are legal and compliant.
 - 4.1. For ease of reference we attach a copy of the Board of Sheriff Conditions (Form 21) which sets out the Conditions that the Sheriff must follow (refer Para. 4.7)
5. We thank you in advance for all your kind assistance and co-operation.


Kind Regards,



Peter Livanos

CC:
BOARD OF SHERIFFS
VARIOUS TRANSFERRING ATTORNEYS

"M1"



NEW VENTURES

CONSULTANCY & SERVICES
A division of the LIVANOS GROUP SA

30 January 2013

Our Ref:
C Livanos
Nv16@livanosgroup.co.za

TO ALL SHERIFFS AND TRANSFERRING ATTORNEYS

**HIGH COURT RULE 46 FORM 21 CONDITIONS OF SALE IN EXECUTION
OF IMMOVABLE PROPERTY**

1. It has come to our attention that some Transferring Attorneys and/or Sheriffs are not complying with their obligations in terms of Clause 46(8) of the Rules of Court.
2. For ease of reference we attach the above Form 21 (refer paragraph 9) as well as the subsequent Conditions that was prepared by the Board of Sheriffs (refer paragraph 4.7 and 4.8).
3. For ease of reference we attach a summary of the Judgement in the High Court between ABSA Bank and The Sheriff under Case Number 26018/2010. It is clear that the Sheriff must comply with Form 21 and Rule 46.
4. It is clear that the Conditions refer to the purchaser who is liable to obtain a Clearance Certificate in terms of Section 118(1) to effect transfer. The Municipality is entitled and/or obliged to claim the outstanding debt directly from the proceeds of the Sheriff sale.
5. As stated above some transferring Attorneys/Sheriffs are adding in a clause which states that the purchaser is liable of all Municipal debts on the property. This clause is unconstitutional because it makes a purchaser liable for previous owners and tenants debts that could run into many, many years.
6. The Constitutional Court held that a Landlord/Owner is only responsible for the past two years debts in order to obtain a Clearance Certificate even if a tenant ran up this debt.

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7. In the Supreme Court of Appeal matter between BOE Bank and The City of Tshwane, Case Number 240/2003 it is clear that the Municipality must issue a Clearance Certificate for the past 2 years in terms of Section 118 and that they must claim the balance of the outstanding debt directly from the Sheriff. (Copy attached for ease of reference)
8. In the Supreme Court of Appeal between the City of Johannesburg and Harry Kaplan, Case Number 111/05 the Court clearly sets out a summary of the Municipalities debts and claims. (Please refer to paragraph 25 onwards, relevant copies attached)
9. In the Supreme Court of Appeal between The City of Cape Town and Real People Housing, Case Number 77/09 the Court held that it will be unlawful to withheld a Clearance Certificate if the past 2 years were paid. It is interesting to note that the original High Court Judgement specifically refers to the above Judgments (refer paragraph 25,26,27,28,34,39: relevant pages attached)
10. It is imperative that all Sheriffs comply with their obligations. The Sheriffs failure to comply with their obligations is causing unnecessary disputes and tension between the various parties.
11. We have made arrangements to meet with the Board of Sheriffs to ensure that this issue is rectified immediately. If we do not obtain the Sheriffs co-operation we will launch an application to the High Court of South Africa for an Order against the Sheriffs that do not comply with their obligations. This will include a special punitive cost order against the relevant Sheriffs.
12. It is clear that some Sheriffs are not applying their own initiative and are being manipulated by certain Attorneys and Creditors which include some Banks.

Will you please communicate with us or confirm that the above will be complied with.

Yours faithfully

Costa Livanos

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FORM 21 CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

In re:

.....Plaintiff

.....Defendant

The property which will be put up to auction on theday of
..... 19....., consists of:

The sale shall be subject to the following conditions:

1. The property shall be sold by the sheriff of atto the highest bidder without reserve/with a reserve price of
2. The sale shall be for rands, and no bid for less than *one* rand shall be accepted.
3. If any dispute arises about any bid the property may be again put up to auction.
4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately be again put up to auction.
5. The purchaser shall, as soon as possible after the sale, and immediately on being requested by the, sign these conditions, and if he has bought *qua qualitate*, state the name of his principal.
6. (a) The purchaser shall pay a deposit of ten per cent of the purchase price in cash on the day of sale, the balance against transfer to be secured by a bank or building society guarantee, to be approved by plaintiff's attorney, to be furnished to the sheriff withindays after the date of sale.
(b) If transfer of the property is not registered within *one* month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate ofper cent p.a. and to thebondholder at the rate of per cent p.a. on the respective amounts of the award to the plaintiff and thebondholder in the plan of distribution as from the expiration of *one* month after the sale to date of transfer.
7. Inasmuch as the defendant is a member of the Group, no bids will be accepted by or on behalf of a person who is not a member of such Group, unless such person

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exhibits to the auctioneer at the sale a permit from the Minister of the Interior authorizing him to acquire such property.

8. If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from him under judgment of the judge pronounced summarily on a written report by the sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose; and if he is already in possession of the property, the sheriff may, on seven days' notice, apply to a judge for an order ejecting him or any person claiming to hold under him therefrom.

9. The purchaser shall pay auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.

10. The property may be taken possession of immediately after payment of the initial deposit, and shall after such deposit be at the risk and profit of the purchaser.

11. The purchaser may obtain transfer forthwith if he pays the whole price and complies with condition 9, in which case any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 6 and 9 hereof.

12. The sheriff may demand that any buildings standing on the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid: and if he does not do so, the sheriff may effect the insurance at the purchaser's expense.

13. The property is sold as represented by the title deeds and diagram, the sheriff not holding himself liable for any deficiency that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.

14. The execution creditor shall be entitled to appoint an attorney to attend to transfer.

ATthisday of
.....19.....

"R5"

.....Sheriff

I certify hereby that to-day thein my presence the
 hereinbefore-mentioned property was sold forto

I, the undersigned, residing at
 in the district ofdo hereby bind myself as the
 purchaser of the hereinbefore-mentioned property to pay the purchase price and
 to perform all and singular the conditions mentioned above.

.....

[Form 21 amended by GN R2410 of 30

New Ventures - Alida Heenen

Subject:

FW:

http://www.sheriffs.org.za/pdf/Recent_Rulings_high_court_doc_summary_courts_order_of_9_may_11.pdf

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

CASE NUMBER: 26018/2010

In the matter between:

ABSA BANK LIMITED

Applicant

and

**THE SHERIFF OF THE HIGH COURT
SIMON'S TOWN**

Respondent

In this matter the application to court was brought on an urgent basis to cancel a sale in execution that the sheriff of Simon's town was intending to proceed with as requested by Absa Bank , this was done by the bank in an effort to justify the "set off" of the debt owing by debtor to the first bondholder against the purchase price should the execution creditor become the purchaser in sales in Execution of fixed property by 1st bond holders .

By doing this the bank maintained that it does not have the obligation o pay the sheriff the proceeds of the sale and that such situation therefore makes the procedures of receiving and distribution of the proceeds by the sheriff in terms of Rule 46 irrelevant

The sheriff maintained that this is ultra vires with Rule 46 and form 21.

The sheriff further maintained that he had the right to change the conditions by insertion of alternative wording to it. This was done to amend the inserted clause to make it possible for the sheriff to remain in a position to complete his mandate as required by Rule 46

IN SHORT:

1. The sheriff may not change the conditions of sale unilaterally without the Execution creditors co-operation

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2. The sheriff will be at risk if any stipulation in the conditions are found to be out of tune or ultra vires with form 21 and Rule 46

3. The sheriff should therefore not proceed with a sale in execution should any of this be found to be present [Not give a date for sale before the settling has been concluded]

4. The Execution Creditor may not apply the "set off " principle and should the sheriff allow any deviation from form 21 or Rule 46 he does so at his / her risk

5. The sheriff shall comply with all the provisions of Rule 46 and receive, and distribute the proceeds of the sale after transfer

6. The issue of the paying of the funds into the court and the Magistrate making payment after the sheriffs distribution account has been dealt with in terms of the Rules seem to be "at odds" with the Sheriffs Act Section 22 and should be clarified by the Rules Board