

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: Yes/No
(2)	OF INTEREST TO OTHER JUDGES: Yes/No
<u>5/11/2025</u>	
DATE	SIGNATURE

Case No: 2024-074421

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR
GAUTENG DEPARTMENT OF COMMUNITY SAFETY

Applicant

and

UNIVERSAL KNOWLEDGE SOFTWARE (PTY) LIMITED

First Respondent

SHERIFF, JOHANNESBURG CENTRAL

Second Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email.

Gilbert AJ:

1. The applicant ("the Department") seeks by way of urgent relief an order declaring that a writ of execution issued on 11 September 2025 at the instance of the first respondent and the consequent attachment of property belonging to the Department is invalid and is to be set aside on the basis that the first respondent has not complied with section 3 of the State Liability Act, 1957, alternatively that execution upon the court order of 10 June 2025 granting summary judgment against the Department be stayed pending proceedings to rescind the order.
2. On 10 June 2025, summary judgment was granted against the Department on an unopposed basis. The Department failed to appear in court that day and did not file a resisting affidavit.
3. On 4 July 2025, the first respondent as judgment creditor furnished a copy of the court order to the State Attorney together with a letter demanding payment of the judgment debt.
4. Payment was not made.
5. On 11 September 2025 the first respondent attended to the issue of a writ of execution by the registrar.

6. On 18 September 2025 the Sheriff attended at the premises of the Department and made certain attachments of the Department's property. The Sheriff returned on 15 October 2025 to make further attachments.
7. Consequent thereupon the Department as the execution debtor launched these present proceedings on 20 October 2025.
8. As explained by the Department in their affidavits, there is a disconnect between the Department and the State Attorney who until recently represented the Department, with the Department explaining how throughout it wished to both defend the summary judgment proceedings as well as expeditiously bring rescission proceedings once it learnt that summary judgment had been granted against it on an unopposed basis. Although the Department had furnished instructions to the State Attorney in relation to opposing the summary judgment proceedings and then also in relation to rescission proceedings, the State Attorney did not act consequent thereupon. And so the Department, to protect its interests, was compelled to appoint its own attorneys and counsel after a procurement process, and which attorneys now represent the Department.
9. I indicated to the parties at the outset of the hearing that the application was sufficiently urgent to be heard on an urgent basis. The delay in launching this proceedings has been explained by the Department. When the Department launched these proceedings, it did not know when the first respondent may instruct the sheriff to remove the attached property. The risk of the removal of the attached property was present. According to the first respondent's

interpretation of section 3 of the State Liability Act, 1957, it would be entitled to instruct the Sheriff to remove the attached property as from 26 November 2025.¹ The first respondent gave no indication to the Department that it would not do so once 26 November 2025 arrived and so the harm remained that the Department's property would be removed if this application was heard in the ordinary course, which would be well beyond 26 November 2025.

10. Although the first respondent in its heads of argument submitted that the Department would be afforded substantial redress in due course as it is entitled to invoke certain subsections of section 3 of the State Liability Act, 1957 (such as section 3(10)), the remedies in those subsections presuppose a valid attachment. As the Department disputes that there is a valid attachment, and which is the primary issue that this court had to decide, the Department cannot be faulted for not pursuing a remedy that is destructive of the position it adopts.
11. As stated above, the primary relief sought by the Department is that the issue of the writ of execution and the consequent attachment is invalid and is to be set aside. The Department's counsel reiterated during argument that it is only if this primary relief is refused that the Department seeks a stay of execution proceedings pending the determination of its rescission proceedings, which constitute Part B of its application.

¹ The Department did not know when it launched the application on 20 October 2025 that the first respondent's position was that it would, based upon its interpretation of section 3, have to wait until 26 November 2025 before instructing the sheriff to remove the attached property, and so the Department cannot be faulted for enrolling the matter for the urgent court week of 4 November 2025 rather than close to 26 November 2025.

12. The central point to be decided is whether it was incumbent upon the first respondent as the judgment creditor to comply with section 3(4) of the State Liability Act.² It is common cause that the first respondent did not take the steps as are described in section 3(4). The first respondent's position is that it was not obliged to do so as those provisions are directory rather than peremptory. In contrast, the Department contend that without the first respondent as judgment creditor complying with section 3(4), the first respondent was not permitted to seek of the registrar to issue the writ of execution in section 3(6) and so the issue of the writ of execution and the consequent attachment is unlawful and is to be set aside.
13. Section 3 has been considered and the process provided for therein usefully explained in cases such as *Minister of Police v Sheriff, Mthatha and Another* 2022 (1) SA 229 (ECM) in paragraph 42 and *MEC, Department of Public Works and Others v Ikamva Architects and Others* 2022 (6) SA 275 (ECB) in paragraphs 30 to 38. Particularly as these are urgent proceedings, I do not propose doing so again. Nonetheless, it will facilitate this judgment if the presently relevant sub-sections of section 3 are set out (the emphasis is mine, for reasons that will become apparent):

“3. Satisfaction of final court orders sounding in money

² The first respondent raised the complaint that section 3(4) was not specifically relied upon by the Department in its founding affidavit but only in the replying affidavit, and so the Department cannot rely on that section. It is however plain that the section 3(4) is a subsection in issue, and where the subsections that the Department do refer to in its founding affidavit, such as section 3(5), cannot be read and considered in isolation from section 3(4). No prejudice was raised by the first respondent at section 3(4) not having been expressly referred to by the Department in its founding affidavit and where the first respondent was alive throughout to that section being in play in the proceedings. Moreso where the Department as the applicant launched the application on an urgent basis and so where the omission to expressly refer to section 3(4) is understandable.

- (1) *Subject to subsections (4) to (8), no execution, attachment or like process for the satisfaction of a final court order sounding in money may be issued against the defendant or respondent in any action or legal proceedings against the State or against any property of the State, but the amount, if any, which may be required to satisfy any final court order given or made against the nominal defendant or respondent in any such action or proceedings must be paid as contemplated in this section.*
- (2) *The State Attorney or attorney of record appearing on behalf of the department concerned, as the case may be, must, within seven days after a court order sounding in money against a department becomes final, in writing, inform the executive authority and accounting officer of that department and the relevant treasury of the final court order.*
- (3) (a) *A final court order against a department for the payment of money must be satisfied-*
 - (i) *within 30 days of the date of the order becoming final;*
or
 - (ii) *within the time period agreed upon by the judgment creditor and the accounting officer of the department concerned.*
- (b) (i) *The accounting officer of the department concerned must make payment in terms of such order within the time period specified in paragraph (a) (i) or (ii).*
- (ii) *Such payment must be charged against the appropriated budget of the department concerned.*
- (4) *If a final court order against a department for the payment of money is not satisfied within 30 days of the date of the order becoming final as provided for in subsection (3) (a) (i) or the time period agreed upon as provided for in subsection (3)(a) (ii), the judgement creditor may serve the court order in terms*

of the applicable Rules of Court on the executive authority and accounting officer of the department concerned, the State Attorney or attorney of record appearing on behalf of the department concerned and the relevant treasury.

(5) The relevant treasury must, within 14 days of service of the final court order as provided for in subsection (4), ensure that—

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned.”

(6) If the relevant treasury fails to ensure that—

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned,

within the time period specified in subsection (5), the registrar or clerk of the court concerned, as the case may be, must, upon the written request of the judgment creditor or his or her legal representative, issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against movable property owned by the State and used by the department concerned: Provided that a writ of execution or a warrant of execution, where a judgment

by default was granted against a department, can only be issued by the registrar or clerk of the court if he or she is satisfied that the requirements of subsection (4) have been complied with."

14. Further sub-sections follow that deal with how the sheriff must go about first attaching, but without removing, movable property and how the attachments and execution process will progress, eventually to the removal and sale of the attached property depending on whether the judgment is satisfied and how the attachment and execution process unfolds. In the present proceedings, the focus is on the anterior issue whether the first respondent complied with that which may be required for the registrar to issue a warrant of execution, and so these further sub-sections need not be considered.
15. Section 3(1) expressly provides that execution, attachment or the like in relation to a final court order sounding in money may only proceed against the State or any property of the State subject to sections 3(4) to (8). And so if there is no compliance with these sub-sections, there can be no execution, attachment or the like.
16. Sub-section 3(2) provides that State Attorney, in this instance as the State Attorney represented the Department at the time, must within seven days after a court order sounding in money against the Department becoming final in writing inform the executive authority and accounting officer of the Department and the relevant treasury of the final court order. These, as the first respondent's counsel argued, are obligations imposed upon the State

Attorney, in the present instance. This appears from the use of the word "*must*".

17. Section 3(3) places a positive obligation upon the Department to satisfy the court order within a specified period. This appears from the use of the word "*must*". Clearly the purpose of sub-section 3(2) in placing an obligation upon the State Attorney to inform the executive authority and accounting officer of the Department as well as the relevant treasury of the final court order is to facilitate the Department discharging its obligation to satisfy the final court order. The more state functionaries that are informed, the more likely the final order is satisfied.
18. Section 3(4) provides that if the final court order is not satisfied within the specified thirty days, then the judgment creditor may serve the court order in terms of the applicable rules of court on the executive authority and accounting officer of the Department concerned, the State Attorney or attorney of record appearing on behalf of the Department concerned and the relevant treasury.
19. Section 3(5) obliges the relevant treasury to within fourteen days of service of the court order ensure that the judgment debt is satisfied or arrangements are made with the judgment creditor. Should the relevant treasury fail to so ensure, then in terms of section 4(6), the registrar, in this instance as the final order is that of the High Court, must upon the written request of the judgment creditor issue a writ of execution. This obligation on the registrar is subject to the proviso that if the judgment was by default, then the writ of execution can

only be issued by the registrar if he or she is satisfied that the requirements of sub-section 4 have been complied with.

20. The wording of these sub-sections is plain. The position and purpose of these sub-sections in the overall structure and purpose of section 3 is clear and coherent. Should a judgment creditor wish to execute upon a final court order because the Department has not satisfied the judgment debt within the period prescribed in terms of section 3(3), then the execution creditor must attend to serve a copy of the court order in terms of the Uniform Rules on the executive authority and accounting officer of the Department concerned, the State Attorney and the relevant treasury. This makes sense because the relevant treasury upon being served with the court order would then know it must satisfy the court order within fourteen days (particularly should it for some or other reason not have been furnished with a copy of the final court order by the State Attorney as required in terms of section 3(2)). This gives the Department a further opportunity, this time through the relevant treasury, to satisfy the judgment debt before its property is attached by way of execution proceedings.
21. It is only if the execution creditor has complied with subsection 3(4) that the execution creditor can approach the registrar for the issue of a writ of execution. As held by the Full Court in *Ikamva Architects* in paragraph 34, “[i]t is the failure of the relevant treasury [to satisfy the judgment debt] (within 14 days of service of the final order) that triggers the possibility of the issue of a

writ of execution or a warrant of execution".³ Without the judgment creditor complying with section 3(4) and *inter alia* attending to serve the final court order on the relevant treasury, the possibility of the issue of a writ of execution is not triggered.

22. This accords with "*the objective of the prescripts and the mechanisms created by s3 ... to make the attachment of state property a last resort*" and that "[i]t obliges the department concerned to pay the judgment debt. When the department fails to do so, it obliges the relevant treasury to pay the debt on behalf of the department, or to make acceptable arrangements for its payment. It is only after there has been total failure to pay the judgment debt that judgment creditor may seek to attach the property of the department".⁴
23. The argument on behalf of the first respondent is that there is no obligation upon a judgment creditor to first comply with section 3(4), in particular to serve a copy of the court order upon the executive authority and accounting officer of the Department and upon the relevant treasury, and that to do so was optional at the instance of the judgment creditor. The argument continued that because it was optional, the execution creditor can nonetheless proceed to require of the registrar to issue a writ of execution as provided for in

³ See also para 36 (e) of *Ikamva Architects* that 'before the judgment creditor may request the registrar to issue a writ of execution', specific time periods need to expire and within which there needed to be actions or omissions of the relevant functionaries to act. This includes the failure of the relevant treasury to satisfy the judgment debt within 14-days of service of the final order upon it, as required of the execution creditor in terms of section 3(4). See also para 42.2 in *Minister of Police v Sheriff, Mthatha* above that 'in order to enforce the judgment' if payment is not made within the 30-day period provided for in sections 3(3) and 3(4), then the court order needs to be served on the specified functionaries.

⁴ *Ikamva Architects* above, para 37.

section 3(6). In support of this argument, the first respondent submitted that this appears from the wording of section 3(4), which expressly provides that the judgment creditor “*may*” proceed to serve the order on the various functionaries, in contrast to, for example, the peremptory wording of section 3(2) which provides that the State Attorney “*must*” act in a particular manner.

24. This reasoning is to be rejected. Section 3(4) is permissive insofar as the judgment creditor has an election whether to proceed further should the Department not have satisfied the final order within the period specified in terms of section 3(3). Should the judgment creditor wish to proceed further, then it must comply with section 3(4). On the other hand, if the judgment creditor does not wish to proceed any further consequent upon the final order not being satisfied, then it is free not to proceed any further. The judgment creditor is not obliged to persist with execution and attachment proceedings, for whatever reason. It is in this sense that section 3(4) is permissive and hence the use of the word ‘may’.

25. In contrast, the Department has no option but to satisfy the judgment debt. There is no option for the Department not to discharge its obligation to satisfy a judgment debt, as any other judgment debtor must, or face execution proceedings. The Department does not have immunity against execution.⁵ It is in this sense that section 3(3) places a positive obligation upon the

⁵ Hence the Constitutional Court in *Nyathi v MEC for Department of Health, Gauteng* 2008 (5) SA 94 (CC) declaring section 3 of the State Liability Act, as it then was, unconstitutional in precluding execution against the State, and which lead to the subsequent extensive amendments to the section.

Department that it must satisfy the judgment debt within a specified period. And for purposes of doing so, certain peremptory obligations are imposed upon the State Attorney by section 3(2).

26. It does not follow that if the State Attorney fails to comply with section 3(2) and so fails to inform in writing the various state functionaries of the final court order that the execution creditor is excused from complying with section 3(4) and in particular from attending to serve the final order in terms of the applicable court rules on those same state functionaries. Where the State Attorney fails to discharge its obligations in terms of section 3(2) all the more reason that there be compliance section 3(4) so as to afford these state functionaries an opportunity to address the still unsatisfied judgment debt before the execution creditor resorts to attaching state property.
27. The purpose of section 3 is to provide for execution proceedings against the State but only after the State is afforded the specified opportunities as provided for in the section to satisfy the judgment debt before its property is attached, and then at a later stage removed and sold in execution. One of those opportunities is that if the Department concerned does not settle the judgment debt within the period prescribed in section 3(3), then there is a further opportunity for the judgment to be satisfied in terms of section 3(5), through the relevant treasury. To facilitate this further opportunity, *inter alia* the order must be served upon the relevant treasury in terms of section 3(4). Should it be optional for the judgment creditor to serve the order upon the relevant treasury, as the first respondent contends, this further opportunity is

defeated or at the very least diminished, and undermines the purpose of the section.

28. The first respondent's submissions are contrary to both *Ikamva Architects and Minister of Police v Sheriff, Mthatha* above as also the strong obiter statement by Madlanga J in the Constitutional Court matter of *Provincial Government North West and Another v Tsoga Developers CC and Others* 2016 (5) BCLR 687 (CC) (24 March 2016) at paragraphs 45 and 46 that service in terms of section 3(4) is a jurisdictional fact before the registrar can issue a writ.
29. It is not disputed that the first respondent as the judgment creditor did not serve the court order as required in terms of section 3(4) upon the executive authority of the Department or upon its accounting officer or upon the provisional treasury as the relevant treasury.
30. The first respondent has not complied with section 3(4) and so was not permitted to approach the registrar in terms of section 3(6) for the issue of a writ of execution. The issue of the writ is therefore unlawful as are the attachments consequent thereupon.
31. Something was made of the proviso to section 3(6), which is that before a writ of execution can be issued where the judgment was by default, the registrar must be satisfied that the requirements of section 3(4) have been met. The first respondent's submission is that the primary relief cannot be granted as there is a non-joinder of the registrar as it was the registrar's decision that is subject to challenge. The submission continued that it did not appear from what was before the court what the registrar considered in deciding whether

he or she was satisfied that the requirements of subsection 4 have been complied with, and this non-suited the Department.

32. I have difficulties with this submission. The first difficulty is that it is somewhat cynical for the first respondent to place in issue what was or what was not before the registrar when the registrar issued the writ of execution as it was common cause that the first respondent as the judgment creditor had not served the court order on the relevant functionaries listed in the sub-section. There is therefore no prospect that the registrar could have been satisfied that the requirements of section 3(4) had been satisfied. The second difficulty is that the first respondent's position is that the summary judgment order granted against the Department was not by default. Although summary judgment was granted on 10 June 2025 without the Department's presence in court and without the Department having delivered a resisting affidavit, the first respondent submits that based upon *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture et al*⁶ the judgment was nonetheless not by default. I do not decide whether this is so. The point is that the Department's position is that the judgment was not by default and so assuming in favour of the Department that its position is correct, the proviso is not triggered. The third difficulty is that whatever may be required of the registrar by the proviso before issuing a writ of execution cannot affect the jurisdictional requirement that the execution creditor must first comply with section 3(4) before initiating the execution process in terms of section 3(6). A further difficulty is whether it is actually necessary for the registrar to be joined

⁶ 2021 (11) BCLR 1263 (CC)

to proceedings of this nature, seeking to set aside a writ of execution. Ordinarily, the registrar is not joined as a party.⁷

33. The non-joinder of the registrar to these proceedings is not then a reason to refuse the Department the relief that it seeks to set aside the issue of the writ of execution.
34. As I have granted the primary relief sought by the Department, there is no need for me to consider the alternative relief staying the execution proceedings until the rescission proceedings in Part B is determined. The alternative relief was expressly sought by the Department only if the primary relief was refused.
35. The Department has succeeded on its primary claim, and therefore is entitled to its costs.
36. Although the Department initially, in its notice of motion and then its heads of argument, sought costs on an attorney and own client on a punitive basis against the first respondent, this was not pressed with any vigour during argument. This was prudent as, after all, had there not been a disconnect between the Department and its erstwhile legal representatives in the form of

⁷ In the Constitutional Court matter above of *Tsoga Developers CC* where the issue of compliance with section 3(4) was raised as a basis for the registrar having issued a writ of execution unlawfully, the registrar was not cited as a party and nothing was said during the course of the judgment that it was required to be joined. This notwithstanding that the Constitutional Court in paragraphs 28 and 29 expressly stated that a registrar's issuing of a writ in contravention of the State Liability Act implicates the principle of legality and so it was the very act of the registrar that was in issue.

the State Attorney, it is unlikely that these proceedings would have materialised. To this extent at least, the Department is seeking an indulgence.

37. During argument the Department as applicant sought the costs of two counsel on Scale C. In my view the matter is not one of complexity, albeit in the context of urgent proceedings. The costs of one counsel on scale B will suffice.

38. The following order is granted:

38.1. The writ of execution of 11 September 2025 together with any consequent attachment of the property of the applicant consequent upon is invalid and is set aside.

38.2. The first respondent is to pay the costs of the application on a party and party scale, with the costs of one counsel on Scale B.



B M Gilbert

Acting Judge

Date of hearing: 4 November 2025

Date of judgment: 5 November 2025

Counsel for the applicant: Mr M H Mhambi with L Kalashe

Instructed by: Vimba & Associates, Rivonia

Counsel for the first respondent:

M Phalane

Instructed by:

Cliffe Dekker Hofmeyr Inc, Sandton