



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED
 _____ DATE : 5 December 2025 SIGNATURE

CASE NO: 211867/2025

**HEARD ON: 27 November 2025
JUDGMENT: 5 December 2025**

In the application of:-

THE SOUTH AFRICAN BOARD FOR SHERIFFS

APPLICANT

AND

JOHANNES TSEKE MPHALELE

FIRST RESPONDENT

FIRST NATIONAL BANK A DIVISION OF FIRST

RAND BANK LTD

SECOND RESPONDENT

NAMEDI TSHEPO MPHALELE

THIRD RESPONDENT

JUDGMENT

Strijdom J

INTRODUCTION

1. This is the anticipated return date of a *rule nisi*, which operates as an interim order, and which was granted on an urgent *ex parte* basis on 11 November 2025 ("the order") in terms of which the first respondent is prohibited from dealing with his trust account and a *curator bonis* is appointed to take control of and administer the trust account.
2. The first respondent is moreover ordered to surrender to the *curator bonis* "all receipt books and accounting documents relating to the Pretoria North East Sheriffs' Office and the applicant ("the Board") is ordered to make arrangements to ensure that the office of the Sheriff, Pretoria North East will continue to function lawfully and in terms of the Sheriffs' Act 90 of 1986, which arrangements may include the appointment of an acting Sheriff in accordance with the provisions of the Sheriffs' Act."

RELEVANT FACTS

3. The relevant facts are as follows:

- 3.1 The first respondent has been the Sheriff for Lephalala since 1 December 2012 and the Sheriff for Pretoria North East since 1 March 2023.
- 3.2 The first respondent is in possession of two fidelity fund certificates ('FFC'), reflecting the Lephalale and Pretoria North East offices respectively.
- 3.3 The first respondent was appointed on 15 September 2025 by the Minister of Justice and Constitutional Development ("the Minister") as the Sheriff of Pretoria North East "with immediate effect".
- 3.4 The Minister appointed the third respondent on 28 September 2025 as the Sheriff for Pretoria North East from 1 November 2025.
- 3.5 During the Board's "vetting process" it came to its knowledge that the first respondent was allegedly convicted during 1987 of robbery and received corporal punishment and a suspended prison sentence, which is a disqualifying factor to be issued with a fidelity fund certificate in terms of section 33(1)(h).
- 3.6 On 13 October 2025, the first respondent applied to the Board in terms of section 33(2) for the issuing of a fidelity fund certificate which provision reads as follows:

"If in respect of any Sheriff who is subject to any disability mentioned in subsection (1), the Board is satisfied that having regard to the relevant considerations, the issue of a fidelity fund certificate to him is justified in the interest of fairness towards him, the Board may, on such conditions as the Board

may with the concurrence of the Minister determine, issue a fidelity fund certificate to him when he applies therefore.”

(Emphasis added.)

- 3.7 The Board has to date refused to consider the first respondent’s application.
- 3.8 On 14 October 2025, the first respondent applied on an urgent basis (“the urgent application”) for the suspension of the Ministers retraction of the first respondents’ appointment and the appointment of the third respondent as Sheriff for Pretoria North East pending the review of the decisions.
- 3.9 In the Minister’s answering affidavit in the urgent application, she stated that she had never retracted the first respondents’ appointment.¹
- 3.10 The urgent application was argued on 30 October 2025 before Kumalo J, who reserved judgment, which is still pending.
- 3.11 On 30 October 2025 and after argument before Kumalo J, the Board’s attorneys addressed correspondence to the first respondent’s attorneys demanding that the first respondent conduct a full and complete hand over of all court processes, documents and assets currently in his possession for the Pretoria North East

¹ Paragraph 21.6 of the answering affidavit [p01-98]

jurisdiction to the Court Manager ... by close of business tomorrow, 31 October 2025, being the last day of his lawful acting appointment.

- 3.12 The first respondent refused to comply with the Board's demand.
- 3.13 Pending the judgment of Kumalo J, the applicant launched an urgent *ex parte* application and obtained an interim order on 11 November 2025, which is the subject of this matter.
- 3.14 On 20 November 2025, the first respondent's criminal record was expunged in terms of section 271B of the Criminal Procedure Act 51 of 1977, which implies that the first respondent is no longer disqualified in terms of section 33(1)(h) to be issued with a fidelity fund certificate ("FFC").

LIS PENDENS

- 4. It was submitted by the first respondent that:² "The Board is moreover attempting to pre-empt the findings of Kumalo J in the urgent application and is thus acting contemptuously. The Board in this regard deals with the following disputed issues, which Kumalo J is called upon to deal with in the pending judgment:

- 21.5.1 my appointment as Sheriff for Pretoria North East "fell away"; I failed to meet the "fit and proper" criterion for appointment as Sheriff; and I am pre-emptively disqualified by statute from being issued with an FCC "(paragraph 7);

² Para 21.5 p01-97 Answering Affidavit

- 21.5.2 I have not been appointed as the Sheriff for Pretoria North East and I cannot perform the functions of Sheriff because I do not hold the requisite FCC for Pretoria North East (paragraph 10);
- 21.5.3 I have “evidently ... been dishonest” (paragraph 46);
- 21.5.4 My criminal conviction and my failure to disclose it to the Board “disqualifies [me] immediately” from issuing the office of Sheriff and being issued with a FFC (paragraphs 47, 48, and 55); and
- 21.5.5 My “conditional” appointment as Sheriff for Pretoria North East lapsed (paragraph 58).”

5. It was argued by the first respondent that the following requisites for a defence of *lis pendens* have been satisfied:

- 5.1 pending litigation between the same parties or their privies;
- 5.2 based on the same cause of action;
- 5.3 in respect of the same subject matter, which does not mean that the form of relief claimed must be identical.

6. The applicant contended that the application before Kumalo J concerns decisions taken or not taken by the Minister and has nothing to do with (a) the operation of a trust account, (b) the legality of performing the functions of a Sheriff without an FFC, and (c) the protection of trust monies under section 24.

7. It was further submitted by the applicant that even if the first respondent succeeds in the pending application before Khumalo J, he will still not have an FFC for Pretoria North East, nor will it cure his historical misrepresentations. The Board does not seek to pre-empt the application before Kumalo J.
8. It is trite that if an action is already pending between parties and the plaintiff brings another action against the same defendant on the same cause of action and in respect of the same subject-matter, it is open to the defendant to take the objection of *lis pendens*. Objection is usually taken by way of a plea in abatement .
9. The onus rests upon the party raising the defence to prove the requisites. Once the requisites have been established, a factual presumption arises that the second proceeding is *prima facie* vexatious. The party who instituted the second proceeding then bears the onus to convince the Court that the new proceeding is not vexatious. He must convince the Court that despite the fact that all the required elements are present, the balance of convenience and equality are in favour of allowing the case to proceed.
10. On a conspectus of all the facts before me, I conclude that the grounds on which the applicant seeks the relief in this matter are the same grounds and or disputed issues that Kumalo J is called upon to deal with in the pending judgment.
11. Although the relief claimed in this matter is not identical as the relief claimed before Kumalo J, it is not a requirement for the defence of *lis pendens*.

12. I am also of the view that this matter is based on the same cause of action and in respect of the same subject matter that was argued before Kumalo J.
13. The proceedings before Kumalo J involved determination of issues that is necessary for the determination of the present case and is substantially determinative of its outcome.
14. In the circumstances, the following order is made:
1. The *rule nisi* granted on 11 November 2025 is discharged.
 2. The application is dismissed with costs, which costs are to be taxed with scale B.



Strijdom JJ

Judge of the Hight Court, South Africa
Gauteng Division, Pretoria

Appearances:

For the applicant:	Brenton Joseph SC Kuvashkir Naidoo
Instructed by:	Herold Gie Attorneys
For the first respondent:	HF Oosthuizen SC
Instructed by:	Krynauw Inc Attorneys