REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: **2023-024319**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

In the matter between:

THE SHERIFF OF THE HIGH COURT

SANDTON Applicant

And

G[...] H[...] (PTY) LTD Claimant

In re:

M[...] F[...] M[...]
[Identity Number: 9[...]] Execution Creditor

And

F[...] M[...]
[Identity Number: 8[...]] Execution Debtor

And

FIRST NATIONAL BANK LIMITED Garnishee

WRITTEN REASONS FOR THE ORDER

KHABA AJ

[1] This matter concerns an opposed interpleader proceedings launched by the Sheriff of the High Court (Sandton) pursuant to the attachment of funds held in the execution debtor's First National Bank seven-day notice account *("FNB savings account")* with account number 7[...], in favour of the execution creditor for arrear *pendente lite* maintenance in terms of Rule 43 and non – compliance by the execution debtor with the court order handed down by the Honourable Justice Senyatsi J on 22 January 2024. *("the Justice Senyatsi order").* On 3 December 2025, I delivered my order without the reasons. On 15 December 2025, the claimant applied in terms of Rule 49(1)(c) for written reasons to be provided in respect of the order that I delivered, with specific reference to the findings of fact and/or rulings of law relied upon in granting such order. These are the reasons for the order.

[2] Before setting out the issues and the reasoning, it is necessary to record the unsatisfactory procedural context. Counsel appearing for the claimant, filed no heads of arguments. Upon enquiry from counsel of his failure to file his heads of arguments and to comply with the provisions of the Practice Manual read together with the Consolidated Directive 1 of 2004 as amended of this Division, he informed the court that he was only briefed on the day of the hearing of this application, hence the non-compliance with the practice directives. This conduct is contrary to the Practice Directive of this Division and unacceptable. Counsel for the claimant *"practice note"* sought not to argue the merits of the interpleader, but instead to have the matter removed from the roll on the basis of an alleged incorrect enrolment of the matter.

This procedural point was not substantiated and was, in my view, a distraction from the real issues that required determination. The only substantive arguments and written submissions before court were those of the execution creditor who sought the final dismissal of the interpleader. In the absence of any substantive legal of factual challenge from the claimant's side, the court was compelled to decide the matter on the papers and arguments as presented.

The Parties and the Factual Background:

[3] The applicant is the Sheriff of the High Court (Sandton), who brought this application in terms of Rule 58(1) of the Uniform Rules of Court.

[4] The claimant is G[...] H[...] (Pty) Ltd, represented by its sole director Ms. R[...] M[...], the mother of the execution debtor, Mr. F[...] M[...]. The claimant is the sole director of the company.

[5] The execution creditor is Ms. M[...] F[...] M[...] (born O[...]). Ms. M[...] is the judgement creditor in underlying divorce and maintenance proceedings.

[6] The execution debtor is Mr. F[...] M[...], the judgment debtor in the said proceedings.

[7] The Garnishee is First National Bank Limited *("FNB")*, where the disputed account is held. The dispute centres on funds held in an FNB savings account, with account number: 7[...] *("the account").* The execution creditor, having obtained a Rule 43 maintenance order granted against the execution debtor by the Honourable Justice Seyantsi J on 22 January 2024.

The following chronology, distilled from the affidavits and documents filed by the execution creditor, is largely undisputed and forms the factual matrix of this dispute:

[8] On 28 July 2023, the execution debtor filed a financial disclosure form *("FDF")* in the Rule 43 proceedings. In his sworn statement he listed the FNB account, with account number: 7[...] as his personal asset. There was no mention of any liability to, or cession in favour of the claimant or any other entity in respect of this account.

[9] On 22 January 2024, the Honourable Justice Seyantsi J granted a Rule 43 application and ordered the execution debtor to make payment of maintenance to the execution creditor in the amount of R 45 000.00 monthly for herself and the parties child. The execution debtor was further ordered to make payment in the amount of R 50 000.00 towards the execution creditor's legal costs.

[10] On 13 February 2024, the execution debtor filed an application for leave to appeal the Rule 43 order granted by the Honourable Justice Senyatsi J despite such orders being generally unappealable in terms of section 16(3) of the Superior Court's Act 10 of 2013.

[11] On 31 March 2024, the execution creditor caused a writ of execution to be issued attaching the execution debtor's FNB savings account in the amount of R 48 154.40. The attachment was effected on 4 April 2004.

[12] On 12 April 2024 a writ of execution was issued by this court against the execution debtor's FNB account or any other assets of the execution debtor for the realisation of the sum of R 103 532.00 for arrear Rule 43 maintenance for a period of February 2024, in pursuance of the Honourable Justice Senyatsi J, Rule 43 court order.

[13] The FNB savings account was disclosed as a personal asset and listed in the execution debtor's financial disclosure form, which was delivered on 28 July 2023 during the Rule 43 proceedings wherein the execution creditor sought, *inter alia*, maintenance in respect of herself and the parties' son.

[14] Given the execution debtor's demand and advice to FNB that the Rule 43 order was subject to an application for leave to appeal, despite such orders being generally

unappealable. FNB required the execution creditor to obtain a court order to retain the funds pending the outcome of the application for leave to appeal. This gave rise to an urgent application being launched by the execution creditor to interdict any transacting in the execution debtor's FNB account.

[15] On 16 May 2024, after an opposed hearing wherein all issues relating to the FNB savings account and the writ of execution in respect of the attachment of the funds in the FNB account were ventilated, an order was granted by the Honourable Justice Nharmuravate J *("the Nharmuravate J order"),* in terms of which FNB were interdicted from releasing any monies from the execution debtor's FNB banking account with account number 7[...] pending the application for leave to appeal.

[16] Upon confirmation by the Honourable Justice Senyatsi J that no appeal lies, in the defective leave to appeal application against a Rule 43 order, the execution creditor's attorneys of record informed FNB and requested that the interdict funds be paid into their trust account in respect of the execution debtor's arrears and contempt of the order of Senyatsi J.

[17] Before FNB could attend to payment of the funds held in the FNB savings account, the funds were intercepted by an interpleader, pursuant to the claimant's claim of a cession over the FNB savings account.

[18] At no stage during the Rule 43, nor in the FDF, nor in the urgent interdict proceedings did the execution debtor allege that the funds were subject to a cession nor did the execution debtor raise any liability to the claimant herein.

[19] The claimant alleges that on 27 August 2024 (post the hearing of the Rule 43 application, the Honourable Justice Seyantsi J order, the issuing of the writs, the urgent interdict application and the Honourable Justice Nharmuravate J order), a written cession agreement was entered into between the claimant and the execution debtor, in terms of which the execution debtor ceded all the execution debtor's rights title and interest in and to the shareholding of V[...] S[...] S[...] (Pty) Limited and all the

execution debtors rights and interests in the FNB savings account to the claimant, as security for an acknowledgment of indebtedness by the execution debtor in favour of the claimant.

[20] On 21 October 2024 the applicant informed the execution creditor attorneys that the claimant claimed funds in the FNB account by way of the claimant holding a cession over funds. This was the execution creditor first knowledge about the alleged cession.

[21] It is further imperative that to note that at no time during the Rule 43 proceedings, inclusive of the delivery of the execution debtor’s financial disclosure form deposed to under oath, which included financial statements relating to the execution debtor nor, during the urgent interdict application was any averment made about the alleged cession.

[22] On 30 October 2024, the applicant, faced with these competing claims, launched a notice in terms Rule 58 (1) of the Uniform Rules of Court, advising of two parties adverse claims over certain movable property under attachment. The notice called upon the claimants to lodge the particulars of their respective claims.

Evaluation of the Evidence and Submissions:

[23] The execution creditors’ claim derives from court orders and writs of executions that were perfected through attachments before the cession agreements came into existence. A creditor who has lawfully attached property in execution obtains a real right *(a ius in re aliena)* which takes precedence over subsequent personal rights created by the debtor. The cession, even if valid *inter partes*, cannot defeat the prior perfected real right of the execution creditor.

[24] The execution debtor failed to disclose, in his financial disclosure form of 28 July 2023 and throughout the subsequent litigation, including an urgent interdict application in May 2024 concerning this every account. The execution debtor

consistently represented the account and its funds as his personal asset. The execution debtor disclosed liabilities but made no mention whatsoever of any indebtedness to the claimant or any cession of the account.

[25] The cession emerged only after the confirmation by the Honourable Justice of Senyatsi J order, that no appeal lies along with confirmation of the invalidity of the leave to appeal. The alleged cession agreement was only concluded on 27 August 2024 months after the attachment. The execution creditor first learned of this cession agreement from the applicant *("the Sheriff")* on 21 October 2024.

[26] The cession agreement purports to cede the execution debtors rights in the shareholding of V[...] S[...] S[...] (Pty) Ltd as security for a debt. It pertains only to the cession of the right, title and interest in and to his shareholding of V[...] S[...] S[...] (Pty) Ltd. Crucially, it contains no clause expressly ceding the right to the specific FNB account in question. The attempt to extend the cession to this account is an after the fact interpretation and it is an impermissible and *ex post facto* reinterpretation.

[27] The claimant could not specify the amount ceded, stating vaguely it was "the entire contents" of the account, further undermining the credibility of a genuine security arrangement. Counsel for the respondent relied on In ***Ebrahim v Deputy Sheriff Durban and Another***[20], Henning J remarked as follows:

> *"The test whether a claimant has discharged the onus of proving his ownership to movable property which is not in his possession is whether, in a result, the probabilities are balanced in his favour. The strength of the evidence which he has to produce to succeed depends on the circumstances of the particular case. In an interpleader suit, for example, the judgment creditor may be at a grave disadvantage because he is not in a position to adduce evidence to rebut that of a claimant who says that the disputed property is his, although he agreed to let the judgment debtor have possession of it. Apart from other considerations, the Court would no doubt in such a case require, the claimant to produce clear and satisfactory proof of his ownership. On the other hand, where the source of rebuttal evidence is available to and is utilised by the party who disputes the claimant's claim, the position appears to be different; for then the disadvantage to which I have referred largely disappears. I might*

mention one further factor which might of particular importance in deciding whether the claimant's evidence should be approached with more than normal caution, and that is the nature of the article of which the ownership is in dispute."

[28] The claimant's case as set out in her affidavit is scant, on detail and largely defensive. It asserts the validity of the cession and claims the funds virtue thereof. It denies collusion and labels the execution creditors allegations as defamatory. The claimant affidavit is threadbare. It relies on the assertion of the cession and offers no credible explanation as to why the cession was never disclosed by the execution debtor in multiple court proceedings were his financial position was directly in issue; why the cession post-dates the attachment; The discrepancy between the subject matter if the written cession(shareholding) and the asset now claimed (bank account(s).

[29] The trite law of cession, requiring a genuine intention *(animus transferredi and animus acquiredi)* to transfer a right. The enquiry into intention is factual, and a feigned or simulated cession must be disregarded.

[30] The cession agreement, properly interpreted, does not encompass the bank account. The attempt to argue otherwise contradicts the execution debtors own sworn disclosure that the account was his personal savings, unrelated to V[...] S[...] S[...] (Pty) Ltd.

[31] A claimant must produce clear and satisfactory proof of ownership, especially where circumstances invite suspicion. At the hearing of this matter, counsel for the claimant oral submissions did not engage substantively with the merits of the interpleader, the validity of the cession, or factual chronology.

The Rulings of Law and Application to the Facts:

[32] The points raised by counsel for the claimant were unmeritorious and appeared dilatory. The matter was properly enrolled for hearing. Counsel's failure to file heads

of arguments on merits, despite the Practice Directives, left the court with no substantive counter argument to consider. A court cannot countenance a strategy of avoiding a merits hearing by raising weak procedural points at the eleventh hour.

[33] The writs of execution were issued, and the attachment was lawfully effected in April 2024. This created a secure real right in favour of the execution creditor over the specific funds. The purported cession of August 2024, being subsequent in time, cannot defeat this prior real right. This point alone is dispositive of the interpleader in favour of the execution creditor.

[34] As a matter of contractual interpretation, the cession agreement is unequivocal. It cedes rights in the *shareholding of V[...] S[...] S[...] (Pty) Ltd*. It makes no mention of ceding rights to a specific FNB bank account. The claimant's attempt to stretch the agreement to cover the bank account is legally untenable. There is no evidence linking this personal savings account (explicitly declared as such the execution debtor) to the shareholding of V[...] S[...] (Pty) Ltd suppliers.

[35] A cession must reflect the genuine intention of the parties to transfer a right. The surroundings circumstances in this case overwhelmingly point to the lack of genuine intention to cede the bank account funds at the time the cession agreement was signed. The timing (post attachment), the non- disclosure in prior legal proceedings all strongly indicate that the cession was contrived as a stratagem to shield the funds from execution. I found that, to the extent the claimant alleges the cession covers the account, it is a simulation transaction and cannot be upheld.

[36] The execution debtor's consistent sworn non-disclosure of this *"debt"* and security in multiple court proceedings is damning. It is inconceivable that a genuine creditor holding security over a major asset would not have been disclosed in the financial disclosure form or raised as a defence when those very funds were attached. The timing is highly suspicious, and indicative of a stratagem concocted to prevent the release of funds to the execution creditor. The court must look at the true intention of the parties. The true intention here was not to create a genuine security cession but

to simulate a transaction to place the funds beyond the reach of the execution creditor. This simulation must be disregarded.

[37] The totality of the circumstances overwhelmingly supports the execution creditor's contention that the cession is not genuine. Even if the intention were genuine, the cession agreement is clear and unambiguous. It cedes rights in the shareholding of V[...] S[...] S[…] (Pty) Ltd. It does not mention the FNB account. The expression *unius est exclusio alterius* principle applies. The account is not subject to this cession.

[38] A claimant in an interpleader must prove its claim with clear and satisfactory evidence, particularly where rebuttal evidence points to contrivance. The claimant provided only a bare cession agreement, which on its face does not cover the bank account, and a bald assertion of its validity. The claimant provided no explanation for the non-disclosure, the timing, or the relationship between the ceded shareholding and the bank account. It failed to rebut the powerful inference of simulation drawn by the execution creditor. Consequently, it failed to discharge its onus.

[39] The execution creditor has demonstrated, on a balance of probabilities, that her claim to the funds and the writs of execution, which were perfected by attachment prior to the purported cession, is superior and valid. The claimant has failed to discharge the evidentiary burden of proving a valid, pre-existing right to the attached funds. Consequently, the execution creditor was the successful claimant in the interpleader.

Conclusion:

[40] For the reasons set out above, I found that the claimant has no valid claim to the funds held in FNB account 7[...] that can supersede the prior protected right of the execution creditor. The interpleader application therefore served no purpose and lacked merit, and the execution creditor was entitled to the attached funds. There were no genuine competing claims to justify the applicant's *("the Sheriff)* continued

holding of the funds or the court's intervention to decide between the two adverse claimants.

[41] The attempt to frustrate the execution creditor's lawful claim through what appears to be a collusive and contrived cession warranted a punitive costs order. The claimant and the execution debtor acted in concert to undermine the court process. It was just and equitable that they be held jointly and severally liable for the costs on the attorney and client scale, which included cost of counsel on scale C. Costs should follow the result. There were no reason given as to why the execution creditor should not be entitled to her costs.

Order:

[42] Accordingly, I made the following order:

1. The interpleader is dismissed.

2. The claimant and execution debtor, jointly and severally, to pay the execution creditors costs of the application on the attorney and client scale, including the costs of counsel on Scale C

KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: The written reasons for the order delivered in this matter on 03 December 2025, are digitally delivered by circulation to the parties' representatives by email and by uploading them to the electronic file of this matter on CaseLines. The date of the delivery of these reasons is deemed to be 13 January 2026.

Counsel for the Claimant:	Adv. N Riley
Instructed by:	Michael Marshall Attorneys
Email:	mikem@michaelmarshallattorneys.com

Counsel for the Execution Creditor:	Adv. L Grobler
Instructed by:	Shaheed Dollie Inc
Email:	nabeelah@sdollieinc.co.za

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Date of request for reasons:	15 December 2025
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