



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 245823/2025

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
	
24 FEBRUARY 2026	
.....	
SIGNATURE	DATE

In the application of:

THE SOUTH AFRICAN BOARD FOR SHERIFFS

Applicant

and

JOHANNES TSEKE MPHAHLELE

Respondent

In re:

JOHANNES TSEKE MPHAHLELE

Applicant

and

THE SOUTH AFRICAN BOARD FOR SHERIFFS

First Respondent

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Second Respondent

NAMEDI TSHEPO MPHAHLELE

Third Respondent

LEAVE TO APPEAL: JUDGMENT

LABUSCHAGNE J

[1] On 22 January 2026 I granted an order in the urgent court in favour of Mr Mphahlele (respondent in this application) the substantive part of which reads as follows:

“2. Pending the finalisation of the relief sought in Part B of the application, as well as Part B of the application under case number B6834/2025, the first respondent is ordered to forthwith:

2.1 Issue the applicant with a Fidelity Fund Certificate for Pretoria North East High and Lower Courts; and

2.2 Remove any reference on the first respondent’s website to the third respondent as the Sheriff for Pretoria North East High and Lower Courts.

3. The first respondent is ordered to pay the costs of this application on Scale C.”

- [2] The reference in the order to the first respondent is a reference to the Board for Sheriffs, the applicant for leave to appeal. The application for leave to appeal is aimed at the whole order and judgment.
- [3] The application was set down for hearing on Monday, 15 February 2026. The Acting Deputy Judge President was notified that Mr Mphahlele brought an application for contempt for non-compliance with the court order and the contempt application was also referred to this court.
- [4] On 15 February 2026, when it became apparent that the contempt application was not ripe for hearing, I granted directives that affidavits be exchanged and that the matter be argued together with the application for leave to appeal on 20 February 2026.
- [5] In this judgment I deal only with the application for leave to appeal, although I will refer to certain contentions advanced by the Board of Sheriffs in correspondence referred to in the application for contempt. The reason why I do so would be apparent from the order below.
- [6] Mr Mphahlele was in possession of a Fidelity Fund Certificate which would expire at the end of December 2025. He launched an application on 15 December 2025 to be provided with a Fidelity Fund Certificate for 2026. On 22 January 2026 such an order was granted for the reasons which appear from the judgment that I delivered in the main application.

CORRESPONDENCE AFTER JUDGMENT

[7] On 28 January 2026 the Board for Sheriffs addressed correspondence to Mr Mphahlele's four deputy sheriffs, advising them as follows:

- “2. Please be informed that (Mr Mphahlele) was removed from office as sheriff by the Minister with effect from 20 December 2025.
3. The (Board) further advises that (the third respondent) was duly appointed as the sheriff for the Pretoria East North East jurisdiction on 28 January 2025.
4. In light of the above and in terms of the legislative and regulatory framework governing the appointment and authority of sheriffs and deputy sheriffs, no deputy sheriff is authorised to serve or accept service of legal process under (Mr Mphahlele's) authority as Mr Mphahlele is not in possession of (a Fidelity Fund Certificate). Any such conduct would be unlawful and without legal authority.
5. You are accordingly instructed to merely cease all operations, including the service and acceptance of process, purportedly under (Mr Mphahlele's) authority.”

[8] Mr Mphahlele had resigned from the position of sheriff of Lephalale (to which the letter of the Minister of 20 December 2025 relates) as a condition for his appointment as the sheriff for Pretoria North East. On 03 February 2026 the Minister addressed a letter to Mr Mphahlele, stating inter alia:

“For the avoidance of any doubt, I hereby confirm that you have been removed from the Office of Sheriff for all jurisdictions within the Republic of South Africa.

The Office of Sheriff is one of high trust and integrity. A finding that an individual is no longer a fit and proper person to hold the office of Sheriff in one jurisdiction, resulting in formal removal, renders that individual by fact, ineligible to hold office in any other jurisdiction.”

[9] In the application of 2 February 2026 for leave to appeal the judgment, the Board for Sheriffs contends that the judgment is both moot and legally incompetent. This contention is based on the fact that the Minister’s letter of 20 December 2025 removing Mr Mphahlele as sheriff for Lephalale on grounds that he is not fit and proper, was not disclosed to me during the hearing of the main application. The contention is that the decision to remove Mr Mphahlele stands as an administrative action in terms of the **Oudekraal** principle and therefore renders my judgment moot.

[10] It bears noting that the letter of the Minister of 20 December 2025 was not disclosed to me in the papers that served as the basis for the judgment that I delivered on 22 January 2026. As the decision to remove Mr Mphahlele only took place after the application had been launched, it was incumbent upon the Board for Sheriffs to disclose this letter to me. If in law Mr Mphahlele had been removed as Sheriff from all jurisdictions, as the Minister contends, that would have been an absolute bar to an order directing the Board to issue a Fidelity Fund Certificate to Mr Mphahlele. This fact did not serve before me.

- [11] When the main application was argued before me in the urgent court, it was common cause, as confirmed by former counsel for the Board for Sheriffs, that Mr Mphahlele's appointment as Sheriff for Pretoria North East had not been retracted. This had been the position of the Board for Sheriffs in the proceedings before Khumalo J in September 2025 in which Mr Mphahlele sought a suspension of a purported retraction of his appointment. There is no judgment in that matter yet.

FURTHER EVIDENCE ON APPEAL: SECTION 19(1)(b) THE SUPERIOR COURTS ACT, 10 OF 2013

- [12] In January 2026, it was still the position of the Board, as conveyed to the court by former counsel, that there had been no retraction. The Board was however aware at the time of arguing this matter, of the Minister's removal letter, but chose not to disclose it. The Board for Sheriffs now wishes to introduce evidence to a court of appeal regarding this blunder on its part and will seek leave from the court of appeal to introduce the letter of the Minister of 20 December 2025.
- [13] The difficulty that the Board for Sheriffs will face in introducing evidence on appeal an appeal, is that it will seek to introduce evidence which was in its possession all along, and which it deliberately chose not to disclose to this court.
- [14] However, as the removal decision of 20 December 2025 stands as an administrative action, and as it affects the enforceability of the order that I have granted, I regard it as being in the interests of justice to grant leave to

appeal to enable the Board for Sheriffs to try and persuade a court of appeal whether it will accept on appeal further evidence as suggested.

- [15] On the facts on which this matter was decided the Board for Sheriffs would not have prospects of success on appeal (section 17(1)(a)(i). However, in light of the removal decision being the intended subject of an application to place further evidence before a court of appeal in terms of section 19(1)(b), I am satisfied that there is a compelling reason why this appeal should be heard (Sec 17(1)(a)(ii)).

COSTS

- [16] The conduct of the Board for Sheriffs in this regard is not without consequence. Sheriffs are a vital component of the administration of justice in order to give effect to court orders. The Board for Sheriffs supervises sheriffs. The conduct of the Board for Sheriffs in failing to disclose the decision of the Minister to remove Mr Mphahlele on 20 December 2025, is deserving of a rebuke. The case before this court was advanced on incomplete, even incorrect facts, which facts were withheld by the Board. It now seeks to blame Mr Mphahlele for the non-disclosure.
- [17] Although I intend granting leave to appeal paragraph 2 of the order granted, for the reasons stated above, leave to appeal the cost order is refused.
- [18] I consequently make the following order:

1. The Board for Sheriffs is granted leave to appeal to the SCA against paragraph 2 of the order of 22 January 2026.
2. Leave to appeal against paragraph 3 of the aforesaid order is refused.
3. Notwithstanding partial leave to appeal having been granted, the Board for Sheriffs shall pay the costs of this application on Scale C.

[REDACTED]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT : Adv Oosthuizen SC

INSTRUCTED BY : Krynauw Inc

COUNSEL FOR RESPONDENT : Adv Joseph SC

INSTRUCTED BY : Herold Gie Attorneys