



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-245823

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.


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24 FEBRUARY 2026

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SIGNATURE

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DATE

In the application of:

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

LETHUKHUTHULA MARK MORGAN

Fourth Respondent

JUDGMENT

LABUSCHAGNE J

[1] On 22 January 2026 I granted an order in the urgent court in favour of the applicant, the operative part of which reads:

“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] Due to non-compliance with paragraph [2] of the order, Mr Mphahlele brought an application against the Board for Sheriffs in which he seeks the following relief on an urgent basis:

“2. It is declared that the first respondent is in contempt of paragraph [2] of the order granted on 22 January 2026 by Labuschagne J under case number 245823/2025 (“the order”).

3. It is ordered that the first respondent pays a fine in the amount of R100 000.00, which is wholly suspended on condition that the first respondent complies with the order within one day of the date of this order.
4. In the alternative to prayers 2 and 3 above, it is declared that:
 - 4.1 The order is and remains valid and enforceable;
 - 4.2 The operation and execution of the order is not suspended pending the decision of any application for leave to appeal or appeal in respect thereof; and
 - 4.3 The first respondent remains obliged to comply with the order.
5. Adv Lethukhuthula Mark Mogan is joined in his personal capacity as the fourth respondent.
6. The fourth respondent is ordered to ensure that the first respondent complies with the order and this court order.
7. The applicant is authorised to approach the court for appropriate relief on these papers, duly amplified, in the event that the order and this court order are not complied with by the first and/or fourth respondents.
8. Pending the final determination of the relief sought in Part B of this application as well as Part B of the application under case number

B6834/2025, the second respondent's purported decision to remove the applicant as the sheriff for Pretoria North East and Lower Courts is suspended.

9. The first respondent is ordered to forthwith and unconditionally withdraw annexure JM41A, JM41B, JM41C, JM41D and JM53 to the founding affidavit by addressing correspondence in this regard to the addressees of the said letters and the circular.
10. The first respondent is ordered to pay the costs of this application on the scale as between attorney and client.
11. Further and/or alternative relief."

[3] It bears noting that what the Acting Deputy Judge President referred to me was the contempt application, to be heard together with the application for leave to appeal. When the matter was called on Monday, 16 February 2026, neither the leave to appeal nor the contempt application was not ripe for hearing and they stood down for simultaneous hearing on 20 February 2026.

[4] In light thereof that I directed that the application for leave to appeal and the contempt application be heard simultaneously, the respondents in the application for contempt did not deal with relief aimed at suspending the order of the Minister removing Mr Mphahlele as Sheriff, as referred to in paragraph 8 of the notice of motion.

- [5] Paragraphs 8 and 9 of the notice of motion are not related to the primary relief, which is based on contempt, but in effect constitute Part A of review proceedings of the decision to remove Mr Mphahlele as Sheriff on 20 December 2025.
- [6] It suffices to state that paragraphs 8 and 9 are not ripe for hearing before me and, as indicated in open court, I will deal with the application pertaining to contempt of court in this judgment.
- [7] It follows that paragraphs 1 (insofar as it relates to paragraphs 8 and 9) as well as paragraphs 8 and 9 of the notice of motion are postponed sine die. The applicant may enrol these prayers as soon as the papers are ready for argument.
- [8] When the matter was argued on 20 February 2026, it was apparent that both Mr Mphahlele and the Board of Sheriffs were aware of the decision of the Minister to remove Mr Mphahlele as sheriff for Lephalale in terms of a letter dated 20 December 2025.
- [9] I quote this letter in full. It is dated 20 December 2025, is signed by the Minister of Justice and Constitutional Development, and is directed to the applicant, Mr Mphahlele. It reads:

“Dear Mr Mphahlele

Re: Decision on removal from office: Sheriff for Lephalale High and Lower
Courts

I refer to your letter dated 02 December 2025 which serves as a response to my notice of proposed suspension and/or removal from office issued on 21 November 2025.

I have noted your explicit statement that “it will accordingly not serve any purpose to make written representations” regarding your proposed suspension or removal. I accept this as a formal waiver of your right to make further representations on this matter. Accordingly, I proceed to make my final decision based on the facts at my disposal.

Your assertion that you have “resigned” to assume the position of sheriff for Pretoria North East is founded on the fundamental misconception of the legal status of that appointment. The offer of appointment extended to you on 15 September 2025 was not absolute. It was subject to strict suspensive conditions which had to be fulfilled before the appointment could vest. Specifically, the appointment could vest. Specifically, the appointment letter stated:

- That you “forthwith relinquish your permanent appointment for Lephalale HL”; and
- That you “are in compliance for the necessary requirements to be issued for the Fidelity Fund Certificate (“FFC”).

Our records demonstrate that you failed to fulfil these material conditions:

- You failed to relinquish for post at Lephalale “forthwith” (immediately). Instead you retained the post for months, only attempting to tender a

conditional resignation on 02 December 2025. This failure is sufficient to render the suspensive condition [unclear].

- You are statutorily disqualified from holding a FFC in terms of section 33(1)(h) of the Sheriffs Act, 90 of 1986 ("the Act") due to your previous criminal conviction. Consequently, you cannot meet the conditions regarding compliance with FFC requirements.

As these suspensive conditions were not met, the appointment for Pretoria North East lapsed by operation of law and never came into legal effect. You do not hold that office, and your attempt to use it as a basis for resignation from Lephalale is legally incompetent. The South African Board for Sheriffs has formally notified me that your FFC for Lephalale was cancelled on 24 November 2025.

Furthermore, my office has been provided with evidence that, notwithstanding the fact that you hold no valid FFC for any jurisdiction, you have continued to perform the statutory functions of the sheriff. This includes the organising and advertising of sales in execution. I must remind you that the performance of such functions without a valid FFC is a criminal offence under section 30(1)(a) as read with section 60(1)(a) of the Act. This continued disregard for the law constitutes an aggravating factor and serves as definitive proof that you are not a fit and proper person to occupy the office of a sheriff, an office that demands the highest standard of integrity and legal compliance.

In the circumstances, I am satisfied that grounds exist for your removal. I hereby remove you from the Office of Sheriff for Lephalale High and Lower Courts with immediate effect, in terms of section 4(3)(a) of the Sheriffs Act.

Since you were appointed to the South African Board for Sheriffs in terms of section 9(2)(a) of the Act (representing the sheriffs' profession), please be advised that your removal from the Office of Sheriff be due immediately cease to hold office as a board member in terms of section 12(1)(d) of the Act.

You are directed to surrender all office files, trust account records and court processes to the court manager and the board's representative immediately.

Yours sincerely

Ms Mmamoloko Kubayi, MP

Minister of Justice and Constitutional Development

20 December 2025"

- [10] The Board for Sheriffs was aware of this notice of removal at the time that the main application was argued before this court in January 2026 but failed to disclose it. This applies equally to the applicant. However, the letter only surfaced after the applicant had already initiated the application that gave rise to the judgment on 22 January 2026.

[11] The Board for Sheriffs, was obliged to take steps to clarify its legal position. This required it to apply to court for a declaration of its rights and obligations. The correspondence indicated that the Board for Sheriffs was aware of this obligation and in fact advised the attorneys for the applicant that it intended doing so. It later recanted, describing such exercise as a waste of State resources.

[12] In Circular 2 of 2026 the South African Board for Sheriffs, on 09 February 2026 circulated the following to the Judge President, the Registrar of its Division, Clerks of the Magistrates' Court, Pretoria and various other related entities the following pertaining to the judgment:

“With specific reference to the judgment of the Gauteng Division of the High Court (per Labuschagne J) delivered on 22 January 2026 which orders the Board to issue Mr JT Mphahlele with a Fidelity Fund Certificate, the Board confirms that this judgment is subject to leave to appeal. Furthermore, the Board has received legal advice that Mr JT Mphahlele's removal renders the said judgment moot and unenforceable as the Board cannot issue a FFC to a person that has been removed from the Office of Sheriff.”

[13] From correspondence of the Board of Sheriffs it is however apparent that it was aware that it should have challenged the validity of the court order for the very reasons it advances in the quoted paragraph. It has failed to do so. This application is the result of that failure.

[14] One must bear in mind that sheriffs are an executory arm of the State in the enforcement of court orders. Organs of State are obliged to enhance the

dignity of the courts by complying with court orders. This applies particularly to the Board of Sheriffs, who supervises a profession whose primary obligation is to give effect to court orders. To shirk its constitutional obligation by describing an approach to court as a waste of state resources is deeply concerning.

[15] It is demonstrative of a Board that has formed its own view of the binding effect of the court order that I granted on 22 January 2026 and has decided to ignore it for a variety of reasons, contending that it is moot and not legally competent. This equates to a contumacious disregard of a court order when the obligation to challenge it is apparent.

[16] The fact of the removal of Mr Mphahlele, as is evident from the letter of 20 December 2025 on grounds that include the fact that he is not fit and proper for office, stands as an administrative action until suspended and/or set aside. The legality and rationality of the removal decision, will have to be decided once the papers are complete.

[17] For the benefit of the Board for Sheriffs the following needs to be stated categorically:

17.1 An order of court against the Board for Sheriffs is binding in terms of section 165(5) of the Constitution, unless it is challenged by the Board. This is an incident of both the Constitution and the rule of law.

17.2 The supine response of the Board for Sheriffs in this matter, to the validity of the court order, is in breach of its constitutional obligation to comply with the court order or to challenge it.

[18] There are three requirements for contempt of court proceedings:

18.1 The first is the existence of a court order.

18.2 The second is knowledge of the part of the respondent of such court order.

18.3 The third is wilful disobedience

[19] The first two elements are established in these proceedings.

[20] The difficulty in this matter lies with the establishment of wilfulness in not complying with the court order.

[21] There are two considerations relevant to the question of wilfulness:

21.1 The first is that the Board for Sheriffs believes that the application for leave to appeal has suspended the court order in question. Mr Mphahlele counters that the order in question is an interim order which is not final in effect and is not suspended (section 18(2) of the Superior Courts Act, 10 of 2013). I do not deem it necessary to resolve this issue as the mere fact that the Board for Sheriffs believes that the order was suspended by the application for leave to appeal (rightly or wrongly), indicates that non-compliance is not per se

wilful. This is a conclusion to which I come reluctantly, as legal advice that is patently in conflict with sec 165(5) of the Constitution cannot in principle be reasonable.

21.2 The second is the so-called mootness of the court order in light thereof that the Minister had removed Mr Mphahlele as sheriff. The subjective belief that his removal by the Minister rendered the court order moot, means that non-compliance for the court order does not rise to the level of wilfulness.

21.3 In the premises the application must fail. That is, however, not the end of the matter.

COSTS

[22] The Board of Sheriffs is obliged to act constitutionally when it comes to compliance with court orders. As stated above, its conduct in these proceedings falls short of what is expected of it.

[23] Had the Board for Sheriffs acted in terms of its belief that the court order was moot and/or not legally competent, by challenging the court order head-on in court proceedings, this contempt application would not have been necessary.

[24] The Board for Sheriffs cannot shirk its constitutional obligation to comply with court orders pertaining to the Board, unless they are challenged, by citing legal advice. The issue is governed by the Constitution in section 165(5) and the

legal advice referred to can merely motivate the basis upon which a court order may be challenged.

CONCLUSION

[25] For the reasons that I have set out supra, I am not persuaded that the applicant is entitled to relief based on contempt. By equal measure, this court is disappointed by the unconstitutional conduct of the Board for Sheriffs for the reasons advanced supra.

[26] In the premises I make the following order:

1. Prayers 2, 3, 4, 5, 6 and 7 of the notice of motion are dismissed.
2. Prayers 1, 8, 9 and 10 are postponed sine die.
3. No order as to costs.

— [REDACTED]
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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