

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2026-096245

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
12 May 2026	
DATE	SIGNATURE

In the matter between:

THE SOUTH AFRICAN BOARD FOR SHERIFFS

Applicant

and

JOHANNES TSEKE MPHAHLELE

First Respondent

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Second Respondent

NAMEDI TSHEPO MPHAHLELE

Third Respondent

JUDGMENT

LENYAI J

- [1] This is an urgent application in terms of Rule 6(12),¹ in which the Applicant (The South African Board for Sheriffs ("the Board")) seek the following relief:
- (a) a declaratory order that the first respondent does not, as at the date of hearing, hold a Fidelity Fund Certificate ("FFC") under the Sheriffs Act,² and that his performance of any sheriff function without an FFC is unlawful and an offence under sections 30(1)(a) and 60(1)(a) of the Act;³ and
 - (b) Interim interdict, pending the final determination of the proceedings under Case Numbers B6834/2025 and 245823/2025 (and any appeal).
- [2] Neither the second respondent nor the third respondent has entered an appearance to oppose these proceedings. The application is therefore opposed solely by the first respondent.

Urgency

- [3] Rule 6(12)⁴ provides that—
- (a) "In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.
 - (b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course."

¹ the Uniforms Rules of Court.

² 90 of 1986 (hereinafter referred to as the Sheriffs Act)

³ the Sheriffs Act (n 2) above.

⁴ the Uniform Rules of Court (n 1) above.

- [4] In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W),⁵ the court stated that —

“The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.”

- [5] In the matter beforehand, the applicant has submitted that the urgency arises on four cumulative issues namely:

- (a) each day of continuation of performing the duties as a Sherriff without a FFC by the first respondent is a fresh offence under sections 30(1)(a) and 60(1)(a) of the Sheriffs Act;
- (b) Third-party litigants and execution creditors are exposed;
- (c) the Board's statutory mandate under section 7 and Chapter III is eroded daily; and
- (d) The underlying proceedings cannot deliver prospective relief in time.

- [6] Based on the above submissions, I am satisfied that the Applicant has established urgency. It remains uncertain when the underlying proceedings will be finalised, thereby leaving third-party litigants and execution creditors in a vulnerable and exposed position. Pending the final determination of those proceedings, the continued performance of sheriff functions without a valid Fidelity Fund Certificate would, on the Applicant's case, constitute an ongoing contravention of the Sheriffs Act. The urgency in the present matter is not self-created, particularly in light of the numerous steps taken by the Board to resolve the dispute through non-curial means before approaching the Court. In the circumstances, this Court is satisfied that urgency has been adequately established.

⁵ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137 E-F.

Contravention of Section 30(1)(a) and 60(1)(a) of the Sheriffs Act

- [7] Section 30(1)(a) of the Sheriffs Act reads that a sheriff or his or her deputy shall not perform any functions assigned to a sheriff by or under any law unless the sheriff is the holder of an FFC.⁶
- [8] In *Segwana NO v South African Board of Sheriffs* 2025 JDR 0492 (GP),⁷ this court stated that:
- “Section 26 of the Act established a fidelity fund for sheriffs, which is largely aimed at indemnifying the public for claims against sheriffs. A Sheriff is obliged to have a FFC by virtue of the provisions of section 30 (1) (a) of the Act.”
- [9] A proper reading of section 30(1)(a) of the Sheriffs Act,⁸ makes it clear that the possession of a valid FFC by a sheriff is peremptory and not discretionary. In the absence of a valid FFC, a sheriff is not lawfully entitled to perform any sheriff functions, and any attempt to do so would be contrary to the provisions of the Act.
- [10] Furthermore, section 60(1)(a) read with section 60(2) of the Sheriffs Act provides that contraventions of section 30(1)(a) may result in a fine or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.⁹
- [11] In terms of Chapter III of the Sheriffs Act, the authority to issue a FFC to a sheriff vest solely in the Board established under section 7 of the Act.¹⁰
- [12] What is apparent before this court is that the respondent holds no FFC; he continues to perform sheriff functions; and he formally refuses to desist.

Requirements of an Interim Interdict

⁶ the Sheriffs Act (n 2) above.

⁷ *Segwana NO v South African Board of Sheriffs* 2025 JDR 0492 (GP) at para 3

⁸ Sheriffs Act (n 2) above.

⁹ Sheriffs Act (n 2) above.

¹⁰ Sheriffs Act (n 2) above.

[13] In the matter of *Setlogelo Appellant v Setlogelo Respondent* 1914 AD 221,¹¹ the court confirmed the requirements of an interdict as follows:

- (a) A prima facie right- as a matter-of-fact law;
- (b) A well-grounded apprehension of irreparable harm;
- (c) A balance of convenience in favour of the granting of the interim relief; and
- (d) Absence of other satisfactory remedy.

Prima Facie Right

[14] In terms of section 7 read with section 8 and Chapter III of the Sheriffs Act,¹² the Board is the only body vested with the statutory authority to issue FFC and to regulate and maintain the integrity and standing of the office of sheriff. Where the Board has refused to issue a FFC and the previous certificate has lapsed through effluxion of time, the Board has a direct and substantial interest in ensuring compliance with section 30(1)(a) of the sheriff Act.¹³ This accordingly establishes, at the very least, a prima facie right on the part of the Applicant, with the result that the first requirement for the granting of an interim interdict has been satisfied.

Well-grounded apprehension of irreparable harm

[15] The contravention is expressly admitted by the first respondent's attorneys and remains ongoing. In the present matter, the violation of section 30(1)(a), read together with section 60(1)(a) of the Sheriffs Act, occurs on a continuous basis,

¹¹ *Setlogelo Appellant v Setlogelo Respondent* 1914 AD 221 at 227.

¹² the Sheriffs Act (n 2) above.

¹³ the Sheriffs Act (n 2) above.

in that every act performed by the first respondent in the execution of sheriff functions since 1 January 2026 constitutes a separate and fresh contravention of the Sheriffs Act. The unlawful conduct therefore persists each day that the first respondent continues to perform sheriff functions without a valid Fidelity Fund Certificate.

- [16] This Court cannot fold its arms and await the finalisation of the pending proceedings while unlawful conduct is allegedly being committed on a daily basis. The Court is obliged to uphold the rule of law, and permitting the first respondent to continue performing sheriff functions in the absence of a valid FFC would create a dangerous and undesirable precedent. In the circumstances, I am satisfied that the second requirement for the granting of an interim interdict has likewise been established.

Balance of convenience in favour of the granting of the interim relief

- [17] In considering the balance of convenience, this Court is satisfied that it overwhelmingly favours the granting of the interim interdict. The first respondent cannot suffer any cognisable legal prejudice by being restrained from continuing conduct which, on his own version and that of his attorneys, is performed in the absence of a valid FFC, a mandatory statutory requirement under the Sheriffs Act. There can be no balance of convenience in permitting conduct which is prima facie unlawful and constitutes a continuing criminal offence. Each day that the first respondent continues to perform sheriff functions without a valid FFC gives rise to a fresh contravention of the Act.

- [18] The balance of convenience further favours the Applicant because this Court is enjoined to uphold the rule of law and ensure compliance with existing legislation unless and until such legislation is repealed or declared unconstitutional by a competent court. To permit the first respondent to continue exercising sheriff functions in contravention of section 30(1)(a) would undermine the authority of the statutory regulatory framework governing sheriffs and erode public

confidence in the administration of justice. Considerations of public policy and good governance strongly militate against allowing state-sanctioned functions, including the service and execution of court processes, to be carried out by a person who is statutorily prohibited from doing so.

- [19] The granting of the interim interdict is also necessary to protect third-party litigants and execution creditors who may be exposed to significant legal prejudice should court processes be served or executed by a sheriff acting without lawful authority. The Board, as the statutory regulator entrusted with maintaining the integrity, legitimacy, and proper functioning of the office of sheriff, has a substantial interest in ensuring compliance with the Act. Refusing the relief sought would not only undermine the Board's regulatory mandate but would also create a dangerous and undesirable precedent that unlawful conduct may continue pending the finalisation of protracted proceedings. In the circumstances, I am satisfied that the third requirement for the granting of an interim interdict, namely the balance of convenience, has been established.

Absence of other satisfactory remedy

- [20] The Applicant submits that no adequate alternative remedy exists in the present matter. A claim for civil damages would not provide effective relief, as it is incapable of preventing continuing unlawful conduct. The harm complained of arises on a daily basis through the continued performance of sheriff functions without a valid FFC and damages cannot offer similar protection against such ongoing contraventions of the Sheriffs Act.
- [21] The Applicant further contends that the criminal sanction provided for under section 60 of the Sheriffs Act does not constitute an adequate alternative remedy. Criminal prosecution may take a considerable period to finalise, during which the alleged unlawful conduct would continue unabated. Furthermore, the first respondent's persistence in performing sheriff functions despite knowledge of

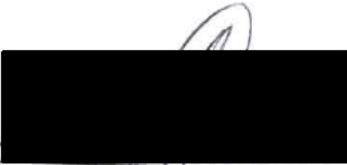
the statutory prohibition demonstrates that the possibility of criminal sanction has not operated as an effective deterrent.

[22] The pending proceedings between the parties likewise do not afford immediate or effective prospective relief. There remains uncertainty as to when those matters, including any appeals, will be finalised. In the circumstances, I am satisfied that the Applicant has established the absence of a satisfactory alternative remedy and that an interim interdict is necessary to prevent the continuation of the alleged unlawful conduct pending the determination of the underlying disputes.

Order

[23]

- (1) The court declares and orders that the first respondent does not, as at the date of hearing, hold a Fidelity Fund Certificate ("FFC") under the Sheriffs Act, and that his performance of any sheriff function without an FFC is unlawful and an offence under sections 30(1)(a) and 60(1)(a) of the Sheriffs Act; and
- (2) Interim interdict is granted, pending the final determination of the proceedings under Case Numbers B6834/2025 and 245823/2025 (and any appeal).
- (3) The first respondent is ordered to pay the costs of the application including the costs of two Counsel on a party-and-party scale C.


LENYAI J
JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant: Adv JG Wasserman and
Adv TV Mabuda,

Instructed by Herold Gie Attorneys

For the Respondent:
Adv Oosthuizen SC

Instructed by Krynauw Incorporated

Date of Hearing 07 May 2026

Date of Judgment 12 May 2026