IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not reportable / Reportable

Case no: 1131/2025

In the matter between

B[...] C[...] S[...]	**FIRST APPLICANT**
MMAESHIBE PHUTI DIBETE N.O.	**SECOND APPLICANT**
CHARL STANDER N.O.	**THIRD APPLICANT**

[The second and third applicants are cited in their capacities as receivers in the joint estate of C[...] C[...] S[...] and B[...] C[...] S[...]]

and

11 JULY (PTY) LTD	**FIRST RESPONDENT**
C[...] C[...] S[...]	**SECOND RESPONDENT**
UNLIMITED LIFESTYLE TRAVEL (PTY) LTD	**THIRD RESPONDENT**
LOVIUS BLOCK INCORPORATED	**FOURTH RESPONDENT**
THE SHERIFF OF THE HIGH COURT BLOEMFONTEIN – WEST	**FIFTH RESPONDENT**
THE STANDARD BANK OF SOUTH AFRICA LIMITED	**SIXTH RESPONDENT**

Neutral citation: *S[...] and Others v 11 July (Pty) Ltd and Others* (1131/2025) [2025] ZAFSHC 243 (14 April 2026)

Coram: NAIDOO J

Heard: 31 JULY 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 14 April 2026.

Summary: Attachment of monies in bank account of attorneys in terms of Rule 45(12)*(a)* – clients of attorneys are joint receivers in a joint estate of divorced spouses – attorneys have a debtor-creditor relationship with banks in respect of the monies in the bank account – also debtor-creditor relationship with receivers in respect of the monies held in their trust account on behalf of the receivers – judgment obtained against one of the spouses for debt incurred after divorce – such debt not a debt of the joint estate – the bank has no debtor-creditor relationship with the judgment debtor spouse – attorneys do not have a debtor-creditor relationship with that spouse – bank is not the garnishee – rule 45 notice and writ of execution not served on all interested parties in terms of Uniform Rule 45(8)*(c)*(i)*(a)* – proceedings in terms of rule 45 incompetent – attachment set aside – conditional counter application brought by first respondent dismissed.

ORDER

1 The attachment by the fifth respondent (Sheriff of the High Court, Bloemfontein West), in terms of Uniform Rule 45(12)*(a)*, of the bank account of the fourth respondent (Lovius Block Incorporated), held at the sixth respondent (Standard Bank of South Africa Limited), is hereby set aside;

2 The first respondent is ordered to pay the costs of this application;

3 The conditional counter application brought by the first respondent is dismissed with costs.

JUDGMENT

Naidoo J

[1] The applicants seek an order setting aside an attachment by the fifth respondent, the Sheriff of the High Court, (the sheriff), in terms of Uniform Rule 45(12)*(a)* of the bank account of the fourth respondent, Lovius Block Incorporated (Lovius Block), held at the sixth respondent, Standard Bank of South Africa (Standard Bank), together with an order for costs against the first respondent, July 11 (Pty) Ltd. The latter is the only respondent who opposed this application. Although the answering affidavit is ostensibly that of the first and second respondent, it is clear that it relates only to the first respondent. No confirmatory affidavit from the second respondent (Mrs S[...]) was in any event, filed. The first respondent also filed a conditional counter-application.

[2] The first applicant, B[…] C[…] S[…] (Mr S[...]) and the second respondent, Mrs S[...], were previously married in community of property to each other, and were subsequently divorced by an order of this Court on 23 June 2022. A deed of settlement, which they entered into, was made an order of court. In terms of the deed of settlement, the second and third applicants, Mmaeshibe Phuti Dibete (Mr Dibete) and Charl Stander

(Mr Stander) respectively, were appointed as receivers of the joint state, with extensive powers, which were set out in the deed of settlement. I will refer to them individually or collectively as ‘the receivers’. Once the receivers had ascertained the assets and liabilities of the joint estate, they were required to compile a liquidation and distribution account (L&D account), in terms of which creditors of the joint estate and all other expenses would be paid. Any residue remaining would then be paid to Mr and Mr S[...] in equal shares. The receivers would be released from their duties upon completion of the L&D account and subsequent finalization of the joint estate.

[3] On 19 April 2023, the first respondent issued summons against the third respondent, Unlimited Lifestyle Travel (Pty) Ltd (Unlimited) and Mrs S[...], who had represented Unlimited, for repayment of a loan made to Unlimited, during September 2022. This was a debt incurred by Mrs S[...] after the date of the divorce and was not a debt of the joint estate. The first respondent obtained default judgment against Mrs S[...] and Unlimited on 29 June 2023, and thereafter, on 3 April 2024, brought an application to declare specially executable, an immovable property situated at 4[...] S[...], Extension 7, Bloemfontein (the property). The property was owned jointly by Mr and Mrs S[...], who acquired the property in 2014, prior to the divorce. The property was an asset in the joint estate. I note that although the main action was brought only against Mrs S[...] and Unlimited, the application to declare the property executable included as respondents, Mr S[...] and an entity known as Nqaba Guarantee SPV (RF) (Pty) Ltd (Nqaba). Mr S[...] and Nqaba were cited only because of their interest in the property as joint owner and bondholder of the property, respectively. The application to declare the property specially executable appears to have been settled between the first respondent and Mrs S[...] on 19 September 2024, which settlement was made an order of court on that day. The receivers were not party to these proceedings, nor were they aware of such proceedings and settlement thereof.

[4] In terms of the settlement, which was made an order of court, Mrs S[...]’s half share in the property was declared specially executable, and she and Unlimited were ordered to repay an amount of R500 000.00 by 30 September 2024, and the first respondent would not proceed with a sale in execution until 30 September 2024. It

would only do so if Unlimited and Mrs S[...] failed to pay the amount they agreed to. They clearly did not pay the amount as agreed, and on 20 November 2024, the first respondent obtained a writ of execution against Mrs S[...]'s movable property.

[5] While all this was happening, it turns out that Mr and Mrs S[...] had already sold the property on 31 January 2024, long before the application to declare the property specially executable was issued in April 2024 and before the settlement agreement in September 2024. The receivers were not informed of the sale of the property and were only subsequently informed of the sale by Mr S[...]. The second applicant, Mr Dibete contacted the transferring attorneys and advised them that the receivers were appointed to administer and finalise the joint estate and requested them to transfer the proceeds of the sale into the bank account of the receivers' attorneys, Lovius Block. The transferring attorney accordingly transferred the proceeds of the sale, being R1 904 300.88 into the trust account of Lovius Block, at the behest of the receivers, who were the clients of Lovius Block.

[6] When the sale of the property and subsequent transfer of the proceeds thereof into the account of Lovius Block, came to the attention of the first respondent, his attorneys demanded from Lovius Block payment of the amount due to the first respondent. A string of correspondence and communication between the parties ensued, but no resolution was reached. The first respondent was intent on proceeding with the matter. On 3 November 2024, the sheriff issued a notice in terms of Uniform Rule 45(12(a) (the notice) in terms of which he attached *'the proceeds of the Defendant's legal claim on monies held or accruing*' in Lovius Block's trust account held at Standard Bank, the latter of whom was described as the garnishee. I note that although the notice cites Unlimited and Mrs S[...] as defendants, the notice thereafter refers to 'defendant' in the singular. I will deal further with this shortly. The notice was served on Standard Bank, Lovius Block and on Mrs S[...] and Unlimited, at the offices of Lovius Block. This application was precipitated by the notice which was served by the sheriff.

[7] The factual background, which I have set out is not in dispute by the first defendant. Its view is that the issue for adjudication by this court is a legal one, namely whether the funds which were attached may properly be said to be owing or accruing to Mrs S[...], as contemplated in rule 45(12)*(a)*. The first respondent filed the conditional counter application, in the event that the court should set aside the attachment. In the conditional counter application, the first respondent seeks, firstly, an order, pending the final determination of Mrs S[...]'s nett entitlement upon division of the joint estate, preventing the amount of R500 000.00, which he alleges is held in the trust account of the sheriff of the High Court, from being disbursed, released or transferred to anyone other than the first respondent, without a further order of this court. Secondly, it seeks, pending the institution or conclusion of further execution proceedings aimed at satisfaction of the judgment debt, to interdict the receivers or anyone acting on their behalf from disposing of, dissipating or directing the release of any portion of the R500 000.00, or lesser amount determined to be due to Mrs S[...]. The answering affidavit to the main application also as the founding affidavit in the conditional counter application.

[8] The first respondent's case is that the receivers step into the shoes of both spouses to administer their property; the money does not belong to the receivers. Mrs S[...]'s half share in the joint estate belongs to her, subject to calculation and distribution. This includes the proceeds of the sale of the property, which is the kind of claim envisaged in rule 45(12)*(a)*, which permits the attachment of the debt for the benefit of a judgment creditor. A joint estate under receivership is not the same as an insolvent estate, where execution by individual creditors is stayed. In the case of the joint estate, it does not mean that Mrs S[...]'s creditors cannot attach the assets, and must wait until the estate is distributed. In addition, the applicants have not shown, in founding, that Mrs S[...] will receive less than the amount attached. Therefore, on the evidence before court, Mrs S[...] is entitled to at least R500 000.00 of the proceeds of the sale of the property.

[9] With regard to service, the first respondent alleges that the notice was served on the relevant parties and was procedurally proper and substantively sufficient. In

support of the latter allegation, the first respondent asserts that Lovius Block were the agents of Mr and Mrs S[...], who instructed the receiver to bring the present application, and therefore service was complete. The first respondent mentioned that there was an interpleader application issued by the sheriff, but which has been overtaken by the issuing of the present application. I do not deem the interpleader proceedings to be relevant to this application and will deal no further with it.

[10] With regards to the conditional counter-application, the first respondent reiterated, in its answering/founding affidavit that if its attachment of the funds is set aside, then it relies on the conditional counter-application to preserve the funds pending the completion or institution of fresh execution steps. The first respondent argues that it has a *prima facie* right, if not a clear right, that there is a direct nexus between the funds sought to be preserved and the unsatisfied judgment debt, and the balance of convenience favours it. If the interdictory relief is not granted, it will detract from the first respondent's ability recover the debt, which qualifies as irreparable harm. It also asserts that no irreparable harm to any of the parties can occur if the interim interdict were granted. In the circumstances, the first respondent has no other satisfactory remedy.

[11] Rule 45(12)*(a)* provides that:

'Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by such garnishee to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached'.

As indicated earlier, the receivers were appointed by the court upon the final order of divorce being granted. Their powers and duties were extensively set out in the deed of settlement. I propose to highlight those powers and duties which are relevant for the adjudication of this matter.

[12] Clause 2.1 of the deed of settlement stipulates that

'The Liquidators shall take control over the joint estate and shall enjoy all the powers as administrator thereof. Without derogating from the generality of the foregoing, the Liquidators shall also be entitled:-

2.1.1 to accumulate details of all the assets, movable or immovable, tangible or intangible which form part of the joint estate;

2.1.2 to accumulate details of all liabilities of the joint estate;

2.1.3 to make all investigations necessary and in particular to obtain from the parties all information with regard to the assets and liabilities of the joint estate;

2.1.15 to distribute the net assets of the joint estate in accordance with paragraphs 3, 4 and 5 hereunder';

Paragraphs 3, 4 and 5 read thus:

'3. The division of the nett assets referred to in paragraph 2.1.15 above shall be subject to the protection of the rights and claims of secured and preferent creditors of the joint estate.

4. The division of the net assets referred to in paragraph 2.1.15 above shall be in equal proportions between Plaintiff and Defendant, but subject to paragraph 5 below.

5. Any losses suffered by the joint estate as a result of the wrongful behaviour of the parties in dissipating the joint estate's assets shall be borne exclusively by such party and the distribution and division of the assets of the joint estate or the proceeds thereof, as the case may be, shall accordingly be subject to adjustment in accordance with the Liquidators's (sic) discretion'.

[13] From the provisions of the deed of settlement it is clear that the receivers are not stepping into the shoes of the parties, Mr and Mrs S[...] (as alleged by the first respondent), but are acting in accordance with a court order. They may obtain information from the parties in order to guide them in the administration of the joint estate, but do not act under the instructions of the parties. The receivers instructed Lovius Block to receive the proceeds of the sale of the property (which was an asset of the joint estate), into the latter's trust account, to be held on behalf of the receivers. Lovius Block held its account with Standard Bank, by virtue of which Lovius Block becomes a customer of the bank. A debtor-creditor relationship is thus created between

Lovius Block and the bank, and the latter is indebted to its customer, Lovius Block. While the bank owns the money, it is the customer who dictates how the money (if it is a positive balance) should be dealt with. Mrs S[...] is not the holder of the bank account that was attached and is therefore not a customer of the bank. A similar debtor-creditor relationship was created between the receivers and Lovius Block when the proceeds of the sale were deposited into Lovius Block's bank account. They held the money on behalf of their client or customer (the receivers), who had the say over how those funds were to be dealt with.[1]

[14] There are a few issues which need to be discussed in determining whether the attachment made by the sheriff is proper and whether the first respondent is entitled to rely on that attachment to obtain the orders it seeks. The debt owed by Mrs S[...] to the first respondent was incurred after the date of divorce and the default judgment in respect of that debt was likewise obtained after the date of divorce. The debt is, therefore, not a debt of the joint estate. From what I have said about the debtor-creditor relationship between the receivers and Lovius Block, as well as that between Lovius Block and the Bank, it is clear that neither the bank nor Lovius Block is indebted to Mrs S[...]. In terms of rule 45(12)*(a)*, the existence of a relationship of debtor and creditor between a third party and the judgment debtor is a prerequisite for an attachment under this subrule. Mrs S[...] does not enjoy such a relationship either with the bank or with Lovius Block. The sheriff was not entitled, in terms of rule 45(12)*(a)*, to attach the bank account of Lovius Block.

[15] The first respondent's argument that Lovius Block acted as agents of Mr and Mrs S[...] is misplaced and the interpretation that the first respondent attempts to give to rule 45(12)*(a)* is a stretch too far and does not assist it all. The money held by Standard Bank on behalf of Lovius Block does not amount to a debt 'owing or accruing' to Mrs S[...]; she would be entitled to her share of the nett value of the joint estate. The proceeds of the sale form part of the assets of the joint estate and is not the only asset. All the assets and all the liabilities of the joint estate would have to be accounted for, and the liabilities first settled, before a nett value of the joint estate can be ascertained.

[1] *Van Wyk Van Heerden Attorneys v Gore* [2022] ZASCA 128; 2023 (1) SA 80 (SCA) paras 14-16.

For whatever reason, that process has not been completed and the nett value of the estate has not yet been determined. Therefore, the claim that Mrs S[...] is entitled to at least R500 000.00 of the monies held by Lovius Block is misguided. It follows from what has been said that Standard Bank is not a garnishee, as envisaged by rule 45(12)*(a)*, and that the garnishee proceedings are, therefore, not competent.

[16] I turn now to deal with the issue of service of the noticed by the sheriff. Rule 45(8)*(c)*(i)*(a)* stipulates clearly that;

'In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,

(i) the attachment shall only be complete when —

(a) notice of the attachment has been given in writing by the sheriff to all interested parties…'

The sheriff served the writ of execution and the rule 45(12) notice on Standard Bank, Lovius Block, and on Mrs S[...] and Unlimited at the offices of Lovius Block. Neither Mrs S[...] nor Unlimited are clients of Lovius Block. There is no evidence that either of them consented to being served at the offices of Lovius Block. There is furthermore, no evidence of service upon Mr S[...] who is an interested party, nor the receivers on whose behalf Lovius Block was, in fact, was holding the money. By virtue of this fact, the receivers are interested parties. The first respondent was well aware of this, as the content of the letters that passed between the attorneys, made this clear.

[17] The first respondent alleges that there was proper service, as Lovius Block acted as agents of Mr and Mrs S[...], which, it argues, is apparent from correspondence that was exchanged between the legal representatives of the parties. What is clear from the correspondence of attorneys Symington De Kok is that they represent the joint receivers. The first respondent's assertion that Mr and Mrs S[...] instructed the receivers to bring the present application is incorrect. That is not evident from the correspondence. I note that the first respondent does not deal with the service on Unlimited at the offices of Lovius Block and its reasons for holding that service in that manner was proper. As I indicated, Unlimited was never a client of Lovius Block and neither it nor Lovius Block agreed to service in the manner effected by the first respondent. The first respondent cited Mr S[...] as an interested party when it issued the writ of execution, so it was aware that, as an interested party, he ought to have been

served with the notice in terms of rule 45, but it failed to do so. A further problem with the notice is that it cites two defendants, namely Mrs S[...] and Unlimited but refers in the entire notice to 'defendant'. It is therefore not clear whether the first respondent is alleging that Standard Bank and Lovius Block are also indebted to Unlimited. In my view, service on all interested parties did not take place, hence rule 45(8)*(c)*(i)*(a)* was not complied with. That being so, service was not completed and, on this ground too, the attachment falls to be set aside.[2]

[18] The first respondent claims that it seeks interim interdictory relief in its conditional counter application, the terms of which I have mentioned earlier. An interim interdict is usually sought and granted in order to preserve the status quo pending the final determination of the rights of the parties in pending litigation. This implies that the pending litigation must be between the same parties cited in the interim interdict. Once again, the first respondent attempts, impermissibly so, to stretch the interpretation of the law relating to interim interdicts. The determination of Mrs S[...]'s entitlement to the nett proceeds upon finalisation of the joint estate cannot, in my view, fall within the meaning of 'pending legal proceedings', as argued by the first respondent. What the first respondent appears to seek, is a final interdict. The first and most important requirement for a final interdict is to establish a clear right to such relief. As indicated earlier, the proceeds of the sale of the property form only a part of the assets of the joint estate, which is yet to be finalised. Therefore, Mrs S[...]'s entitlement to 'at least R500 000.00' of those proceeds does not currently exist.

[19] The applicants have shown that the extent of Mr and Mrs S[...]'s indebtedness to various creditors is such that there will, in all likelihood, be nothing left in the joint estate to distribute to them. That being so, there can be no clear right to the R500 000.00 that the first respondent claims. In any event, the judgment debt that the first respondent holds against Mrs S[...] is not a debt of the joint estate, so the first respondent cannot claim to be a creditor of the joint estate who is entitled to claim against the joint estate. Therefore, any further execution proceedings that it intends to institute in order to obtain satisfaction of the judgment debt owing by Mrs S[...], also cannot qualify as pending legal proceedings for an interim interdict, nor can it found a clear right for a final

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[2] *See Stratgro Capital (SA) Ltd v Lombard NO* [2009] ZASCA 142; 2010 (2) SA 530 (SCA) at 536D–I, and *South African Congo Oil (Pty) Ltd v Indentiguard International (Pty) Ltd* [2012] ZASCA 91; 2012 (5) SA 80 (SCA).

interdict. It seems to me that the first respondent attempts to adopt the proverbial 'shotgun approach' in bringing the conditional counter application – fire a spray of bullets in the hope that one will strike the target. The conditional counter claim cannot, in my view succeed, as the relief sought in terms thereof is not competent.

[20] The first respondent alleged that the applicants impermissibly introduced new facts in their replying/answering affidavit and that it will seek to have such matter struck out. There was no indication of what exactly it found objectionable or what it wished to have struck out. The first respondent overlooks the fact that the replying affidavit was also the applicants' answering affidavit to the conditional counter-application. They were therefore, entitled to answer the allegations raised in the conditional counter application. In any event, I do not deem it necessary to deal further with this aspect, in view of my findings with regard to the attachment and the conditional counter application. With regard to costs, there is no reason for this court to depart from the usual practice of costs following the result.

[21] In the circumstances, the following orders are made:

1 The attachment by the fifth respondent (Sheriff of the High Court, Bloemfontein West), in terms of Uniform Rule 45(12)(a), of the bank account of the fourth respondent (Lovius Block Incorporated), held at the sixth respondent (Standard Bank of South Africa Limited), is hereby set aside;

2 The first respondent is ordered to pay the costs of this application;

3 The conditional counter application brought by the first respondent is dismissed with costs

S NAIDOO

JUDGE OF THE HIGH COURT

Appearances

For the Applicants: Adv WJ Groenewald

Instructed by:	Symington De Kok Inc 169B Nelson Mandela Drive Bloemfontein (Ref: M Gertenbach/FXE2213)
For the First Respondent:	Adv WA Van Aswegen
Instructed by:	Phatshoane Henney Attorneys 35 Markgraaff Street Westdene Bloemfontein (Ref: 267079/LEC/jc)
For the Second and Third Respondents:	No Appearance
Instructed by:	Matlho Attorneys 96 Henry Street Bloemfontein (Ref: D Mathlo)
For the Fourth Respondent:	No appearance
Instructed by:	Lovius Block Attorneys 31 First Avenue Westdene Bloemfontein
For the Fifth Respondent:	No appearance
Instructed by:	Sheriff of the High Court

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