

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

**Case Number 1160/2023**

**In the matter of:**

**PIZEL BOERDERY (PTY) LTD**  
**(Reg No 2[...])**

**APPLICANT**

**JOHANNES HERMANUS THEODORUS DELPORT**

**2<sup>nd</sup> APPLICANT**

**And**

**THE SHERIFF OF THE HIGH COURT, VIRGINIA**

**1<sup>st</sup> RESPONDENT**

**MILUSCHKA DELPORT**

**2<sup>nd</sup> RESPONDENT**

**CORAM: NAIDOO, J**

**HEARD ON: 16 MAY 2023**

**DELIVERED ON: 26 MAY 2023**

**JUDGMENT**

[1] This matter came before this court as an urgent application initially on 9 March 2023, where the applicants sought relief in two parts – Part A and Part B. In Part A, the applicants sought an order against the respondent, the Sheriff of the High Court, directing him to provide information about certain assets belonging to them, which appeared to have been sold in execution, in respect of a debt they did not

owe. They requested the sheriff to confirm whether those assets were sold, and if they were, to furnish details of the purchaser/s thereof as well as the location of the assets. The applicants also requested the sheriff to provide them with the documentation concerning the sale in execution, which he was obliged by law to keep. Part B was for an order to vindicate their ownership, which was dependent on obtaining the information requested in Part A. Adv (Ms) A Swanepoel represented the applicants, and, while the first respondent appeared in person before me initially, he was represented on 16 May 2023 by Adv (Ms) N Van Der Sandt. The second respondent was cited only in so far as she may have an interest in the sale in execution relevant to this matter. No relief was sought against her and she played no part in these proceedings.

[2] Part A of the application was granted, on 9 March 2023, by my colleague, Daffue J, in terms of which the sheriff was directed to furnish the information sought by the applicants, by 15 March 2023. He failed to do so, and the applicants brought the current application to hold the sheriff in contempt of the court order of 9 March 2023. The contempt application was set down for hearing on 30 March 2023. The applicants sought an order declaring the sheriff to be in contempt of court and sentencing the sheriff to a period of imprisonment. The sheriff appeared in person, indicating that he has the documentation with him in court. He also indicated that he wished to be legally represented and was making arrangements for an attorney to represent him. The matter was postponed to 4 April 2023, for these reasons. On 4 April 2023, the applicants' counsel advised that the sheriff had furnished all the required information and they were no longer proceeding with the contempt application, but sought a costs order against the sheriff. Mr Mosikili, the sheriff indicated that he still wished to be legally represented. The matter was then postponed to 16 May 2023 for him to secure legal representation and for argument on costs. On this day, both parties were represented.

[3] Ms Swanepoel argued that the request for information from the sheriff, was made in terms of Regulation 31 of the Regulations to the Consumer Protection Act 68 of 2008, which provides, *inter alia*, that the person in possession of the records must, forthwith upon receipt of a written request, furnish those records at his own cost. Despite written and telephonic requests for the documentation and information,

the sheriff failed to provide same and the applicants brought the application to compel the sheriff to furnish information, resulting in the court order of 9 March 2023. After the date of 15 March 2023, specified in the order, had passed, the applicants' attorney contacted the sheriff telephonically as well as by way of a letter, requesting the required documentation, to no avail. The contempt application was then launched and, as indicated, the documentation was only furnished to the applicants on 3 April 2023. Hence, Ms Swanepoel argued, that as the sheriff had brought the applicants to court unnecessarily, they are entitled to seek a punitive costs order.

[4] Ms Van der Sandt argued that the contempt application was withdrawn, and therefore the applicants should bear the costs. The sheriff is an officer of the court and imprisoning him would have serious consequences. He was given a very short time to comply with the court order and is a lay man in respect of civil proceedings and the law. He was not able to consult with his attorneys before 11 May 2023, and could not respond to the applicants' attorneys prior to that. She asked that the applicants be ordered to pay the costs, alternatively that each party should pay their own costs.

[5] The argument that the applicants withdrew the contempt application and should therefore pay the costs, is untenable. The applicants attempted to avert further costs by requesting the sheriff to comply with the court order of 9 March 2023. He failed to respond in any way, even if it was to explain that he was attempting to gather the information and request that he be given more time. He complied with the court order a day before the court hearing on 4 April 2023, and the court was not favoured with any explanation for that delay. On 30 March 2023, he alleged, in court, that he had in fact served the documents on 14 March 2023, before the contempt application was launched. Despite several requests from the applicants, the sheriff has failed to produce proof of such service. He also failed to provide his legal representative with such proof.

[6] The sheriff is indeed an officer of the court and as such, a high standard of conduct is expected of him, and it is also expected of him to respect orders of the court. The sheriff in this matter appears to have fallen short of that standard. I do, however, take note that initially, he experienced problems with the computer system,

which may have impacted on his ability to respond timeously to the applicants' various requests. The court has not heard what the reasons are for any further delays.

[7] It is well established in our law that the general rule regarding costs is that the unsuccessful party pays the costs of the successful party on the party and party scale. The determination of an appropriate costs order is in the discretion of the court, which discretion is usually informed by a number of factors in order that such discretion be exercised judiciously. **Erasmus in Superior Court Practice, D5-6**, states it succinctly as follows: In leaving the court a discretion, the law contemplates that it should take into consideration the circumstances of each case, carefully weighing the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair and just between the parties.

[8] Although at first blush, the sheriff's conduct may appear to be deserving of severe sanction, I am constrained to find that it is conduct that is indicative of *mala fides* or wilfulness. From what I have set out above, it appears that the slowness of the sheriff's reactions is his main problem. These proceedings would have drawn sharply to his attention that if he does not maintain the high standard of conduct expected of him as an officer of the court, he does so at his own peril. It is after all, not a usual occurrence for a sheriff of the court to be brought before the court in this manner. I am of the view that an award of costs on the punitive scale is unduly harsh and not necessary in this case. I am cogniscent of the fact that the sheriff performs a service for the legal profession and for the court, and that he also did so in this matter. I have no doubt that the legal representatives of the applicants will continue to use his services in the future. It is hoped that he now understands that promptness in discharging his official duties is of paramount importance. I am of the view that the order I will make would be equitable and fair in the circumstances.

[9] In the circumstances I make the following order:

Each party is to pay their own costs

**S NAIDOO J****On Behalf of the Applicants:****Instructed by:**

Adv A Swanepoel

Noordmans Attorneys

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Bloemfontein

**On Behalf of the 3<sup>rd</sup> Respondent:****Instructed by:**

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(Ref: Mr D Coetzee)