

ANNEXURE D

44 Interpleader claims

(1)(a) Where any third party (hereinafter in this subrule referred to as the 'applicant') has in his or her custody or possession property to which two or more persons (hereinafter in this rule referred to as the 'claimants') make adverse claims the applicant may sue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.

(b) If the property in question consists of money, the applicant shall when suing out the summons pay the amount thereof into court.

(c) The applicant shall annex to a summons referred to in paragraph (a) an affidavit setting out that-

(i) he or she claims no interest in the subject matter in dispute other than for charges or costs;

(ii) he or she is not colluding with any of the claimants; and

(iii) in the case of property other than money paid into court in terms of paragraph (b), he or she is willing to deal with the property as the court may direct.

(2)(a) Where any person other than the execution debtor (hereinafter in this subrule referred to as the 'claimant') makes any claim to or in respect of property attached by the sheriff in execution of any process of the court or where any such claimant makes any claim to the proceeds of property so attached and sold in execution the sheriff shall require from such claimant to lodge an affidavit in triplicate with the sheriff within 10 days from the date on which such claim is made, setting out-

(i) the claimant's full names, identity number and occupation;

(ii) the claimant's residential address and business address or address of employment; and

(iii) the nature and grounds of his or her claim substantiated by any relevant evidence.

(b)(i) Within 15 days after the date on which the claim is made the sheriff shall notify the execution creditor and all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the claim.

(ii) Simultaneously with the notice referred to in subparagraph (i), the sheriff shall deliver one copy of the claimant's affidavit to the execution creditor and one to the execution debtor.

(c)(i) The execution creditor shall, within 10 days of receipt of notice of the claimant's claim and affidavit, advise the sheriff in writing whether he or she admits or rejects the claimant's claim.

(ii) If the execution creditor gives the sheriff notice within the period stated in paragraph (i) that he or she admits the claim, he or she shall not be liable for any costs, fees or expenses

- afterwards incurred and the sheriff may withdraw from possession of the property claimed.
- (3)(a) If the execution creditor gives the sheriff notice that he or she rejects the claim, the sheriff shall within 10 days from date of such notice prepare and issue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.
- (b) The sheriff shall notify all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the date specified in the summons sued out under paragraph (a) and of the judgment of the court.
- (c) The registrar or clerk of the court shall sign and issue the summons.
- (4) If any claimant does not appear in pursuance of any summons sued out under this rule or appears but fails or refuses to comply with any order made by the court after his or her appearance, the court may make an order declaring him or her and all persons thereafter claiming under him or her barred from making any claim in respect of the subject matter referred to in the summons against the applicant or the sheriff.
- (5) If any claimant referred to in this rule appears in pursuance of any summons sued out under this rule, the court may-
- (a) order him or her to state, orally or in writing on oath or otherwise, as the court may deem expedient, the nature and particulars of his or her claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in subrule (1), order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or
- (c) try the matters in dispute in a summary manner.
- (6) Where the matters in issue are tried, whether summarily or otherwise, the provisions of rule 29 as to the trial of an action shall *mutatis mutandis* apply.
- (7) The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or sheriff as it may deem fit.