



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 December 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal.

BG Bojosinyane & Associates v The Sheriff, Vryburg and Another (1072/2022) [2023] ZASCA 174 (8 December 2023)

Today the Supreme Court of Appeal handed down two judgments, one by Koen AJA with Matojane and Weiner JJA and Chetty AJA concurring, and a separate concurring judgment by Makgoka JA, upholding an appeal against a judgment of the North-West Division of the High Court, Mahikeng.

The appellant in the appeal, *BG Bojosinyane & Associates*, a legal practice, had required the first respondent, the Sheriff of the magistrates' court in Vryburg, to serve and execute certain court processes. The first respondent refused to do so until a deposit on account of his anticipated fees and charges relating to such service or execution was first paid. The appellant objected to that practice and sought interdictory relief directing the first respondent to serve and execute processes without unreasonable delay. The relief claimed by the appellant was opposed by the first respondent and the South African Board of Sheriffs, which intervened as the second respondent. The appellant was unsuccessful before the North-West Division of the High Court.

The SCA held that the practice followed by the first respondent in respect of court processes required by the appellant to be served resulted in unreasonable delay that can be avoided, and that it was not permitted by and is inconsistent with the legislative

framework, specifically the magistrates' court rules, which require court processes to be served and executed expeditiously and without delay. It accordingly upheld the appeal and directed that the costs relating thereto be paid by both respondents jointly and severally. It set aside the order of the high court, and replaced it with an order that unless authorised by a magistrate in terms of section 14(7) of the Magistrates' Court Act 32 of 1944, the first respondent was directed to effect service and to execute any court processes emanating from the appellant's practice without delay, and without requiring payment of the first respondent's fees and charges before any such process is served or executed, or before the return of service relating thereto is released. The first and second respondents were also directed to pay the costs of the proceedings before the high court jointly and severally.

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