



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • P.O. Box 13106, The Tramshed, 0126 • Tel (012) 326 8014/ 8045, Fax (012) 326 8018

21 September 2020

Our ref: JB/N Maseko

Your ref:

Dear Sir/Madam,

PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 43: EXECUTION AGAINST IMMOVABLE PROPERTY

Pursuant to representations received regarding the rules of court regulating execution against immovable property, the Rules Board for Courts of Law (Rules Board) proposes certain amendments to Magistrates' Courts Rule 43.

The amendments proposed to rule 43(1)(b)(ii) are aimed at providing sufficient information of the immovable property, *including the registered description, the title deed number and the erf number or sectional title unit number to enable it to be attached and to enable the Registrar of Deeds to identify the attached property and record the attachment as an interdict against the immovable property and its title deed*. In addition, the proposed amendments to rule 43(11)(b) are intended to substitute the reference to an aggrieved creditor *whose name appears on the sheriff's distribution account* with an aggrieved creditor *referred to in paragraph 43(14)(c)*.

The proposed rule amendments are contained in the annexure hereto. **[ANNEXURE A]**

As part of its consultative process, the Rules Board hereby invites your comments on the proposed amendments to the rule. Comments should be submitted to the Secretariat by no later than **23 October 2020**

Comments may be sent via hand delivery, post, facsimile or email to:

PHYSICAL ADDRESS: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

POSTAL ADDRESS: P. O. Box 13106, The Tramshed, 0126.

FACSIMILE: (012) 326 8018.

EMAIL: Nkosinathi Maseko (NMaseko@justice.gov.za).

Further enquiries may be directed to (012) 326 8014 / 8045.

The Rules Board looks forward to receiving your comments (if any) and thanks you therefor.

Yours sincerely,

JK Balkishun

J Balkishun

Acting Secretary: Rules Board for Courts of Law

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PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 43

GENERAL EXPLANATORY NOTE:

[] Expressions in square brackets in bold indicate omissions from the existing rules.

 Expressions underlined with a solid line indicate insertions into the existing rules.

Amendment of rule 43 of the Rules

Rule 43 of the Rules is hereby amended by—

(a) the substitution for sub-paragraph (ii) of paragraph (b) of sub-rule (1) of the following sub-paragraph:

“(b) A warrant of execution against immovable property shall contain—

(i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and

(ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof, including the description of the title deed number, the erf number or sectional title unit number to enable the Registrar of Deeds to identify the immovable property and record the attachment as an interdict against the immovable property.”; and

(b) the substitution in sub-rule (11) for paragraph (b) of the following paragraph:

“(b) Any loss sustained by reason of the purchaser’s default may, on the application of any aggrieved creditor **[whose name appears on the sheriff’s distribution account]** referred to in paragraph (14)(c), be recovered from the purchaser under judgment of a magistrate given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a magistrate for the aforesaid purpose.”.