

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 006139/2022**

**REPORTABLE: NO**

**OF INTEREST TO OTHER JUDGES: NO**

**REVISED.**

**26/08/2022**

In the matter between:

**A [....] 1 G [....] J [....]**

Applicant

And

**C [....] 1 C [....] 2 (FORMERLY A [....] 2)**

First Respondent

**SHERIFF SANDTON**

Second Respondent

**JUDGMENT**

**MAKUME, J:**

[1] In this matter the Applicant seeks an order setting aside or staying a Writ of Execution pending the outcome of a action to be instituted by the Applicant for declaratory or ancillary relief.

[2] It is common cause that the Applicant and the first Respondent divorced and an agreement that was made an order of Court is at the centre of this application.

[3] On the 21<sup>st</sup> June 2022 the Sheriff attached certain goods at the Applicant's premises and on the 13 July 2022 the Sheriff removed the goods that had been placed under judicial attachment.

[4] Some of the items were released and only the oven is still on attachment and stored at costs. The Applicant has placed his attorney in funds as security that in the event he is not successful with his intended action then the Respondent will be paid, out of those funds.

[5] The amount involved in this matter is the sum of R585.46. The matter is urgent as the goods attached may be sold at any time and if not released will continue to incur storage costs.

[6] The first Respondent appeared in person and made submissions in opposing the application. At the conclusion of submissions by both parties it was agreed that they would like to consider a settlement which they did and I made that an order of court.

[7] In a nutshell the first Respondent conceded to the setting aside of the Writ of Execution thus resulting in the release of the Applicant's attached goods. What remained outstanding was the issue of the costs of the application including the costs due to the Sheriff as a result of the attachment and the removal of the Applicant's goods.

[8] It is clear to me having listened to the submissions that the acrimonious divorce between the Applicant and the first Respondent is continuing post the dissolution of their marriage. The issue is about the proper interpretation of a clause in the divorce settlement agreement.

[9] This matter having been settled mostly in favour of the Applicant now requires of me to make a determination why the first Respondent should bear the costs of this application as well as the costs of Execution. The Applicant is insisting on costs being paid by the first Respondent on the other hand the first Respondent says that

she cannot afford to pay the costs hence her own attorney and counsel had to withdraw now. She proposes that each party pays own costs.

[10] The general rule is and has always been that the successful party is entitled to costs. However, this does not detract from the principle that the award of costs is a matter wholly within the discretion of the Court irrespective of who succeeded or not.

[11] In a number of cases amongst them the matter of **De Kock v Minister of Public Works [2004] 1 ALL SA 282 (CC) at 296** it was held that where legal proceedings are settled disposing of the merits except as in so far as the costs are concerned it may be difficult for a Court to make a proper allocation of costs (See also **Jenkins vs SA Boilermakers Iron and Steel Workers and Shipbuilders Society 1946 WLC 15; Mashoane v Mashoane 1962 (2) SA 684 (D) 687**).

[12] In the present matter after the Applicant received the notice of attachment he repeated his request to the first Respondent to furnish him with information as to why medial aid had rejected the claim. The first Respondent did not avail such information to the Applicant.

[13] The Applicant followed this up with an offer that he has placed funds to the value of some R4 000.00 in trust with his attorneys that the Respondent should agree to the release of his goods that had been placed under attachment pending the outcome of an action or proceedings to be instituted in which he seeks a declaratory as to the correct interpretation of the clause on the divorce settlement.

[14] Despite this offer the first Respondent through his attorneys instructed the Sheriff to remove the attached goods. This is what prompted the Applicant to launch this urgent application.

[15] The first Respondent in my view acted unreasonably by refusing to accept the guarantee offered so that she agrees to the release of the Applicant's goods. She gives no reason why that offer should not have been sufficient to enable the Applicant to get his goods back after all the guarantee was to the effect that if the

Applicant is unsuccessful then the Respondent would be paid money that was being held in Trust on her behalf.

[16] I have accordingly exercised my discretion I favour of the Applicant in view of the facts and circumstances set out above. In the result I make the following order;

**ORDER:**

- i) The costs of executing the Writ of Execution removing, storing and returning the Applicant's oven stand shall be paid by the first Respondent.
- ii) The costs of this application shall be paid by the first Respondent on a party and party scale to be taxed.

Dated at Johannesburg on this 26<sup>th</sup> day of AUGUST 2022.

**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Appearances:**

DATE OF HEARING : 16 AUGUST 2022

DATE OF JUDGMENT : AUGUST 2022

FOR APPLICANT : ADV GEORGIU

INSTRUCTED BY PA LAMBON ATTORNEYS

FOR RESPONDENT : IN PERSON