

SOUTH AFRICA / JUDGMENT

Mokoma v M-Njr and Olwethu Consulting (Pty) Ltd and Others (J3/25)

[2025] ZALCJHB 100 (11 March 2025)

[2025] ZALCJHB 100**COURT**

Labour Court Johannesburg

BEFORE

Ramji

CASE / FILE NUMBER

J03/25

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Source record**THE****LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not reportable****case****No: J03/25****In ex parte application****of:**

GIVEN TSHINGEDZENI

MOKOMA

Applicant

In re:

GIVEN TSHINGEDZENI

MOKOMA

Applicant

and

M-NJR

AND OLWETHU CONSULTING (PTY) LTD

First Respondent

MOSES

MATHUNJWA

Second Respondent

FIRST

NATIONAL BANK LIMITED

Third Respondent

ABSA

GROUP

LIMITED

Fourth Respondent

NEDBANK

LIMITED
Fifth Respondent
STANDARD
BANK GROUP LIMITED
Sixth Respondent

Heard: 5 February 2025
Delivered: 11 March 2025
(This judgment was handed down electronically by emailing a copy to the parties. The 11 March 2025 is deemed to be the date of delivery of this judgment).

Summary: Attachment of bank account – requirements for attachment of incorporeal property – writ of execution – court application not necessary

JUDGMENT

RAMJI, AJ

Introduction

- [1] On 5 February 2025, the applicant’s representative moved this application asking the Court to “direct” the sheriff “to attach all bank accounts held with/by the third to sixth respondents under the name [of the first respondent]” and “cause to be realised the sum of R140,078.41” with interest.
- [2] The judgment debt arises out of a contempt order made by Makhura J, ordering costs in favour of the applicant. The background to Makhura J’s contempt order is that on 28 November 2020, the CCMA awarded the applicant R16,522.23 in unpaid salaries and lifted a suspension against him, stating that he report for duty on 7 December 2020. The employer (the first respondent) appears to have settled the money debt to the applicant. However, in his efforts to be reinstated (through contempt proceedings against his employer in this Court, the outcome of which is not stated), the applicant incurred a large legal debt, amounting to R140,078.41 after taxation. The applicant has brought this application in pursuit of this substantial debt. The applicant is unemployed.
- [3] Despite Makhura J ordering that the first and second respondent are jointly and severally liable for the costs of the contempt application, for whatever reason, the applicant’s representative has proceeded only against the first respondent.
- [4] This judgment is structured as follows:
- 3.1. First, I set out the nature of the relief sought.

3.2. Second, I explain why the relief sought cannot be granted by a judge.

3.3. Third, I explain the applicable procedure to obtain the relief which the applicant seeks.

Nature of the relief sought: Attachment of incorporeal property

[5] In the founding affidavit, the applicant's representative states in respect of each bank that it is "cited herein for convenience purposes only and no order is sought against it".

Immediately after that, he states that this is an application for "an order... attaching the first respondent's bank account held with/by the third to sixth respondents". The applicant's representative confirmed the latter is the case. This is also stated in the notice of motion. I will therefore ignore the quoted averments concerning the third to sixth respondents (the banks) made in the founding affidavit.

[6] This leaves me with the relief sought in the notice of motion.

[7] The implications of the relief as it is drafted in the notice of motion have been explained in previous cases, including in MEC, Department of Public Works and Others v Ikamva Architects and Others (Ikamva), where a full bench, referring to the Uniform Rules of Court explained the following:[1]

'The return of service indicates that the sheriff executed the writ in terms of 'Rule 45(8)(c) read with Rule 45(12)(a)'. The difficulty with this attachment is that the two subrules are mutually exclusive. [Rule 45(8)(c)] provides for the attachment of 'other' incorporeal rights, which in the present context would have been the Department of Health's right to the moneys standing to its credit in its banking account. Importantly, this subrule does not envisage the attachment of actual moneys but rather the right to the money in the bank account. Like any movable property that is attached, the right must be realised by its sale at a sale in execution. This subrule does not place any obligation on the bank in question to pay actual moneys to either the sheriff or the judgment creditor.'

[8] The applicant's representative is therefore not seeking to enforce Makhura J's judgment and recover the judgment debt by asking the banks to pay him the money that the first and second respondent owe him pursuant to the taxed bill of costs as one would in a garnishee procedure. He merely seeks to attach a right, to be realised by monies raised at a sale in execution: the applicant is asking for the attachment of the first respondent's right of action, which a bank account holder would have against its bank/s. This is incorporeal property.

[9] At the hearing, I expressed concern with, among other things, the fact that an application for the relief sought was being made in Court. The applicant's representative submitted only that he had moved applications like this one many times before, and that he had seen many applications like this one granted. This may be so, but I do not believe that this is the correct approach.

The Court is not competent to grant the application for attachment and execution

[10] Putting aside the technical point taken by the Full Bench in *Ikamva*, I still cannot grant this application because the Court is not competent to grant “attachment orders”.

[11] In determining the meaning of the term “attachment order” used in the National Credit Act in the case of *Nkata v Firststrand Bank Limited and Others*[2], Rogers J (then sitting in the Western Cape High Court) articulated the point best:

‘Where a credit provider obtains a monetary judgment against the consumer for the outstanding amount of the loan, the court order will not include an order for the attachment of any property. In such cases, the rules of court entitle the judgment creditor to obtain a writ of execution. The writ is addressed by the registrar to the sheriff. A writ of execution is not itself an ‘order’. It is a process which may be issued where an order for the payment of money has been made. Even where the loan agreement is secured by a mortgage bond and the court declares the bonded property to be specially executable, the court’s order does not include an order for the attachment of the property. The order of executability merely entitles the creditor to levy execution on the immovable property in terms of rule 46 without first attempting execution against movables in terms of rule 45. The court does not order the immovable property to be attached; it is for the judgment creditor to determine how it will go about execution.’ (own emphasis)

[12] Put simply, a judgment creditor cannot apply to Court for an order or attachment or an order of execution – these simply do not exist. The applicant’s representative must approach the Registrar for a writ of execution.

The attachment and execution process

[13] I have considered whether applying to this Court in some manner was a necessary step prior to obtaining the required writ of execution, i.e. is there some justification for the applicant’s representative bringing a court application? The answer is no.

[14] Labour Court Rule 61 provides:

‘In terms of section 163 of the [Labour Relations] Act, service and execution of the court’s decisions, judgments or orders must take place in accordance with the procedure for service and execution of decisions, judgments or orders of the High Court of South Africa.’

[15] The applicant must therefore use the Uniform Rules of Court (UR) – specifically, UR45(1) and UR 45(8) for the relief he seeks (attachment and execution). Neither rule requires a court application.

15.1. First, UR 45(1) gives the judgment creditor the right to execute on a judgment debt by completing a form and having it issued by the Registrar, at the judgment creditor’s own risk.[3] Form 18 contemplates the attachment of movable property. Movable property may be corporeal or incorporeal. There is no judicial

involvement.

15.2. Second, the attachment of incorporeal property is specially provided for under UR 45(8)(c).

[4] The effect of UR 45(8)(c) is that, without applying to Court, the sheriff may, on the strength of a writ issued by the Registrar in terms of UR 45(1), attach movable or immovable incorporeal property which is available for attachment. Again, there is no judicial involvement.

15.3. The only conditions are for the attachment of the incorporeal property concern the sheriff's conduct and the content of the writ:

15.3.1. When attaching incorporeal property, the sheriff must: (i) give notice of the attachment to all interested parties, and (ii) obtain proof of ownership of the incorporeal property or certify that he has not been able to obtain such proof. Thereafter the sheriff may go to the possessor of the incorporeal property (it may be the judgment debtor or a third party) and inventory and value the attached right.

15.3.2. The writ of execution, in compliance with Form 18, would still need to be sufficiently broad so as not to limit the sheriff to only attaching incorporeal property when ordinary movable property is available.[5]

[16] The position is no different when the incorporeal property is held by a third party, such as a bank. The case law on UR45(12)(a) is instructive:

16.1. The Durban and Coastal Local Division per Caney J held that the procedure prescribed in UR 45(8) applied to the attachments of property held by third parties and confirmed that UR 48(8) does not require a prior Court application –

‘Rule 45(8) authorises attachment and sale in execution of a judgment debtor's claim against his bank arising out of his relationship with the bank as its customer, and that no order of Court is required for these purposes.’[6]

16.2. More recent High Court decisions affirm this approach.[7]

16.3 Judicial oversight under the Uniform Rules arises only in cases of immovable property, and a greater degree of oversight in cases of residential property. I can find no requirement under the Uniform Rules, or the associated case law, for a judge to be involved in the issuing of a writ against movables and incorporeal property, including those held by third parties. The only time a judge becomes involved in an attachment is when a judgment creditor is seeking to attach immovable property,[8] or where a writ needs to be suspended.[9]

[17] I can only speculate that the approach of applying to a judge for attachment has arisen in this Court because the following paragraph of the Supreme Court of Appeal (SCA) judgment in *South Africa Congo Oil Co (Pty) Ltd v Identiguard International (Pty) Ltd (SA Congo Oil Company)*:

‘Whilst the service of a garnishee notice may have constituted an attachment of a debt under the common law, an attachment of that nature only followed upon an application to court on notice to the debtor and the creditor in respect of the debt and upon the court sanctioning the issue and service of the garnishee order.’[10]

[18] This is not the SCA’s ratio in this matter, though it is sometimes referred to as such.[11] This was merely the appellant’s contention in the appeal. The SCA upheld the appeal but did not hold that a garnishee order needed to be granted by the High Court as the appellant contended. It held that an attachment in terms of UR45(12)(a) is only complete once both the garnishee and judgment debtor have been served with a garnishee notice by the sheriff. [12] The applicant’s representative is not, however, seeking the relief envisaged in UR45(12)(a), and so this judgment is not relevant.

[19] I note lastly that four banks are cited, with no proof that these are any or all the first respondent’s banks. From the bar, the applicant’s representative submitted that it was believed that the third respondent (FNB) was the judgment debtor’s banker, but out of an abundance of caution, the other three banks were being cited. I have no basis to believe that. This will be determined by the sheriff, pursuant to a writ of execution issued by the Registrar.

[20] The sheriff’s determination would also spare the applicant any costs of serving a writ on four banks in the hope of hitting the correct target.

[21] In summary, an application of this nature should never have been brought before the Court for hearing. The relief sought can only be granted by the Registrar of this Court.

Order

1. The application is dismissed.

B. Ramji

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: S G Seepamore, S G Seepamore Inc.

[1] 2022 (6) SA 275 (ECB);

[2022] ZAECHBHC 13 at para

77. See also: Ormerod v Deputy Sheriff, Durban (Ormerod) 1965 (4) SA 670 (D);

[1965] 4 All SA 330 (D) at 673C-H; Burg Trailers SA (Pty) Ltd and Another v ABSA Bank Ltd and Others 2004 (1) SA 284 (SCA);

[2003] ZASCA 55 at para 6; Baphalaborwa Projects CC v T & L Civil Electrical Contractors CC and others 2024 JDR 2914 (GJ); [2024] ZAGPJHC 1046 at para 26.

[2] 2014 (2) SA 412 (WCC); [2016] ZACC 12 at para 49.

[3] UR45(1) states: “A judgment creditor may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof

corresponding substantially with Form 18 of the First Schedule”.

[4] UR45(8) states: “If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided— ...

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid- (i) the attachment shall only be complete when- (a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and (b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document; (ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached”.

[4] UR45(8) states: “If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided—

...

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid-

(i) the attachment shall only be complete when-

(a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and

(b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached”.

- [5] Ikamva (above) at para 72.
- [6] Ormerod (above) at 674F – G.
- [7] See: Riordan v First National Bank Limited 2014 JDR 1773 (GP); [2014] ZAGPJHC 195 at para 7; Ikamva (above) at para 73; House of Tandoor Entertainment and others v TUHF Urban Finance (RF) Ltd and others 2023 JDR 4026 (GJ); [2023] ZAGPJHC 1202 at para 19.
- [8] UR 46(1)(a)(ii) and 46A.
- [9] UR 45A.
- [10] 2012
- (5) SA 125 (SCA); [2012] ZASCA 91 at para 11.
- [11] See for example CB v ABSA Bank Limited and Others
- [2020] ZAGPJHC 303 at para 53.
- [12] See: SA Congo Oil Company (above) at paras 19 and 23.

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