

Short notes on:

EDICTAL CITATION- YOU'VE BEEN SERVED!

A number of rules and legal principles govern the course of litigation. Those who have engaged with the process will know that litigation can sometimes be messy, and to avoid unnecessary delays, these rules and principles must be adhered to.

In saying that, what happens when you are hit with a stumbling block from the onset? All legal processes are initiated via service. However, should the whereabouts of the Defendant or Respondent be unknown, service becomes challenging- this is further complicated when the Defendant has left the country.

What Is Edictal Citation?

A distinction must be drawn between substituted service and edictal citation. Substituted service is a mechanism utilised where ordinary or personal service is not possible, either because the Defendant is evading service or because his/her whereabouts are unknown, but it is suspected that the Defendant is still resident within South Africa. On the other hand, edictal citation may be used when it is supposed that the Defendant is resident in a foreign country.

In order for service via edictal citation to be successful an application must be brought in accordance with Rule 5 of the Uniform Rules of Court for the High Court and Rule 10 (1) (a) in terms of the Magistrates Court Rules.

Edictal Citation Process

Rule 5 (1) of the Uniform Rules of Court states:

“Save by leave of the court no process or document whereby proceedings are instituted shall be served outside the Republic.”

As implied by the above and the remainder of Rule 5 an application will have to be made to court by way of notice of motion and accompanying affidavit setting out the circumstances under which service by edictal citation is sought.

In addition to setting out the grounds upon which the application is sought, the founding papers must also satisfy to the court that the court has the necessary jurisdiction to make the order sought and to hear the application.¹

The court has a discretion to order the manner in which service, other than personal service, be carried out. The court in such instances may also make an order dictating the duration in which the ordered manner of service must be carried out.

Conclusion

Litigants are often left despondent upon the realization that the person they are seeking recourse against has left the country. However, our litigious processes does provide mechanisms for relief and it is important to seek the necessary legal assistance prior to abandoning a claim.

Contact an attorney at SchoemanLaw for you legal needs by visiting our website at www.schoemanlaw.co.za.

¹ Uniform Rules of Court, Rule 5 (2).