SWAZILAND HIGH COURT

HELD AT MBABANE

Civil Case No. 4032/2004

In the matter between:

NDUMISO NHLENGETHWA Applicant

and

DLAMIN1, MAHLALELA ATTORNEYS 1st Respondent

NKOSINGIPHILE MASUKU 2nd Respondent

Coram

J.P. Annandale, ACJ

For Applicant: Advocate M. van der Walt instructed by Robinson Bertram Attorneys

For 1st Respondent: Advocate L. Maziya instructed by Dlamini, Mahlalela Attorneys

2nd Respondent: No appearance

JUDGMENT

27 May, 2005

The applicant came to court on a basis of urgency to seek an order by which the second respondent be directed and ordered to "... forthwith deliver a certain motor vehicle a certain (SIC) Audi A4 registered SD 296 KG, 2000 model, green in colour to the applicant or the applicant's attorneys", alternatively, that the Sheriff/Deputy Sheriff/Police seize and attach the vehicle and hand it over. Costs are sought on the attorney and own client scale, including costs of counsel.

On the 22nd December 2004 Maphalala J issued a rule nisi with immediate interim effect pending a return date which rule was subsequently extended a few times, ultimately to await this final determination of the matter.

Briefly, the applicant describes the first respondent as a firm of attorneys in Manzini which issued a writ of execution, to which I revert hereunder, against himself. In that matter, the first respondent acted for one Thandiwe Kendle, and obtained a judgment of E2 500 against himself.

The second respondent is described as a deputy sheriff, sued in his personal capacity. He is said to have taken the applicant's motor vehicle, the Audi A4 described above, from the applicant's possession on the 15 December 2004. The applicant states that at the time, the vehicle was at the "Cuddle Puddle" in Ezulwini and that it was removed without serving an order to do so on him, nor was he informed of the reason for its removal.

[5] He continues to state that he thereafter contacted the first respondent firm of attorneys which showed him a writ of execution. When he wanted to pay the judgment debt (E2 500) he was told he had

to pay an extra E5 500 over and above the judgment debt itself. On payment, he says that he was sent to contact the second respondent for release of the vehicle, who in turn required a further E3 000 before the vehicle would be released to him.

[6] He says that despite his best efforts, he still remains without his vehicle, which he now wants to have returned on strength of the court order he now seeks. He does not explicitly state whether he paid the additional E5 500 to the first respondents, but he so implies and also filed a receipt (copy) of E8 000. He also does not state whether he paid over the further additional E3 000 to the second respondent deputy sheriff and he does not imply that he did so either.

[7] The applicant advances reasons as to why he seeks relief as soon as can be.

[8] In his answering affidavit, the second respondent states that he attached the applicants' motor vehicle on the 26th November 2004 after serving him personally with "the papers". He told him he would be keeping it in Manzini upon which the applicant asked for a lift. One Sipho Sikhosana was with him at the time. On their arrival in Manzini, he parked the vehicle, locked it after all disembarked from it and he then went to a shop. On his return, the attached vehicle was gone and he reported a theft case with the police. Later, the police told him that the applicant reported at the Mbabane police that the reportedly stolen motor vehicle was his and in his possession.

[9] Only thereafter, on the 15th December, did he again attach the vehicle, this time at the "Cuddle Puddle" after encountering considerable resistance by the applicant who refused to hand over the keys to him. He then called in a breakdown truck to tow it away after the applicant tried to block the road.

[10] Both Sipho Sikhosana and Muzi Mahlalela, two attorneys of the first respondent firm, confirm that the applicant was obstructive at the time his vehicle was attached at the "Cuddle Puddle" by the deputy sheriff. The latter however states the date thereof to be on the 15th September, not the 15th December, an apparent error. The latter attorney further confirms the initial attachment and disappearance of the same vehicle on the 26th November, 2004, as described by the deputy sheriff. The sheriff attached a copy of his return in respect of the attachment of the 26th November that went wrong when the vehicle "disappeared" or "was stolen by the defendant" and the subsequent re-attachment on the 15th December.

[11] Regarding the costs issue raised by the applicant, of E2 500 in respect of the judgment, a further E5 500 with the attorneys and yet another E3 000 with the sheriff, the second respondent states his advised belief differently. He has it from the attorneys that the total amount due, inclusive of interest, was E8 646.47 of which E8 000 was paid by the applicant, leaving a balance of E464.47 (sic).

[12] The latter two amounts are confirmed by an attorney of the first respondent, Tsepo Dlamini.

[13] The deputy sheriff further confirms that he told the applicant that his own costs were "estimated to be in the region of E3 000", which was not disputed at the time.

[14] The second respondent goes on to say that the first respondent did not instruct him to release the vehicle, and that applicant's attorneys cannot do so as the debt had not yet been liquidated "... over and above that he had not paid my costs". At the request of the applicant's attorneys he itemized his own

costs, as set out in his annexures "NM2" (Book of Pleadings, page 26)

[15] The total amount thereof is E2 777.43, slightly less than his estimate of E3 000. I revert to this Bill further down. He says that he will only release the vehicle if so instructed by the first respondent, once his own fees, which may be taxed if disputed, have been paid. He denies any wrongdoing and also denies the matter to be urgent.

[16] In a supporting affidavit filed by Tsepo Dlamini, yet another attorney of the first respondent firm, he states that the judgment in the original matter was granted on the 15th October 2004. Subsequently, the writ (annex NM3 - page 27) and the Bill of Costs (annex NM4 - page 29) was prepared and taxed.

[17] He then gave these papers to the 2nd respondent, to attach if not paid. The deputy later reported to him that the first attachment was

foiled by the now applicant, who removed it from the possession of the deputy sheriff, contemptuous of the court procedures and orders.

[18] The applicant paid E8 000 of the judgment debt and costs, leaving an outstanding balance of E464.67. The attorney insisted on full payment before instructing the sheriff to release, mainly because of the applicant's conduct after the first attachment.

[19] The filed writ of Execution refers to the judgment debt of E2 500 plus interest at 9 % per annum calculated from "March 2001" (on a judgment attained in October 2004) "...plus costs to be duly

taxed..." plus all other costs "...to be hereinafter duly taxed..." besides "...all your costs..." (of the sheriff) (my emphasis).

[20] The writ has the same date of the judgment itself, but date stamped (presumably when issued by the registrar) on the 26th October 2004. I will revert to the emphasized aspects of the writ further down.

[21] The Bill of Costs was taxed on the 12th November in the total amount of E5 171.92.

[22] The first respondent, attorneys Dlamini and Mahlalela, did not file any opposing affidavits on their own behalf or on behalf of their firm.

The applicant's replying affidavit denies any attachment on the 26 November 2004. Broadly speaking, his version is that on being asked by the second respondent for an amount of E2 500, which he queried, he himself would have suggested that they go to the attorneys in Manzini to find out how much was owed. It was only in Manzini that the deputy allegedly forcefully took the car keys as they proceeded to the offices after having parked the car. They did not find the attorney and then the sheriff disappeared. Stranded, he decided to use his duplicate keys and drove home after the keys were brought to him from Mbabane.

He is specific that he was never shown any documentation to authorize the attachment of his vehicle. He denies any untoward behavior at the "Cuddle Puddle" on the 15 December. He aims many blows against the second respondent alleging all sorts of wrong doing.

The applicant repeats much of his founding affidavit but changes the amount demanded by the sheriff from E3 000 to E3 700. He has it that the first time he was shown a writ to execute the judgment debt was when he went to the attorneys offices after theattachment, or "theft" as he has it, on the 15th December.

The applicant makes various wide ranging legal submissions in his affidavit, the first of which is that the second respondent does not know what is expected of him and that it required the matter to come to court before his own attorney received the sheriffs bill of costs, which he regards as "exorbitant". Much of his replying affidavit is vexatious, irrelevant, argumentative and scandalous, subject to be struck out. I do not order so as there is no application to do so.

[27] In a valiant effort to curtail the wounds where the applicant shot himself in the foot in his replying affidavit, his attorney, Mr. Madau, tries to set out the facts of the matter in a confirmatory affidavit.

[28] Attorney Madau sets out how he endeavoured since the 23rd December 2004 to have the applicant's vehicle released by the second respondent. It is a woeful tale of many efforts and dishonoured undertakings by the deputy sheriff and attorney Dlamini of the first respondent firm.

[29] The applicant had already paid (an undisputed) sum of E8 000 on a judgment debt of E2 500 plus interest and costs. Costs were taxed atE5 171.92.

[30] An order was eventually obtained from the court to release the vehicle to the applicant, which

order and especially the learned judge who granted it, was apparently the subject of highly critical comments by the deputy sheriff, who despite the order, steadfastly wanted to retain the vehicle he attached. It required the police to intervene before he conceded. If true, such conduct is worthy of strong censure.

[31] From this somewhat long winded history and facts of the matter, it is firstly clear that although there are factual disputes on the papers, the matter can readily be decided on the papers alone.

[32] Advocate Maziya argues otherwise, stating that these are factual disputes that can only be resolved after oral evidence has been heard. He is correct in that regard, insofar as it impacts on issues that have been raised in the papers, but which issues are not determinative in the outcome of the application.

[33] For instance, there is a factual dispute as to the manner in which the applicant's vehicle was removed from the "Cuddle Puddle". There are two different versions of the facts before court. However, it clouds the issue at stake, as to whether the operation on that day was in accordance with legal authorisation to do so, or not.

[34] What also should be considered is the conduct of the second respondent, who acted on instructions of the first. Fact remains that he did attach and remove the applicant's vehicle on authority of a writ of attachment that was given to him by the first respondent to execute qua deputy sheriff. The allegations made by the applicant that he was an ad hoc deputy sheriff takes the matter "no further. Likewise, the allegations against him by attorney Madau as to how he allegedly has conducted himself in the past. Going even further, the alleged disparaging remarks he is said to have made against the learned judge who issued the interim order is likewise no reason to either refer this matter for trial or for it to be

determinative in the outcome of the present matter.

[35] A further aspect is that advocate Maziya only appeared for the first respondent firm of attorneys at the hearing and that although the second respondent has filed his opposing affidavit to resist the application, there was no appearance on behalf or by the second respondent at the hearing.

Coupled with that, there were no affidavits filed by or on behalf of the first respondent. For all practical purposes, the result could well be that technically there are no opposing papers by the first respondent at all, only an appearance by their instructed advocate at the time the matter was heard. Further, that although the second respondent filed affidavits by himself and his supporters, he had no appearance at the hearing, with the result that neither of the two respondents could actually be said to have prosecuted or defended the application to confirm the rule nisi to its finality.

Be that as it may, the court nevertheless takes cognizance of all the papers filed of record. The second respondent was acting on instructions of the first respondent law firm all along. The affidavits in support and confirmation of his opposition were filed by three different attorneys who are engaged in the practice of the first respondent firm of attorneys.

I therefore consider their positions as is set out in the papers, despite them being technically out of the equation, so to speak.

Advocate Van der Walt quite correctly argues that the entire matter actually revolves around the writ of

execution itself, a document that is before court.

The contentious aspects of the writ involves uncertainty as to the amount that has to be satisfied by the present applicant. I refer to the writ in the exact words ex facie the document itself. Under the appropriate citation, it reads:

"You are hereby directed to attach and take into execution the movable goods ofNDUMISO NHLENGETHWA an adult male Swazi of Eveni Township, Mbabane, in the Hhohho Region of the same cause to be realized by public auction the sum of E2 500.00 together with interest thereon at the rate of 9% per annum calculated from March 2001 to date of final payment plus costs to be duly taxed by the Taxing master of the said Plaintiff, which he recovered by judgment of this Court dated the 15th October 2004 in the abovementioned case, and also all other costs and charges of Plaintiff in the said case to be hereinafter duly taxed according to law, besides all your costs thereby incurred.

Further to pay the said Plaintiff or his Attorneys the sum or sums due to him with costs are above-mentioned and for your doing this shall be your warrant.

And return you this Writ with what you have done thereupon ". (The underlining is my own emphasis).

[41] It is therefore clear that ex facie the writ itself, it was objectively impossible to determine the exact amount that had to be paid by the then defendant or judgment debtor to have the writ on the judgment satisfied and to avoid any attachment of his property.

[42] It is common cause that the judgment debt amounts to E2 500. It is also common cause, however it came into being, that the mora date is an unknown date, "... March 2001". It is plain arithmetic calculation that if the interest accrues at 9% per year, and the debt had to be liquidated on 15 December 2004, that a period of no more than 3 years and 9 months, at the maximum, could be involved. Since the mora date is stated to be "March 2001",without a specific date, I take it to be the 15 March, middle of the month.

I am no mathematician or accountant and profess to be an inadequate "number puncher". Advocate Van der Walt calculated the interest on E2 500 at 9% per year over 3 years and 9 months to be E843.75. Her method of calculation erroneously has interest over the first three full years at the same amount, instead of adding it year after year to the capital and using the same incorrect amount to calculate the final nine months interest. My own calculation, in the simplest method, not compounding monthly but annually, equates to E956.10. A proper financial calculation may possibly properly differ too, but it serves to indicate that interest of E956.10, or thereabout, added to a debt of E2 500, would require more or less E3 456.10 to settle the debt and interest.

The applicant, it is common cause, paid E8 000, which amount was to include taxed costs, which amount is not stated on the writ. On my simplistic interest calculation, added to the judgment debt and deducted from E8 000 paid, it leaves a remaining balance of E4 543.90, which was to service the taxed costs, which were taxed in the amount of E5 171.92, after the writ was issued but before the attachment on the 15 December 2004.

[45] On the above basis, my own calculations are that the applicant was left with an outstanding amount of E628.02, plus the sheriffs fees.

[46] Applicant's counsel attacks the writ on the basis that it does not comply with the provisions of Rule 45(2). It reads:-"Execution - General and Movables

45(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the Taxing Master or agreed to in writing by the party concerned or by the party's attorney of record in a fixed sum;

Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter:

Provided further that if such costs have not been taxed and the original bill of costs, duly allocated, has not been lodged with the Deputy Sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution. "

[47] From the wording of this rule, as it stands, the clear and unambiguous meaning is that prior to execution of costs, it either must already have been taxed by the taxing master, or agreed upon by the party himself or his attorney, in a fixed sum. A fixed sum, in this context, is to be spelled out as an amount in a certain quantity of Emalangeni and Cents.

[48] If not so, the rule further provides for the writ of execution to include a claim for specified costs already awarded by court but not yet taxed, subject to taxation thereafter.

[49] Applied to the present matter, the writ could have included, under the latter provision, the untaxed costs of the bill of costs, subject to taxation on a later date.

[50] As to the first provision of the sub-rule, no fixed sum was either agreed upon or determined after taxation, at the time the writ was executed. No fixed amount of costs is mentioned in it at all.

[51] It is common cause, upon the papers before court, that the writ of execution as well as the bill of costs, yet to be taxed, were both filed on the same day, the 26th October 2004. The bill of costs had a portion of it taxed off, with a total taxed amount of E5 171.92 allocated on the 12th November 2004.

[52] By this date, the writ had already been issued and the deputy sheriff prima facie must have already been in possession of the taxed bill by the 26 November. His return of service certifies that on this date, he demanded liquidation of the debt (reflected in the writ) "... and the taxed bill of costs" from the defendant.

[53] However, the writ itself does not ex facie itself refer to any "fixed sum" or "specified costs" (subject to taxation thereafter or not.) It does refer to "...costs to be duly taxed by the taxing Master", which exact amount of taxed costs, according to the Deputy

Sheriff, he knew at the time he first tried to execute, since he already was in possession of the taxed bill by then.

The wording "specified costs", as contained in the second part of Rule 45(2), is a proviso to deviate

from a "fixed sum", mentioned in the first part. "Specified costs" in the present context, are defined as "...specified costs already awarded to the judgment creditor but not (yet by) then taxed, subject to due taxation thereafter."

The writ itself reads that the judgment costs awarded against the present applicant are "...costs, to be duly taxed by the Taxing Master of the said plaintiff, which he recovered by judgment of this court dated the 15th October 2004 in the abovementioned case."

It is my considered view that the attack on the writ itself for not mentioning a specific amount of taxed judgment costs, cannot be sustained. The provisions of Rule 45(2) do in fact provide for the recovery of judgment costs in the manner in which it has been set out in the contentious writ of execution.

In the preposition that the deputy sheriff indeed had an already taxed bill of costs in hand, as he certified in his return, he would be entitled to demand not only the judgment debt of E2 500 but also the taxed costs of E5 171.92 from the judgment debtor/applicant, in order for him to refrain from an attachment of personal property to otherwise satisfy the writ of execution.

In the applicant's own papers, he does not state whether or not the deputy sheriff required him to furnish proof of payment of the amounts of the judgment debt plus taxed costs. He says that the first respondent told him that he owes E5 500 over and above the amount of the judgment debt (E8 000 in total.) He paid this amount. He continues to say that when he requested release of his vehicle, he was advised to contact the second respondent, who told him to pay a further E3 000, which amount he later changed to E3 700 in his replying affidavit.

The latter amounts, the sheriffs fees, form part of the secondary attack, dealt with hereunder.

Therefore, the applicant's contention, presented by his counsel, that as such, no costs were duly levied or could have been duly levied in execution of the writ, stands to fail.

The second phase of attack on the writ concerns the fees of the deputy sheriff.

After the applicant had paid E8 000 and was referred to the second respondent, he was told by the deputy sheriff that he had to pay a further E3 000 before his vehicle would be released.

The applicant's attorney, Mr. Madau, elaborates the matter to some extent. He tried many times to obtain the bill of the sheriff in order to ascertain his costs, without success. His client, the applicant, then obtained the rule nisi, an order which the deputy sheriff apparently was not pleased with at all. From what attorney Madau states, the prima facie conclusion is that the second respondent sheriff was as unaccommodating as could be.

[64] It seems as if it took the proverbial arm and a leg to get the deputy sheriff so far as to file his statement of charges and expenses. Annexure "NM2" is his account or bill of costs.

[65] The total amount claimed by the deputy sheriff is E2 777.43. His attorney was advised that the applicant contests the amount and wants it to be taxed, as is his good right.

[66] Various items in his bill of costs were highlighted by Advocate van der Walt. One such item is "subsistence x 8 days", amounting to E64.00. From the version of the sheriff himself, it does not seem very likely that he was actively involved, for purposes of his payment, for eight days. The same applies to traveling costs over eight days, totaling some 485 kilometres. Whether or not this distance is correct and substantiated, the current tariff of 60 cents per kilometre does not equate to E970. The claimed amount of E700 for a "breakdown - Ezulwini to Manzini" has to be properly evaluated on motivation to determine if E700 should be allowed. Whether or not 3% of E8 464.47 is payable on presentation of the writ also needs to be properly considered at a taxation. The judgment debt is E2 500, taxed costs of E5 171.92 and also an added maximum of E956.10 as interest amounts to E8 628.02. The storage costs of El 00 per day might be a further bone of contention at the taxation.

Be that as it may , the sheriffs costs was not agreed to nor was it taxed at the time he demanded payment of E3 000 for his own estimated costs, later claimed in a lesser amount of E2 777.43. This amount remains in dispute, still to be resolved upon taxation.

I remain with some difficulty to reconcile the calculations of applicant's counsel. She calculated the interest from the mora date by using the interest due in the first year, E225, and multiplying it by three, due to the three year period, adding 9/12 for the remainder of the period. In my view, the interest of the first year is to be added to the capital sum after one year, with the interest of the second year to be calculated on the initial capital amount as well as the interest that accrued during the first year, an amount of E245.25 interest during the second year, and not E225. Interest during the third year is E267.32. With E218.53 for the final nine months, added to the capital sum of E2 500, the interest totals E956.10 added to the judgment debt it totals E3 456.10, not E3 343.75. Advocate Maziya did not calculate the amount of interest and this aspect was not specifically argued, as to the exact amount of interest or the method of calculation.

E3 456.10 added to the taxed costs of E5 171.92 amounts to E8 628.02, some E628.02 more than the E8 000 that the plaintiff deposited with the first respondent.

The applicant's counsel pre-supposes that the taxed costs could not have been levied against the client on the premise, set out above, that it was not mentioned in the writ of execution what the exact amount of taxed costs were, which argument was not accepted.

She further argued that even if the sheriffs untaxed fees were allowed in the full amount, the applicant would have been left with a remaining credit of almost E2 000.

That this is not the de facto position is clear. The original plaintiff obtained a judgment against the present applicant with mora interest from March 2001, plus costs, which were taxed. These three amounts already exceed the amount that the applicant deposited.

The applicant's counsel argued, based on this incorrect premise, that the deputy sheriff was obliged to release the vehicle when called upon to do so because his own costs were neither agreed upon nor taxed. Also, that the applicant had by then paid more than what he was required to pay and further, that the writ itself did not specify the amount of taxed or agreed costs.

What pertains to the costs order that the then plaintiff obtained against the present applicant, vis-a-vis the writ of execution, applies mutatis mutandis in respect of the costs of the deputy sheriff. The writ reads that the judgment costs were to be taxed after issue of the writ. It also reads that besides the other

amounts to be realised from the defendant, the writ being directed to the deputy sheriff of the district (sic) of Hhohho, the sheriff is further to realise all of his own costs incurred by executing as ordered to do.

Whether the present Rules of Court specifically invests a right upon a person affected by the costs of a sheriff or not, it is trite that a bill of his costs may be brought to be taxed by the taxing Master of the High Court. The new Rules on execution provide so specifically.

[75] Therefore, the applicant is not only at liberty and entitled to have the deputy's bill taxed, it is also so ordered below.

[76] For these reasons, the second leg of argument against the propriety of the writ of execution also stands to fail.

[77] That is however not the end of the matter. This court cannot only consider argument that is based on technical expositions of the rules of court, blindfolded against the fleecing of judgment debtors. However much wrong was purportedly done by the deputy sheriff, and however justified the original plaintiff was to sue the present applicant and however much he may have subsequently erred or not, justice must still be seen to be done.

[78] Thandiwe Kendle sought and obtained a judgment against Ndumiso Nhlengethwa in the amount of E2 500. She was also awarded costs and interest. By now, over and above his own legal costs to seek

and obtain the interim relief and use of his motor vehicle, Nhlengethwa (the applicant) has paid E8 000 to try and get back his vehicle, without success. Fie had to incur further costs, suffer the frustration of going helter skelter to get his car, harass his own attorney at Christmastime to bother the other attorneys and the deputy sheriff.

[79] At worst, he might still be some E2 000 off the mark in respect of payments due by himself. At best, a well argued contested taxation may reduce this amount. Be that as it may, all other aspects being equal, and very strictly speaking, the then plaintiffs attorneys who instructed the second respondent to execute the judgment, falls foul of legalistic and technical nitty grittys of the law on which they themselves relied upon. Simply put, they (the first respondent firm of attorneys) failed to oppose the confirmation of the rule Nisi.

[80] The "respondents", being the first and second respondents, filed a notice to oppose the application. It is only the second respondent who filed his opposing affidavit, bolstered by the supporting and confirmatory affidavits of three attorneys of the firm of attorneys which instructed him. However, no opposing affidavit was filed by any attorney of the first respondent firm of attorneys.

[81] At the commencement of the hearing of argument, advocate Maziya placed on record that he appears for only the first respondent. As stated, the first respondent failed to file any opposing or answering affidavits, which in effect renders them akin to sitting ducks.

[82] The second respondent deputy sheriff did file his opposing or answering affidavit, but he made no appearance at the hearing, when it was to be decided whether the rule nisi should be confirmed or not.

Advocate Maziya, whose bona fides cannot be questioned, told the court that he appeared on behalf of the first respondent only. He did not also appear for the second respondent, who is deemed and bound to abide by the order of court due to non-appearance.

No cause was shown by either respondent as to why the rule nisi of the 23rd December 2004 should not be made final. The rule was extended until the date of this judgment. The rule nisi contained an order that the second respondent should pay punitive costs, including costs of counsel.

Due to the aforementioned aspects of appearance, filing and non-filing of opposing affidavits, as both respondents were called upon to do, I cannot find reason why both respondents should not be equally held liable for the costs of this application. The first respondent filed no opposing papers, but still instructed counsel to appear at the hearing on the extended date of the application to confirm the interim relief. The second respondent, though filing opposing papers, supported and confirmed by attorneys of the first respondent, did not attend or cause appearance at the hearing.

It is for these reasons that the rule nisi, issued on the 23rd December 2004, be hereby confirmed, save that costs are not ordered against the second respondent only, but against both respondents, jointly and severally, the one to pay, the other absolved.

It is further ordered that the bill of costs of the second respondent be taxed forthwith by the Taxing Master of the High Court. Once the necessary full accounting has been done, the applicant shall be liable to pay the shortfall, if any, on the same basis as the original judgment, forthwith.

ANNANDALE, ACJ