Should your AARTO infringement notice be served on you personally?

Over the years, the courts have faced several rescission of judgment applications wherein the debtor or infringer alleges that they were unaware of the notice or legal proceedings being instituted against them, as same merely never reached them. This conundrum is usually attributed to the manner of service of the notices or legal processes. Notices or legal processes are usually delivered to the last known address of the intended recipient or sent via registered post. The intended recipient often does not receive the notice because they have moved or the post did not reach them.

The *Administrative Adjudication of Road Traffic Offence Amendment Act,* 4 of 2019 ("AARTO Amendment Act") has recently prompted controversy about the need for personal service in delivering notices or processes to infringers under the act. Section 17 of the AARTO Amendment Act amends Section 30(1) of the *Administrative Adjudication of Road Traffic Offences Act,* 46 of 1998 (AARTO) by allowing for additional ways of service, such as by electronic means, in addition to personal service and registered mail.

In the recent case of *Organisation Undoing Tax Abuse v Minister of Transport and Others 2023 (1) SA 21 (CC)*, the Organization Undoing Tax Abuse (OUTA) has expressed concerns about the potential repercussions of deviating from personal service, claiming that it may result in many suspected infringers failing to receive important notices and or processes such as infringement notifications and enforcement orders. They argued that this might result in unjust implications, such as disqualification from driving or license suspensions, without giving suspected infringers the opportunity to defend themselves.

However, the courts have adopted a simpler approach to the matter. While OUTA emphasizes the necessity of personal service and registered mail in ensuring document receipt, the courts have underlined the requirement for successful delivery regardless of the manner of service. The Constitutional Court held that the duty is still on the document/notice server to show that reasonable attempts

were made to bring the documents to the suspected infringer's attention, regardless of the method of service used.

Similar problems about service sufficiency have emerged in consumer law, notably in situations involving payment default. The cases of *Sebola and Another v Standard Bank of South Africa Ltd and Another (CCT 98/11) [2012] ZACC 11* and *Kubyana V Standard Bank of South Africa Ltd (CCT 65/13) [2014] ZACC 1*, which dealt with the service of a section 129 notice under the National Credit Act, shed light on the difficulties of service obligations and credit providers' burden of proof. These cases show the need for clarity and consistency when judging if the delivery of a notice was effective. The courts have acknowledged that, while personal service is preferable, it is not always feasible, particularly in the digital age, when electronic contact is common.

As a result, the emphasis should be on whether the preferred manner of service will likely reach the intended receiver. If the recipient contests receipt of the letter or document, they must show why it did not come to their attention. While personal service is still desired, other means, such as electronic service, can be sufficient if done correctly.

Lastly, it should be noted that the above is only applicable where the AARTO and AARTO Amendment Act finds application. The *National Road Traffic Act,* 93 of 1996 governs the implementation of road regulations in the rest of the country where AARTO is not applicable.

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