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17 April 2020

**DIRECTIVES ISSUED BY CHIEF JUSTICE MOGOENG MOGOENG
IN TERMS OF SECTION 8 (3) (b) OF THE SUPERIOR COURTS ACT
10 OF 2013 FOR THE MANAGEMENT OF COURTS DURING THE
LOCKDOWN PERIOD**

**PLEASE TAKE NOTICE THAT THE FOLLOWING DIRECTIVES
SHALL APPLY TO THE EXTENDED PERIOD OF THE LOCKDOWN:**

A. PURPOSE

1. The purpose of these Directives is to –
 - 1.1. provide guidance in relation to how judicial functions are to be managed and performed during the lockdown; and

- 1.2. delegate, to all Heads of Court, the authority to take such action and issue such Directions as may be necessary to give effect to these Directives.

B. GENERAL

2. Parties wishing to have a matter, which has been set down for hearing during the lockdown period, removed from the roll, shall jointly do so by issuing notice, in accordance with the practice of the Court or Division concerned.
3. Subject to these Directives, only urgent applications and urgent matters arising from the activities associated with disaster management may be heard in open Court during the lockdown period, provided that the Judge or Magistrate (hereafter Judicial Officer) hearing the matter may, if he or she deems it necessary, having regard to the exigencies of each case, hear any such matter through video conferencing or other electronic means which are appropriate in the circumstances, after consultation with the parties concerned.

C. CRIMINAL TRIALS

4. Criminal trials already set down for hearing during the lockdown period must be brought forward by arrangement with all the relevant parties, and postponed to dates beyond the lockdown period. This shall apply even in circumstances where the accused is absent or an awaiting trial prisoner who, due to the lockdown, is unable to attend trial.

D. CIVIL TRIALS

5. Subject to the provisions of paragraphs 6 and 7, all civil trials enrolled for hearing during the lockdown period shall forthwith be removed from the trial roll, and their re-enrolment shall be in accordance with a procedure determined by the Head of Court.
6. The Head of Court or, as the case may be, the Registrar or Clerk of the Court, shall either –
 - 6.1. re-enrol the matters for hearing on the earliest available suitable dates; or
 - 6.2. direct that the parties apply for fresh set down dates in which case, the legal representatives of the parties shall, in the spirit of cooperation, confer with one another with a view to agreeing on suitable alternative trial dates and shall, upon reaching agreement, apply to the Registrar or Clerk of the Court for suitable dates as are available to be allocated.
7. Should the parties be unable to reach agreement as contemplated in paragraph 6.2, either party may request that the matter be placed before a case management Judicial Officer in order to facilitate the expeditious re-enrolment of the matter.
8. The parties shall further inform the Registrar or Clerk of the Court of any matter that is capable of settlement.

9. When a matter has become settled during the lockdown period, and the parties are in agreement in relation to the terms of the order, the Registrar or Clerk of the Court may be requested to place the matter before a Judicial Officer for the granting of an order. The Judicial Officer may then deal with the matter in a manner that she or he deems appropriate.

E. APPLICATIONS

(i) Unopposed applications

10. Subject to what is set out in paragraph 11, there shall be no open court sittings during the lockdown period, save for urgent applications referred to in paragraph B.3, which shall include bail applications.
11. Unopposed applications already enrolled for hearing during the lockdown period shall be dealt with in the following manner:

11.1. Matters shall not be dealt with in open court. Where it is inappropriate to proceed with the matters by video conferencing or other electronic means, the matters shall be postponed to dates after the lockdown. Matters suitable to be disposed of without an oral hearing, shall, unless the Judicial Officer concerned determines otherwise, be dealt with on the papers which shall include such written submissions from the parties as may be directed by the Judicial Officer. In instances where oral hearing is to take place, the Judicial Officer may direct that such hearings be by way of video conferencing or other electronic means which are appropriate in the circumstances.

- 11.2. Any *rule nisi* with a return date that falls within the lockdown period, and which was granted prior thereto, shall be extended to dates beyond the lockdown period. Where this cannot be achieved, for reasons of urgency, the matters are to be referred to a Judicial Officer on duty to determine the future conduct thereof.
12. Urgent applications shall be being dealt with by a Judicial Officer on duty, subject to such directives as she or he may issue.

(ii) Opposed applications

13. Save where a litigant is unrepresented and he or she does not have access to email, heads of argument are required to be filed electronically.
14. The parties shall further endeavour to reach agreement dispensing with the presentation of oral argument and shall, to that end, inform the Judicial Officer presiding in the matter of their decision by no later than noon on the preceding Friday.
15. Where the parties have been unable to reach consensus as envisaged in paragraph 14, or where the presiding Judicial Officer directs that argument be presented, the Judicial Officer may further direct that the matter be heard by way of video conferencing or other electronic means which are appropriate in the circumstances, and the Registrar or Clerk of the Court shall provide the parties with relevant information to facilitate the hearing.

F. APPEALS

16. The provisions of section 19 (a) of the Superior Courts Act shall apply to the hearing of appeals, save that the presiding Judge shall solicit the views of the parties prior to the appeal panel making a determination in terms of that section.
17. In the event of the appeal panel determining that oral submissions are to be made, appropriate measures shall be taken to eliminate the need for practitioners to attend court, and the presiding Judge may direct that the hearing be by video conference or other electronic means which are appropriate in the circumstances, and on such terms as she or he may determine.

G. APPLICATIONS FOR LEAVE TO APPEAL

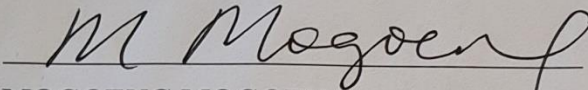
18. The provisions of paragraphs 16 and 17 of these Directives shall apply, with the necessary adaptation, to applications for leave to appeal.

H. JUDICIAL CASE FLOW MANAGEMENT

19. There shall be no judicial case flow management conferences held before a Judicial Officer in chambers or civil roll call hearings convened during the lockdown period. Case management conferences enrolled during the lockdown period shall be removed from the roll and enrolled on dates immediately after the lockdown period; Provided that the Judicial Officer concerned may, where appropriate, communicate electronically with the parties and issue such directives as may be necessary to ensure the trial readiness of any of the matters.

I. CONCLUSION

20. The Heads of Court shall, during the lockdown, issue such Directions as may be necessary to manage particular circumstances not addressed by these Directives that are peculiar to their Courts. Those Directions shall not be inconsistent with these Directives.
21. The measures referred to in the Directives issued on 17 March 2020 shall remain in force during the lockdown period.



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