



**LOWER COURTS JUDICIARY
REPUBLIC OF SOUTH AFRICA**

**Magistrate's Court, Private Bag X54308, Durban, 4000. Tel [031] 3024151/159,
Fax to email: 0865070723, Corner Somtseu and Stalwart Simelane Roads
E-Mail: ENgubane@justice.gov.za**

ENQUIRIES: E B NGUBANE/swp

REFERENCE: 1/4/5 [LCJ]

To: All Area Cluster Heads
Administrative Region 6
[KwaZulu-Natal]

04 May 2020

**JUDICIAL HEAD: ADMINISTRATIVE REGION 6, KWAZULU-NATAL:
JUDICIAL CIRCULAR 11 OF 2020.**

**DETERMINATION OF ADMISSION OF GUILT FINES IN RESPECT OF
OFFENCES COMMITTED IN TERMS OF REGULATIONS PROMULGATED
UNDER THE DISASTER MANAGEMENT ACT, 2002 PUBLISHED IN
GOVERNMENT GAZETTE NO. 43258 DATED 29 APRIL 2020 IN
ADMINISTRATIVE REGION 6, KWAZULU-NATAL.**

The determination of admissions of guilt as a general proposition should be reserved for trivial offences. After consultation with NPA officials and other members of the Judiciary, I have decided to make a limited determination in respect of admission of guilt fines under the Regulations promulgated in terms of section 27(2) of the Disaster Management Act, 2002 for, inter alia, the following reasons:

The Preamble to the Disaster Management Act, 57 of 2002 reads as follows;

To provide for-

“an integrated and coordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery”.

The obligation on the State to manage, prevent or reduce the risk and to mitigate the severity of disasters and the concomitant responsibility of the courts as an arm of the State cannot be taken lightly. The courts as an institution, even when operating at a limited level, play a critical role in the maintenance of law and order.

I consider the offences under the Regulations, save for three offences, to be of such a serious nature, that the determination of Admissions of Guilt would not be in accordance with justice or in the interests of justice. This view, I have learnt, is also supported by the Head of the National Prosecuting Service, South Africa.

We must be cautious in the determination of Admissions of Guilt fines for offences which can hardly be described as trivial, in the expectation that such fines would be paid thereby obviating any court appearance by the accused. The safe -guards alluded to by the courts where the payment of such fines will result in a person acquiring a criminal record, must also be taken into consideration and the process should be beyond reproach [S v Parsons 2013 (1) SACR 38 (WCC) and S vs Tong 2013 (1) SACR 346 (WCC)]. It is also to be noted that where an incorrect regulation or section was inserted by an enforcement officer when the written notice was issued; an offence would not have been disclosed, therefore, the deemed conviction and sentence in terms of section 57(6) of the Criminal Procedure Act, 1977, would not follow [S v Fyn 2011(2) SACR 178 (KZP)].

We are obligated to take this virus seriously, and where necessary, to send a

clear message that any contraventions of the Regulations will be dealt with in a manner befitting the seriousness of the offence and heightening the objective of deterrence, lest we run the risk of there being widespread non-compliance with the payment of a fine being the only consequence.

In all the circumstances I have decided to fix Admissions of Guilt fines as per the attached Determinations for only three offences, namely, Contraventions of Regulations 8(5) r/w 14(4)(a), 16(1) r/w 31(2) and 23(1) r/w 31(1)(a) of Government Gazette 43258 dated 29 April 2020. In respect of other Contraventions, no Admissions of Guilt fines are determined. For your ease of reference, the Schedule of the Determinations that I have made, is attached hereto.

In the interests of uniformity of practice and consistency, bearing in mind the constitutional provision under Section 9 (1) of Act 108 of 1996 that everyone is equal before the law and has the right to equal protection and benefit of the law, I urge Heads of District within this Cluster to consider the advisability of following suit.

Kindly disseminate this Circular together with the attached Determination of Admissions of Guilt Schedule to all Heads of Court within your respective Area Clusters for the attention of all Magistrates.



E B NGUBANE

**CHIEF MAGISTRATE: DURBAN &
JUDICIAL HEAD: ADMINISTRATIVE REGION 6
KWAZULU-NATAL**

