



**LOWER COURTS JUDICIARY  
REPUBLIC OF SOUTH AFRICA**

**Magistrate's Court, Private Bag X54308, Durban, 4000. Tel [031] 3024151/159,  
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**ENQUIRIES: E B NGUBANE/swp**

**REFERENCE: 1/4/25 [LCJ]**

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


**04 June 2020**

**JUDICIAL HEAD: ADMINISTRATIVE REGION 6: JUDICIAL CIRCULAR 16 OF  
2020**

**DIRECTIONS DATED 04 JUNE 2020, ISSUED BY THE JUDICIAL HEAD OF  
ADMINISTRATIVE REGION 6, KWAZULU-NATAL AS DELEGATED BY THE  
CHIEF JUSTICE.**

Kindly take note of the Directions issued by me, the Judicial Head of  
Administrative Region 6, KwaZulu-Natal as delegated by the Chief Justice.

Kindly disseminate this Circular together with the attached Directions to all Heads  
of Court within your respective Area Clusters for compliance by all Magistrates.

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





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**DIRECTIONS ISSUED BY THE JUDICIAL HEAD OF ADMINISTRATIVE REGION 6,  
KWAZULU-NATAL AS DELEGATED BY THE CHIEF JUSTICE IN TERMS OF  
SECTION 8(3) OF THE SUPERIOR COURTS ACT, 2013 AS AMENDED**

**WHEREAS** on 2 May 2020, the Chief Justice of the Republic of South Africa, in terms of section 8(3)(b) of the Superior Courts Act 10 of 2013, issued Directives in relation to how judicial functions are to be managed and performed during the remaining period of the National State of Disaster;

**AND WHEREAS** the Chief Justice delegated to Heads of court, the authority to take such action and issue such Directions as may be necessary to give effect to the Directives issued by the Chief Justice;

**AND WHEREAS** Section 165 (1) of the Constitution provides that judicial authority is vested in the courts;

**AND WHEREAS** in terms of Section 9 (1) of the Constitution, everyone is equal before the law and has the right to equal protection and benefit of the law;

**AND WHEREAS** the constitutional imperatives in terms of Section 165 (4) of the Constitution ensures the independence, impartiality, dignity, accessibility and effectiveness of the courts;

**AND WHEREAS** the provisions of Section 4 (1) and 12 (1) (c) of Act 32 of 1944 provides, inter alia, that every court shall be a court of record and that a magistrate shall be subject to the administrative control of the Head of Administrative Division in which his/her district is situate;

**AND WHEREAS** the obligation of all courts is to enhance access to quality justice; to affirm the dignity of all users of the court system and to ensure the effective, efficient and expeditious adjudication of court cases;

**AND WHEREAS** the scheduling of cases and case flow management is inherently a judicial function and judicially driven;

**AND WHEREAS** it is imperative that all Organs of State protect, uphold and enhance the dignity and decorum of the court at all times;

**AND WHEREAS** the Judge President of the High Court of South Africa, KwaZulu-Natal Division, issued Directions which apply in the High Court of KwaZulu-Natal, to which I have had due regard;

**AND WHEREAS** the Minister for Justice and Correctional Services, issued Directions in terms of Regulation 4(2) of the Regulations under the Disaster Management Act, 2002 published on 2 June 2020 in Government Gazette No 43258, to prevent and combat the spread of COVID-19 in all courts, court precincts and justice points in South Africa;

**AND WHEREAS** the Rule of Law and access to justice are pivotal constitutional imperatives even during the State of National Disaster;

**NOW THEREFORE**, in terms of the authority delegated by the Chief Justice to the Heads of Court to issue Directions as may be necessary to give effect to the Directives of the Chief Justice, and to manage particular circumstances that are not addressed by the Directives of the Chief Justice, and to achieve uniformity of practice and prevent unfair benefit of the law within Administrative Region 6, KwaZulu-Natal, I have, after consultation with various role players and having had due regard to the Regulations promulgated by the Minister of Cooperative Governance and Traditional Affairs, of Alert Level 3, hereby issue the following Directions;

#### **A. CRIMINAL CASES**

1. Postponements, first appearances (including child justice preliminary inquiries) and consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres, shall be dealt with on a case by case basis.
2. If any accused person who is on warning or on bail, did not appear in court as a consequence of the National State of Disaster, such reason must be clearly recorded on the record of proceedings, and as a way of securing the attendance of the accused person in future, a warrant of arrest against him or her, may be authorized but stayed for a provisional future date. The provisional cancellation of bail and forfeiture/ estreatment of bail money may be stayed until the aforementioned provisional future date. Should the State of National Disaster persist beyond such future date, the warrant of arrest, provisional cancellation of bail and provisional forfeiture/ estreatment of bail money, may be stayed further and reasons for such further stay, should be recorded accordingly.

3. The Audiovisual Remand System (AVR), where such system exists, must be used for postponing cases where accused persons are in custody. Audio visual links may further be used in any proceedings where the magistrate deems it appropriate and if to do so would prevent unreasonable delay, save costs or be convenient thereby making it unnecessary for the accused to physically appear in court.

4. Where there is no audiovisual link installed between a correctional centre and a Court, other alternative audio visual links such as teleconference or videoconference or any other electronic mode may be used to conduct any proceedings where the accused persons are in custody where the magistrate deems it appropriate and if to do so would prevent unreasonable delay, save costs or be convenient thereby making it unnecessary for the accused to physically appear in court.

### **Bail applications**

5. All bail applications being inherently urgent must be dealt with. The audiovisual remand system (AVR) where it is available, as well as other alternative audio visual links such as teleconference or videoconference or any other electronic mode may be used in dealing with bail applications where it is appropriate to do so;

6. Proceedings under section 63A of the Criminal Procedure Act 51 of 1977 should be invoked as a way of reducing the number of detainees and as a way of combating and preventing the spread of Covid-19 infections in Correctional Facilities.

### **Trial cases**

7. Trials should be scheduled in all matters but limited to not more than 60 per cent or three trial cases per day per trial court. This is deemed necessary to avoid congestion at courts;

8. Trials of accused person/s in the undermentioned matters shall however be prioritized:-

8.1 Trials where accused persons are in detention and those that have been placed on the priority roll;

8.2 Cases where a child is an accused, a witness or a victim;

8.3 Trials involving corruption, sexual offences, gender-based violence and femicide, serious violent crimes, robbery, murder and violation of COVID-19 Regulations [NB: District Courts can only deal with trials involving gender-based violence, serious violent crimes, robbery (limited) and violation of COVID-19 Regulations].

8.4 Partly-heard cases which can be completed;

8.5 Single witness trials; and

## 8.6 Guilty pleas.

9. Applications for leave to appeal in finalised cases which could not be brought to court or entertained by court due to Lockdown levels 4 or 5 during the State of National Disaster, should be dealt with.

## **B. CIVIL MATTERS**

### **Civil trials**

10. For uniformity of practice within the Region, any civil trial may be scheduled for hearing during the State of National Disaster on Alert Level 3. Trial cases that were postponed due to Alert Levels 4 and 5 should however be given preference. Where the parties so desire, and with consent of all parties in writing, any trial may be removed from the trial roll. Such consent, as contained in the Notice of Removal, should be forwarded to the Clerk of the Civil Court. If such notice is not filed by the scheduled date, the matter will be removed from the roll accordingly, by the Presiding Magistrate;

11. All civil trials may be scheduled for hearing but this should be limited to not more than 60 per cent of the usual trial roll that is scheduled in a given courthouse. A similar limitation is applicable to pre-trial conferences. This limitation is deemed necessary to avoid congestion at the courts and may be reviewed from time to time during the State of National Disaster;

12. Matters which have become settled prior to the trial date, may be brought forward by arrangement with the Head of Court/ Section Head or delegated Presiding Magistrate, where an order is required consequent upon such settlement.

### **Applications**

13. Unopposed and opposed applications shall be dealt with subject to a limitation of 60 per cent of the usual court rolls that are scheduled in such matters in a given courthouse. This is deemed necessary to avoid congestion and will be reviewed from time to time during the State of National Disaster;

14. Whilst an order for the eviction of a person from his or her land or home in terms of the provisions of the Extension of Security of Tenure Act, 1977 (Act 62 of 1977) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1988 (Act 19 of 1998), may be considered and granted; the general rule under Alert Level 3 is that the order of eviction may be stayed and suspended until the last day of the Alert Level 3 period, unless a court decides that it is not just and equitable to do so. In the latter event, full reasons should be endorsed on record;

15. The Presiding Magistrate may direct that any hearing be conducted by way of video conferencing or other electronic means, which are appropriate in the circumstances;

16. All section 65A inquiries shall be dealt with subject to a limitation of 60 per cent of the usual court rolls that are scheduled in such matters in a given courthouse. This is deemed necessary to avoid congestion and will be reviewed from time to time during the State of National Disaster;

17. Granting of Administration Orders (section 74 of Act 32 of 1944), applications for debt reviews as well as rearrangements of consumer's obligations (sections 86 and 87 of Act 34 of 2005 respectively), should be dealt with. However, the number of matters enrolled should be limited to 60 per cent of the usual court rolls that are scheduled in such matters in a given courthouse. This is deemed necessary to avoid congestion and will be reviewed from time to time during the State of National Disaster;

18. Applications for confirmation of detention for purposes of deportation should be considered during this period.

### **C. SMALL CLAIMS COURTS**

19. Small Claims Courts should operate under Alert Level 3 and services relating to these courts should be accessible to members of the public. The cases scheduled per day should however be limited to 60 per cent of the usual court rolls that are scheduled in such matters in a given courthouse. This is deemed necessary to avoid congestion and will be reviewed from time to time during the State of National Disaster.

### **D. FAMILY MATTERS**

20. All family court matters, namely;

20.1 Child and spousal maintenance proceedings;

20.2 Protection orders in terms of the Domestic Violence Act No. 116 of 1998 and the Protection from Harassment Act No. 17 of 2011;

20.3 Foster care applications and hearings including extension of existing orders;

20.4 Guardianship, care and contact, care and protection proceedings in respect of children, including removal to temporary safe care and placement in Child and Youth Care Centres;

20.5 International child abduction cases;

20.6 Adoptions applications and hearings; and

20.7 Mediation and facilitation services.

21. To avoid congestion at the courts and to maintain physical distancing of at least 1.5 meters, a limitation of 60 per cent of the usual court rolls that are scheduled in such matters in a given courthouse, should be adhered to. This limitation will be reviewed from time to time during the State of National Disaster.

#### **E. CHAMBER APPLICATIONS**

22. All Chamber applications, including applications for permits under the State of National Disaster, should be dealt with taking into account the precautionary measures as provided for in the State of National Disaster Alert Level 3 Regulations and various Directions.

#### **F. GENERAL MATTERS**

23. The District Courts, being part of essential services, shall remain open and accessible. Access to court buildings will, however, be restricted to persons who are strictly required to be present in terms of State of National Disaster on Alert Level 3;

24. All District Magistrates, being part of essential services, shall report for duty unless approval has been granted to them to be on leave;

25. The relevant officers of court including Clerks of Court, must timeously inform witnesses, and where applicable, the foreign language interpreters, where trials will not be proceeded with, that their presence in court will not be required during this period.

#### **G. SAFETY MEASURES AT COURTS.**

26. The Head of Court through the Court Manager / Compliance Officer must ensure that all Magistrates and other staff are supplied with adequate sanitisers;

27. Every person at a court room, courthouse or court precinct must-

27.1 at all times wear a cloth face mask or a home-made item that covers the nose and mouth or another appropriate item to cover the nose and mouth; and

27.2 observe the social distancing requirement of 1,5 metres in any queue or seating arrangement and must adhere to any demarcations at such court room or courthouse.

## H. OBSERVANCE OF OFFICIAL WORKING HOURS

28. Heads of Districts/ Presiding Magistrates as Managers of their courts, must insist that Administrative component that renders support service to the Courts (Criminal, Civil and Family), adheres to the normal operating hours of 07h45 to 16h15 as stipulated in paragraph 4.3.2 of the Risk Adjustment Plan issued by the Acting Director General: Department of Justice and Constitutional Development under Departmental Circular 26 of 2020.

These Directions hereby replace all previous Directions which I have issued and will be effective from 05 June 2020 and persist until the end of State of National Disaster period or is amended, extended or withdrawn.

It should be noted that arising from the judgment of the Gauteng Division of the High Court, Pretoria, under case number 21542/2020, delivered on 2 June 2020, Regulations issued by the Designated Minister under Alert Level 3 may, as a consequence, be amended or Regulations may be promulgated afresh and consequential Directions by the various Ministers, may also be issued. In such event, the Directions I have issued herein, may be revisited to be aligned therewith, if necessary.

Given under my hand at Durban on this 04<sup>th</sup> Day of June 2020.

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

