



**LOWER COURTS JUDICIARY
REPUBLIC OF SOUTH AFRICA**

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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 has, in terms of section 8(3)(b) of the Superior Courts Act 10 of 2013, issued Directives for the management of the Courts during the State of National Disaster period, the purpose of which is to;

provide guidance in relation to how judicial functions are to be managed and performed during the remaining period of the national state of disaster; and

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

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

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 for hearing is inherently a judicial function;

AND WHEREAS Court and Case Flow Management is inherently judicially driven;

AND WHEREAS it is imperative that all court officers 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 will apply in the High Court of KwaZulu-Natal, to which I have had due cognizance;

AND WHEREAS the Minister of Justice and Correctional Services, issued Directions in terms of regulation 4(2) of the Regulations under the Disaster Management Act, 2002 which were published on 4 May 2020 in Government Gazette No 43268;

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, I have, after consultation with various role players and having had due regard to the determination by the Minister of Cooperative Governance and Traditional Affairs, of Alert Level 4, published in Government Gazette No 43258 dated 29 April 2020; decided to issue the following Directions;

A. CRIMINAL CASES.

Postponements.

1. 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.
2. The Audiovisual Remand System (AVR), where such system exists, must be used for postponing cases where the accused person is in custody.
3. 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 postpone cases where the accused persons are in custody.
4. The continued detention of children awaiting trial in Child and Youth Care Centres and Correctional Centres must be considered on a case by case basis.

Bail applications.

5. All bail applications must be dealt with in Court. 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.

Trial cases.

6. Trials of accused person/s who is/are on warning or bail shall be postponed to a future date during/after Alert Level 4, except the following;

6.1. Where special arrangements have been made with the Head of Court or Section Head or delegated Presiding Magistrate;

6.2. Trials where accused persons are in detention;

6.3. Trials involving corruption, sexual offences, gender based violence and femicide, serious violent crimes, robbery, murder and violation of COVID-19 Regulations

6.4. Partly-heard cases which can be completed; and

6.5. Guilty pleas.

6.6. Applications for leave to appeal in finalised cases which could not be brought to court or entertained by court due to the State of National Disaster period, can be dealt with.

B. CIVIL MATTERS

Civil trials

7. All civil trials set down for hearing during the State of National Disaster Alert Level 4 period, may be removed from the trial roll with the consent of all the parties. Such consent, as contained in the Notice of Removal, should be forwarded to the Clerk of the Civil Court. If such notice is not received up to the scheduled date, the matter will be removed from the roll accordingly, by the Presiding Magistrate.

8. Any party who deems it urgent that his/her trial must proceed, shall communicate such fact to the Head of Court/ Section Head or delegated Presiding Magistrate, who at his/her discretion, will direct the further conduct of the matter.

9. 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.

10. All matters that have become trial-ready and the Rules of Court would in the ordinary course have been followed, shall for the purposes of the period of State of National Disaster Alert Level 4, be considered as follows:

- a. Once pleadings have closed, the plaintiff or defendant whoever elects to have the matter proceed to a pretrial conference, shall inform the Head of Court / Section Head or delegated Presiding Magistrate of his /her intention;
- b. Pursuant to such notification, the Head of Court / Section Head or delegated Presiding Magistrate, shall peruse the file to determine the readiness to proceed for pretrial conference and may raise any query if need be with such party; and
- c. Once the queries have been resolved, if raised, and the joint pre-trial minutes have been filed, the matter shall then proceed to be set down for such pre-trial conference, to be convened in the best manner consistent with the State of National Disaster Alert Level 4 Regulations and in the absence of the litigants/ legal representatives.

11. Partly-heard civil trial may be proceeded with provided that proper arrangements have been made with the Judicial Officer concerned, having taken into account the precautionary measures in terms of State of National Disaster Alert Level 4 period, and taking into account, measures related to social distancing.

12. Reserved Judgments can be delivered electronically.

Applications.

(i) Unopposed applications

13. Unopposed applications already enrolled for hearing during the State of National Disaster Alert Level 4, shall be dealt with in the following manner;

13.1. In the event of the parties requiring that an oral hearing of the matter be held, and the matter is not deemed urgent; and further, it is not possible to proceed with such a hearing via videoconferencing and/or other electronic means, the matter may be postponed to any date in future;

13.2. Matter which can be disposed of without an oral hearing, must, unless the Presiding Magistrate concerned determines otherwise, be dealt with on papers which must include such written submissions from the parties and on such further Directions as may be required by the Presiding Magistrate; and

13.3. In instances where oral hearing is to take place, the Presiding Magistrate may direct that such hearing be by way of video conferencing or other electronic means, which are appropriate in the circumstances.

(ii) Opposed applications.

14. Save where the litigant is unrepresented and he or she does not have access to email facilities, heads of arguments shall be filed electronically.

15. The parties shall further endeavor to reach agreement dispensing with the presentation of oral argument and shall, to that end, inform the Presiding Magistrate in the matter of their decision by no later than two (2) days before the date of hearing.

(iii) Other applications.

16. All section 65A matters **may** be removed from the roll and can be reinstated by either of the parties when it is permitted to do so by relevant Directions.

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 may be reduced to ensure compliance with the relevant precautionary measures in terms of the State of National Disaster Alert Level 4.

18. Applications for confirmation of detention for purposes of deportation will be performed during this period.

C. SMALL CLAIMS COURTS

19. Small Claims Courts may not operate under Alert Level 4 and services relating to these courts are limited to email and telephonic enquiries.

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 or the Protection from Harassment Act No. 17 of 2011;

20.3 Foster care applications and hearings;

20.4 Care and contact, care and protection proceedings in respect of children, including removal to temporary safe care and placement in child and youth care centers;

20.5 International child abduction cases; and

20.6 Adoptions applications and hearings;

scheduled for hearing and **new matters** shall be dealt with during this State of National Disaster Alert Level 4.

E. CHAMBER APPLICATIONS

21. All Chamber applications, including the State of National Disaster Alert Level 4 permits, should be dealt with taking into account the precautionary measures as provided for in the State of National Disaster Alert Level 4 Regulations.

F. GENERAL MATTERS

22. The Directives issued by the Chief Justice are the primary and overriding authority for regulating access to and use of Courts during the State of National Disaster Alert Level 4, and Heads of Court, in this instance, the Judicial Head, Administrative Region 6, KwaZulu-Natal, has been delegated by the Chief Justice to take such action and to issue such Directions as may be necessary to give effect to Directives of the Chief Justice.

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 Alert Level 4.

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.

26. The holding of District Efficiency Enhancement Committee (DEEC) Meetings (known as Court and Case-flow Management Meetings) are currently not being held due to the State of National Disaster. However, all stakeholders that attend the DEEC meetings, are to be strongly encouraged by District Heads to consider advisability of the use of audio visual links such as teleconference or videoconference or any other electronic mode (Skype, Microsoft Teams et cetera), where possible, in order to hold such DEEC meetings. District Heads and Area Cluster Heads are requested to report within **fourteen days (14)** of the issue of these Directions, about the progress made by the stakeholders in this regard.

G. SAFETY MEASURES AT COURTS.

27. Every Head of Court must ensure that all Magistrates in his or her Court are supplied with adequate sanitisers by the Court Manager to sanitise their hands.

28. Every person at a court room or court house must-

(a) 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

(b) 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 court house.

H. OBSERVANCE OF OFFICIAL WORKING HOURS.

29. On 26 March 2020, the Acting Director-General for the Department of Justice and Constitutional Development, Advocate J B Skosana, issued Circular 22 of 2020 in which he announced in paragraph 3 that operating working hours would be from 10h00 to 13h00 on weekdays, except where urgent and exceptional circumstances dictate that the hours be extended.

30. On 1 April 2020, in a media release on behalf of the Minister of Justice and Correctional Services, following the release of Directions published in Government Notice No. 440 of 31 March 2020, Mr Chrispin Phiri, announced that *“as part of government’s measures to curb the spread of Covid-19, essential justice services will be available at courts only between 10:00 and 13:00 daily during the national lockdown period (27 March until 16 April 2020).”*

31. On 3 May 2020, the Minister of Justice and Correctional Services issued Directions in line with State of National Disaster Alert Level 4 in which he announced that *“Directives published by Government Notice No. 440 of 31 March 2020, were withdrawn by current Directions published under Government Gazette No 43268”.*

32. The announcement relating to the operating hours which were expected to be complied with by all officials of the Department, were understood to imply that the Administrative component of the Department, was allowed to come late to work and also to leave early because of limited availability of public transport, as well as the reduction of work that had to be performed under the first lockdown period (26 March 2020 until 16 April 2020). However, following the announcement of State of National Disaster Alert Level 4, the Minister announced an extended list of duties that may be performed as per Annexure 1 to the current Regulations, which has the effect that Criminal, Civil and Family Courts will almost operate on full time basis. In terms of Government Gazette No 43272 published on 4 May 2020 by the Minister of Transport, Mr F A Mbalula, at paragraph 6, announced that *“Intra- provincial, metropolitan areas and districts public transport is permitted to operate from 5h00 to 20h00 with a grace period of an hour within which to complete the journey and drop off at 21h00.”*

33. Limited operating hours (10h00 to 13h00) during the State of National Disaster Alert Level 5, had a negative impact on the operation of Courts and would lead to disastrous consequences should this position be allowed to persist. To avoid any confusion as a result of conflicting Directions from different sources, constitutional imperatives of section 165 of the Constitution of the Republic of South Africa, must be followed as per the Directives of the Chief Justice of the Republic of South Africa. Noteworthy about the imperative provisions of Section 165 supra, is that among other things, this section provides that judicial authority is vested in the courts and

that other organs of state and functionaries must support and protect the judiciary in order to ensure its independence, impartiality, dignity, accessibility and effectiveness of the courts.

34. Therefore, the Heads of Districts/ Presiding Magistrates as Managers of their courts, must insist that Administrative component that is rendering support service to the Courts (Criminal, Civil and Family), adheres to the normal operating hours of 07h45 to 16h15.

The above Directions will apply with effect from **12 May 2020** and will persist until the end of State of National Disaster Alert Level 4, is amended, extended or withdrawn.

Given under my hand at Durban on this 11th Day of May 2020.

A handwritten signature in black ink, appearing to read 'EB NGUBANE', written over a faint, illegible stamp or background.

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