



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE JUDGE PRESIDENT M F LEGODI
MPUMALANGA DIVISION OF THE HIGH COURT**

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THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION
1ST FLOOR
ROOM CF65
NELSPRUIT

13 July 2020

RE: CIVIL AND CRIMINAL TRIALS COVID-19 DIRECTIVE NO 7

WHEREAS civil and criminal trial rolls in this Division have been seriously affected by the lockdown and Alert Level 3 restrictions and lack of sufficient floor spacing of our court rooms coupled with the desire to limit the spread of the COVID-19 infections;

AND WHEREAS in terms of the Annexure to Alert Level 3 Directions **as per paragraph B.3** thereof issued by the Minister of Justice and Correctional Services under Government Gazette No. 43383 dated 2 June 2020 and regarding permitted services under Alert Level 3, **only urgent civil trials including COVID-19 related cases are allowed;**

AND WHEREAS in terms of the Annexure to Alert Level 3 Directions referred to above, in particular, paragraph A.8 (c) and (e), criminal trials are limited *inter alia*, **to cases where the accused persons are in detention and to finalization to part-heard matters which can be completed;**

AND WHEREAS in terms of paragraph 3 of the Minister's Directions, his directions must be read with the Directives issued from time to time by the Chief Justice and Heads of Court in terms of the Superior Courts Act 2013 (Act no 10 of 2013);

AND WHEREAS HEREUNDER, I issue such Directives;

AND WHEREAS in terms of paragraph 4 of the said Minister's Directions, persons with material interest in a case such as litigants, accused persons, legal practitioners, witnesses, or other persons who may be needed to provide support to the litigants, accused persons and witnesses including family members and persons accompanying children etc. are permitted to enter a court room, a court house, or justice service point;

AND WHEREAS in terms of paragraph 5 of the Minister's Directions entry into a court room, courthouse or justice service point may be allowed in respect of permitted services listed in the Annexure to Alert level 3 Directions by the Minister and subject to the conditions detailed in the Minister's Directions;

AND WHEREAS this Division is prepared to deal with civil trials irrespective of whether or not such matters are urgent and subject to limitations set out in this Covid-19 Directive No. 7;

AND WHEREAS in terms of paragraph 6 of the Minister's Directions the number of persons entering a courtroom, courthouse or justice service point **may be limited based on the floor space of the courtroom, courthouse or justice service point concerned to ensure compliance with the requirements relating to physical distancing;**

AND WHEREAS at the main seat in Mbombela, the floor space of the courtroom **can only accommodate about 6 persons in the gallery, one legal representative for each party and one witness for one party at any given hearing;**

AND WHEREAS at Middelburg local seat, the floor space **can only accommodate 4 persons in the gallery and one legal practitioner for each party and one witness for one party at any given hearing;**

AND WHEREAS on a Monday of each civil trial week **there are more than thirty matters on the roll meant to be allocated to the judges on civil roll and to be finalized in a period of a week**

IT IS HEREBY DIRECTED as follows:

CIVIL TRIAL WEEKS

1. The second, third, fifth, sixth, eighth and ninth week of each Term are used as trial weeks.
2. Parties whose matters are on the roll, shall at least not later than 7 clear court days before a Monday of a civil trial week confirm by email with the Registrar of the court concerned that his or her matter is ready for trial. For Mbombela and Middelburg matters the email addresses to be used shall be as follows:

Mbombela:MMasekoameng@judiciary.org.za;PCeko@judiciary.org.za;MNhlapo@judiciary.org.za;PRamashia@judiciary.org.za

Middelburg:MMasekoameng.org.za;AMalambe@judiciary.org.za;sbDlamini@judiciary.org.za, EMdluli@judiciary.org.za

- 2.1 As an example, matters which are on the roll on Monday 3 August 2020 being the second week of the third Term, it shall be confirmed with the Registrar as contemplated in paragraph 2 above and paragraph 3 hereunder by not later than 12h00 on Wednesday 22 July 2020 that a particular matter is ready for trial.
- 2.2 Filing of the Practice Note referred to in paragraph 3 hereunder, will enable the Judge or Judges to whom trial ready matters are allocated to study, prepare for trial and to issue directives in time whenever is necessary to do so.
3. When a trial readiness of a matter is confirmed as indicated above, the parties shall at the same time file and in a document titled "Practice Note" confirm the following:
 - 3.1 That a meaningful pre-trial conference amongst the parties or their legal representatives with a view to explore settlement including discussions on the matters referred to in Rule 37A (10) as contemplated in paragraph 2.11 of the Practice Directives dated 9 January 2020 have been complied with.
 - 3.2 In damages claim and where contingency deduction is an issue, it shall be confirmed that each party has proposed appropriate contingency deductions and the amount of damages proposed by each party as contemplated in paragraph 2.12 of the Practice Directives dated 9 January 2020. And this shall be so done without disclosing the details thereof.

- 3.3** It shall also be confirmed that an attempt to explore settlement on all or more of the issues identified in sub-rule 10 of Rule 37A have been made including if appropriate whether the parties have considered voluntary mediation without **disclosing the essence of the discussions**.
4. Any party **ready for trial or claims to be ready for trial**, shall list in the “Practice Note” particulars of witnesses and in brief issues on which the evidence of such witnesses would be led.
 5. In damages claims, like medical negligence matters and matters against the Road Accident Fund, if a plaintiff as the dominus litis intends to proceed with trial in the absence of a defendant, it must be indicated in the Practice Note how many witnesses are intended to be called on merits and how many expert witnesses are intended to be called on quantum and the nature of their evidence and estimated duration of trial.
 6. **There shall be no judgment by default in damages claim matters without evidence in whatever form having been tendered on both merits and quantum.**
 7. Number of trial matters per week shall be limited, depending of course on a number of matters that are **confirmed** as trial-ready guided also by the information to be provided in the Practice Note as per paragraph 3 and other information required as alluded to in the preceding paragraphs.

ACTUAL HEARING OF CIVIL TRIAL MATTERS

8. Evidence to be adduced during trial **shall in general, not be adduced in an open court during the lockdown or Alert Level 3 restrictions** and the Judge to whom the matter is allocated shall exercise a discretion about an appropriate mode of hearing which may include receiving evidence on affidavit and the utilization of the video conferencing and **if otherwise unavailable, having a physical hearing for urgent and permitted matters as per paragraph B.3 of the Annexure to the Alert Level 3 Directions issued by the Minister of Justice.**
9. In the “Practice Note” referred to in paragraph 3 above, the plaintiff as the *dominus litis*, shall undertake to set up a video link.

10. The plaintiff shall also be responsible for ensuring that reliable recordings of the proceedings and transcription thereof are maintained, unless Judge ceased with the matter otherwise directs.

SETTLEMENTS AND POSTPONEMENTS ON THE DATE OF TRIAL

11. Settlements and postponements on the dates of hearing regarding any matter **confirmed** as ready for trial in terms of paragraph 3 above, shall invite an enquiry with regards to costs as envisaged in Rule 37(9)(a) read Rule 37A (12) and (16) of the Uniform Rules of Court read with the provisions of paragraphs 14 and 16 of the Practice Directives dated 9 January 2020.

12. Paragraph 15 and 16 of the Practice Directive dated 9 January 2020 shall apply respectively to matters that are settled or postponed on the date of trial.

13. There shall be no settlement or postponement roll. Settlement of any matter shall be dealt with as envisaged in paragraph 15.6 of the Practice Directives dated 9 January 2020.

FAILURE TO FILE PRACTICE NOTE

14. Any failure by a party to file "Practice Note envisaged in paragraphs 2 and 3 above, **shall be construed as un-readiness of the parties or the plaintiff as the *dominis litis* to proceed on the date of trial and such cases shall be regarded as automatically postponed.**

15. Matters so automatically postponed, shall not be re-enrolled on the trial roll unless it has gone through Judicial Case Management process and an affidavit filed explaining the reasons for the un-readiness as contemplated in paragraph 14 above.

DIRECTIVES BY THE JUDICIAL OFFICER

16. The Registrar shall on a Thursday preceded by Wednesday upon which a Practice Note is filed as per paragraph 3 above, equally distribute to the Judges on the civil roll, the files with the "Practice Notes" so filed.

17. Upon receipt of the file or files each Judicial Officer concerned may issue directives to the parties as he or she may deem fit including the date or dates on which such matters would be heard during the week in question.

CRIMINAL TRIALS

18. Preference regarding criminal trials during Alert Level 3 restrictions or during any other any other Alert Level of Covid-19, making it not possible for the courts to function normally, shall be given to the completion of the part-heard matters and matters in which accused persons are in custody and to any gender based violence matter whether part-heard or not.

19. Safety measures and compliance with health protocols shall be the responsibility of the compliance officers and or delegated officials in conjunction with the roll planner regarding matters which are proceeding in the courts within their jurisdictions.

20. Any trial where safety measures and health protocols are likely to be compromised in relation to continuance of a trial matter **whether civil or criminal**, the office of the Judge President and the Presiding Judge concerned shall be informed immediately.

21. Number of witnesses in attendance per day shall be the responsibility of the roll-planner in conjunction with the state advocate prosecuting in a particular matter guided by the floor space of the courtroom concerned.

22. Conducting proceedings by video link shall not be applicable to the criminal proceedings due to the logistical challenges and the unique nature of such proceedings.

APPLICATION OF THIS DIRECTIVE

23. This Directive shall apply only during Alert Level 3 COVID-19 or any other Alert Level which makes it not possible for our courts to function and operate normally.

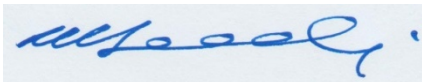
STATUS OF THE PREVIOUS COVID-19 DIRECTIVES

24. All previous Covid-19 Directives issued by this Division shall continue to apply unless the provisions thereof are in conflict with the provisions of this Directive.

EFFECTIVE DATE OF THE DIRECTIVE

25. The effect date for this Directive shall be 14 July 2020.

BY DIRECTIVE OF THE JUDGE PRESIDENT

A handwritten signature in blue ink, appearing to read 'M F Legodi', is placed on a light blue rectangular background.

M F LEGODI
JUDGE PRESIDENT OF MPUMALANGA DIVISION