

OFFICE OF THE JUDGE PRESIDENT WESTERN CAPE HIGH COURT

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TO

: ALL JUDGES

FROM

JUDGE PRESIDENT JM HLOPHE

SUBJECT

ACCESS TO COURT IN LIGHT OF COVID -19

LOCKDOWN

IMPLEMENTATION DATE:

11 MAY 2020

The following Directives will apply from the implementation date above during the National State of Disaster Lockdown. These Directives should be read together with the Directives issued by the Chief Justice (on 20 March 2020 and 02 May 2020) and the Judge President (on 17 March 2020, 06 April 2020 and 17 April 2020). Any Directive contained in the previous WC Directives which is inconsistent with this Directive will no longer apply.

As a Division we are committed to deliver transparent, efficient and quality access to justice for all.

A. PURPOSE

To provide guidance in relation to how judicial and quasi-judicial functions are to be managed and performed during the remaining period of the National State of Disaster.

B. GENERAL

- 1. Any person entering the court precinct shall wear a cloth mask or any other suitable item that covers the mouth and nose. Social distancing of 1,5m will be maintained at all times (while waiting outside the building or when inside the court building and courtrooms). Sanitizing liquid will be available at the entrance to the court building as well as the courtrooms and all offices. Courtrooms will be sanitized before and after a hearing is conducted. Each person entering the building will be subjected to temperature screening. A register will be kept at all entrances for persons entering the building.
- 2. Any party wishing to have a matter, which has been set down for hearing during the National State of disaster period, removed from the roll, shall provide the Office of the Registrar with an electronic notice of removal and where the matter is opposed a notice of removal by agreement between the parties as envisaged in the Chief Justices' Directive dated 02 May 2020.
- 3. In matters already set down before the court, where settlement has been reached between the parties, the settlement agreement and/orders shall be forwarded to the relevant Judicial Officer seized with the matter via his/her secretary on the updated list of e-mail addresses attached hereto.
- 4. In cases not yet allocated the settlement agreement and/or order shall be forwarded under cover of a chamber book application to the general office Registrar/s for submission to the duty Judicial Officer in chambers together with proof that all relevant parties' legal representatives and/or unrepresented parties are seeking leave for the order to be granted.
- 5. In any matter already enrolled before the court, where the parties wish to postpone the matter a draft order shall be mailed to the Registrar's Office for consideration by the Judge assigned to the matter. The draft order shall include the information as indicated in the attached example/s, in order to expedite the issuing of the order by the Registrar's office. Non-compliant draft orders will be returned.

6. The Judicial Officer shall consider options to proceed with cases with minimal contact between themselves, court personnel, legal practitioners and the litigants. Where it becomes necessary to have an open court session compliance with the provisions of paragraph 1 above must be adhered to.

Virtual hearing options such as Microsoft Teams shall be considered where additional evidence and/or further argument/ submissions other than what has been filed on record is required to reach a decision. The costs involved in setting up any virtual hearing link compatible with the courts IT infrastructure shall be borne by the parties or as agreed between the parties. The request for that manner of presentation must be made by e-mail to the relevant Judicial Officer's secretary on the day of allocation of the file and be incorporated in an electronically submitted Practice Note. The parties should also indicate in the Practice note whether counsel and all other interested parties (ie. instructing legal practitioner and clients) have access to a device and reliable internet for purposes of the remote hearing. The link to the virtual hearing will be set up by the relevant Judicial Officer's secretary and disseminated to all the parties alternatively the party setting up any other link, shall facilitate the necessary invitations for full participation by all the parties.

- 7. The exchange of hard copies shall be minimized and all documents and pleadings shall be sent via e-mail and other forms of electronic transmission between parties. Where this is not possible then physical exchange of hard copies should only be provided in full compliance with all conditions, as determined by the Chief Registrar in consultation with the Court Manager, with regard to safety and sanitization.
- 8. The Chief Registrar and Court Manager's offices will determine requirements and conditions for:
 - a. open court hearings (which shall only be considered as a last resort) -The Judicial Officers secretary will, after authorization from and determination by the Judicial Officer, after consultation with the parties, provide the Chief Registrar and Court Manager, with the following:

- i. Case No; type of case (civil or criminal);
- ii. Names of the parties and their legal representatives;
- iii. Full contact details including mobile numbers and e-mail addresses on which the parties or their legal representative may be contacted at any time pending, during and after the hearing of the matter;
- iv. Number of persons who will be allowed in the courtroom including the Judicial Officer and court staff, cognizance should be taken of the floor size of the court room and the allowable limitations in respect thereof;
- v. Should members of the media be allowed, Judicial Officers are to ensure compliance with PN53 of the WC Consolidated Practice Directives:

It will only be necessary for counsel to appear for open court hearings, the instructing attorney need not appear but must be contactable if required.

b. physical filing of documents

- i) If a Judicial Officer has consented to the physical filing of documents, such arrangements are to be communicated to the relevant Registrar's office (Civil or Criminal Divisions) who will provide a date and time slot for the physical submission of the documents at the court building based on the Judicial Officers directives;
 - Civil Registrars (<u>LFEsterhuizen@judiciary.org.za</u> or <u>OKleinhans@judiciary.org.za</u>) Criminal Registrars (<u>LManuel-Naran@judiciary.org.za</u> or <u>AJones-Pretorius@judiciary.org.za</u>).
- c. Entry into the court building by practitioners, the public (including the media) is to be strictly controlled:
 - i. If any person enters the court precinct without prior notification of a date and time slot they shall be turned away unless good cause is shown to the Chief Registrar or any person designated by her for non-compliance with this Directive.

9. Filing of documents

In order to aid communication between the court, legal practitioners and litigants, all documents filed whether electronic or hard copy must contain the following information:

- i) Full names of the parties and their legal representatives;
- ii) Full contact details including mobile numbers and e-mail addresses on which the parties or their legal representative may be contactable at any time pending, during and after the hearing of the matter or for any virtual hearing process;

10. Communication regarding the allocation of cases to the Judicial Officers

Once a matter is allocated to a Judicial Officer, the Judge Presidents' office will electronically inform the Judicial Officer and his/her secretary.

A copy of the electronic Practice Note filed by one of the parties, will be provided at the same time, to allow the Judicial Officer to determine if the original file or an electronic version will be required from the relevant legal practitioner/s.

11. Dress code

During open court sessions the dress code for the Judicial Officer and legal practitioners will apply as per the Directives issued previously by the Judge President on the "Dress Code".

For virtual hearing purposes, Judicial Officers and all legal practitioners need not robe however, in order to maintain the decorum required of a court hearing, they are to be dressed appropriately.

Cognizance should be taken of the environment in which relevant participants set up their access to the virtual hearing process.

C. CRIMINAL MATTERS

i) TRIALS

All <u>new</u> criminal trials set down from 04 May 2020 until the end of term 2 (25 June 2020), will preferably be postponed to a date in consultation with the office of the Director of Public Prosecutions. Preferential trial dates will be allocated to matters were accused persons are in custody. **ONLY** S105A, plea and sentencing agreements as well as S112 pleas will be allocated for hearing.

All criminal trials set down **for circuit** during the second term 2020 (namely; George, Oudtshoorn, Beaufort West and Cape Town: Regional Court) are hereby cancelled and will be re-enrolled during the third and fourth terms 2020.

All currently **pending** criminal trials shall continue only in cases where there is a single accused or where the accused person/s are out on bail and dependent on the Directives relating to the further conduct of the matter as issued by the Judicial officer seized with the matter.

All <u>other part-heard</u> criminal trials shall be postponed as agreed between the Judicial Officer and the representatives of the State and accused to a date after the National State of disaster period.

Accused persons in custody will only be brought to court if requested by a Judicial officer seized with a trial / part heard trial and in terms of any directives issued by the Minister of Justice and Correctional Services in relation to the movement and transporting of accused persons in custody.

ii) JUDICIAL CASEFLOW MANAGEMENT (CRIMINAL PRE-TRIALS)

All criminal pre-trials set down for Term 2, will be dealt with in consultation with the relevant Judicial Officer and the Office of the Director of Public Prosecutions.

D. CIVIL MATTERS

i) CIVIL TRIALS

- a) The Judge President will determine from the civil trials already set down for the second term 2020, if any matter shall be assigned for hearing. Short civil trials with parties and witnesses within the district will be considered for allocation.
- b) The Judicial Officer assigned to the matter will determine the manner in which the trial is to be conducted, bearing in mind the virtual hearing option available.

ii) RULE 43

Applications already set down during term 2 or those that have been allocated dates in terms of the urgent matters allowed under the Directives, shall be dealt with as directed by the Judicial Officer assigned to the matter.

To aid the Judicial Officer the following shall be considered:

- a) If the matter can be determined on the documents filed, the matter shall then be finalized;
- b) Should there be a need for further evidence, same shall be requested to be provided on affidavit or via Microsoft Teams, any other virtual hearing facility or any other manner the Judicial Officer shall consider necessary and expedient.

iii) REVIEWS

All review applications already enrolled shall be dealt with as directed by the Judicial Officer assigned to the matter.

To aid the Judicial Officer the following shall be considered:

- a) If the matter can be determined on the documents filed, the matter shall then be finalized:
- b) Should there be a need for further evidence, same shall be requested to be provided on affidavit or via Microsoft Teams, any other virtual hearing facility or any other manner the Judicial Officer shall consider necessary and expedient.

iv) ADMISSIONS

All admissions set down for 08 May 2020 will be dealt with as follows:

- a) All matters in which certificates have been issued by the Legal Practice Council will be attended to in Court 1 on 08 May 2020;
- All other applications will be postponed to 15 May 2020 or any further date as required by the Legal Practice Council to issue the necessary certificates;
- Only candidates and legal practitioners presenting the candidates for admission will be allowed to enter the court building/ court room;
- d) Not more than 23 applicants will be admitted at any sitting, should there be a need for more than one sitting they will be conducted as follows: 10h00 to 11h00 and 11h30 to 12h30.

v) JUDICIAL CASE MANAGEMENT (CIVIL PRE-TRIALS)

All pre trials already before a case management Judicial Officer will proceed as scheduled, however, on the following basis:

- A pre-trial minute or written update which clearly defines issues still in dispute and the assistance required from the case management Judge.
- b) The pre-trial minute must at least deal with:
 - All issues delineated in Uniform Rule 37A, including the possibility of mediation; and
 - Must include the contactable e-mail addresses and mobile numbers to be used for purposes of virtual hearing, if possible.
- c) A clear explanation must be given as to why the matter had not been settled. Same must be submitted by email to the case management Judge, 5 days prior to the pre-trial date, which shall include an explanation as to why the matter cannot be settled and / or mediated;
- d) The pre-trial will be considered in chambers, having regard to the file contents including the minute referred to in para 1 above;
- e) No attendances are required by legal representatives. Should the case management Judge require submissions from the legal representatives or have any queries, the legal representatives will be contacted by the case management Judges secretary.
- f) The case management Judges directives/orders will be transmitted electronically by the Judges secretary.
- g) Where no minute as set out in 1 above is placed before the case management Judge, the matter will be removed from the roll.
- h) All interlocutory applications arising during the case management process shall be dealt with by the case management Judge as mentioned under the applicable paragraphs under "Applications".

E. APPLICATIONS

1) UNOPPOSED MOTIONS

All unopposed matters already set down prior to the National State of Disaster shall be adjudicated upon. New matters may be considered by the duty Judge based on the urgency provided and in terms of the regulations applicable at the time.

The Judicial Officer will determine the manner of the further conduct of the matter taking cognizance of the provisions contained under the paragraph marked "General" above, when providing directions to the parties.

To aid the Judicial Officer the following shall be considered:

- a) If the matter can be determined on the documents filed, the matter shall then be finalized;
- b) Should there be a need for further evidence, same shall be requested on affidavit via Microsoft Teams, any other virtual hearing facility or any other manner that the Judicial Officer shall consider necessary and expedient.

2. OPPOSED MOTIONS

The Judge President will determine from the opposed motions (including semiurgent matters) already set down for the second term 2020, if any may be assigned for hearing, and may request that the legal representatives create an electronic indexed copy of the file.

Parties are required to electronically file a joint practice note as envisaged in the Chief Justices Directive dated 02 May 2020, where applicable indicating:

- a) the status of the matter;
- b) whether the matter is capable of settlement and what efforts have been made to settle the matter:
- c) the issues still in dispute;
- d) whether the services of an interpreter are required and the relevant language;
- e) any other information that shall be of benefit to the Judicial Officer; and
- f) create an electronic indexed set of the court papers filed in the hard copy file for electronic submission to the Judicial Officer.

Once allocated the Judicial Officer on perusal of the file and the Heads of Argument filed, will provide directions to the parties electronically, for the further conduct of the matter, having regard to the prevailing conditions,

To aid the Judicial Officer the following shall be considered:

- a) If the matter can be determined on the documents filed, the matter shall then be finalized;
- b) Should there be a need for further evidence, same shall be requested on affidavit or via Microsoft Teams, any other virtual hearing facility or any other manner the Judicial Officer shall consider necessary and expedient.

F. APPEALS

All allocated appeals both civil and criminal shall be heard during the lockdown period in terms of S19(a) of the Superior Courts Act and as envisaged by paragraph 13 of the directives issued by the Chief Justice on 02 May 2020.

- a) If the matter can be determined on the documents filed, the matter shall then be finalized, unless the presiding Judicial Officer decides otherwise;
- b) Detailed written submissions, including replying argument, as well as Microsoft Teams or any other virtual hearing facility should be utilized as an alternative to oral submissions in open court, so as to eliminate the need for practitioners to attend court.

G. APPLICATIONS FOR LEAVE TO APPEAL

All applications for leave to appeal both civil and criminal shall be heard during the lockdown period in terms of S19(a) of the Superior Courts Act and as envisaged by paragraph 13 of the directives issued by the Chief Justice on 02 May 2020.

Judicial Officers should utilize Microsoft Teams or any other virtual hearing facility as an alternative to oral submissions in open court, so as to eliminate the need for practitioners to attend court.

H. EASTERN CIRCUIT LOCAL DIVISION AT THEMBALETHU

The Civil Circuit at Thembalethu, George will run from **01 to 26 June 2020** instead of 25 May 2020 to 19 June 2020.

Roll call will be held on 01 June 2020 in respect of all matters which was enrolled for April 2020 and May 2020.

The High Court will be implementing "Case Lines/ Court Online" shortly. All legal

Practitioners are to familiarize themselves with "Case Lines/ Court Online" on the Judiciary website https://www.judiciary.org.za

During June 2020 it is anticipated that "Case Lines/ Court Online" will be implemented at Thembalethu. All legal practitioners are thus required, in the meantime, to ensure that they have an electronic copy of the contents of their files which is currently pending at Thembalethu, to facilitate the efficient uploading thereof onto the Case Lines system.

I. EQUALITY COURT MATTERS

As far as practically possible Equality Court directional hearings are to be attended to by the Judicial Officer seized with the matter. The same provisions contained under the "General" provisions above will apply.

J. TAXATIONS

The Chief Registrar in consultation with the Taxing Masters will develop a manner in which taxations may be dealt with. Consideration should be given to utilizing Microsoft Teams, any other virtual hearing facility or telephonic means. If this is not possible taxations should be postponed to the first available dates after the National State of disaster.

Should you wish to clarify any of the provisions of these Directives, or access to the processes of the court, including virtual hearings, you may contact the offices of the Judge President (care of Lizette Potgieter – 021 480 2564 EPotgieter@judiciary.org.za), Chief Registrar (Ruanne David or care of Antoinette Marinus – 021 480 2635/6 RDavid@judiciary.org.za / AMarinus@judiciary.org.za), Court Manager (Valerie Noah or care of Astrin Ernstzen – 021 480 2637/619 VNoah@judiciary.org.za /AErnstzen@judiciary.org.za) or DPP (care of Adv Bell 021- 487 7226).

We are committed to a safe working environment to protect all.

We are further committed to easing any backlog and ultimately eliminating same so that we can resume normal activity and enhance the efficient administration of justice.

We can only succeed with the continued cooperation and constructive collaborative support of all parties working together.

JUDGE PRESIDENT HLOPHE

07 May 2020

To be issued to:

The Magistracy;

The National Prosecuting Authority;

Legal Aid South Africa;

Cape Bar Council;

Western Cape Bar Association;

Legal Practice Council;

Family Advocate;

State Attorney;

NADEL;

BLA;

South African Police Services;

Office of the Chief Justice

Department of Justice and Constitutional Development;

Department of Correctional Services;

Department of Social Development;

Department of Health;

Any other Court Official not mentioned above.



IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE DIVISION, CAPE TOWN) Before the Honourable Mr/Mrs/Ms Justice Cape Town: Thursday, May 2020	Case No:			
In the matter between:				
	Applicant/ Plaintiff			
AND				
	First Respondent/ Defendant			
DRAFT ORDER				
Having heard counsel for the Applicant and having read the documents filed of record;				
IT IS ORDERED THAT:				
1.				
BY ORDER OF THE COURT				
COURT REGISTRAR				
PH 255 (High Court box No.) William Inglis Inc				



IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE DIVISION, CAPE TOWN)

CAPE TOWN: Tuesday, May 2020 Before the Honourable Mr/Mrs/Ms Justice

Case No.

In the matter between:

TD N.O. MD N.O. (In their capacities as the duly appointed liquidators of CT (Pty) Ltd)

First Applicant Second Applicant

And

OE (PTY) LTD (Registration Number: 2002/000000/00) Registered Address: M Street Valley Road Western Cape Respondent

Having heard Counsel for the Applicants and having read the documents filed of record;

IT IS ORDERED:

 That the Provisional Liquidation Order granted on December 20 is set aside and the Rule Nisi is discharged

BY ORDER OF THE COURT

COURT REGISTRAR 301 Rubensteins Att.

CAPE TOWN



IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE DIVISION, CAPE TOWN)

CAPE TOWN: Tuesday, May 2020 Before the Honourable Mr/Mrs/Ms Justice

Case No.

In the application of:

S AND N CC (Registration Number: 2006/1000000/00)

Applicant

Registered Address at 3 ABC Close MITCHELLS PLAIN Western Cape

Having heard Counsel for the Applicant and having read the documents filed of record;

IT IS ORDERED:

That the rule nisi granted on February 2020 is extended to MAY 2020.

BY ORDER OF THE COURT

COURT REGISTRAR

RH Heydenrych & Assoc. BELLVILLE c/o 6 Bailey Haynes Inc. CAPE TOWN

JUDICIARY

JUDGE PRESIDENT HLOPHE'S OFFICE:

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