



Labour Appeal Court
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Also in Cape Town
Durban and
Port Elizabeth

21 January 2021

LAC DIRECTIVE I of 2021

(5 pages)

DIRECTIVE IN RESPECT OF ACCESS TO AND CONDUCT OF PROCEEDINGS IN THE LABOUR APPEAL COURT IN LIGHT OF THE COVID-19 PANDEMIC

This Directive will apply with effect from 1 February 2021 until such time as it is formally withdrawn. The previous Directives insofar as those differ with this directive are no longer applicable.

1. This Directive is issued in conformity with the Directives of the Chief Justice dated 17 March 2020 and 17 April 2020 and in terms of the authority vested in the Head of Court in terms of section 8(4) (b) of the Superior Courts Act 10 of 2013.
2. This Directive sets out how, and under what conditions, matters enrolled or sought to be enrolled in the Labour Appeal Court will be dealt with until further notice.

3. Although the prospects of long term lockdown with restrictions in movement may remain, prudent behaviour to minimise exposure to infection informs the policy choices made in this Directive.
4. The general principle to be observed is that physical contact among persons be eliminated or minimised. To this end, any matter that is non-compliant with this Directive may not be entertained.
5. All appeals on the roll shall remain enrolled.
6. Subject to what is set out here below, appeals shall not, except where directed otherwise by the Judge President or the Presiding Judge seized with the matter, enjoy an oral hearing in open Court. All appeals will be heard in accordance with *ad hoc* directions issued by the Judge President or the Presiding Judge which are appropriate to the circumstances. More particularly:
 - 6.1. The Parties shall endeavour to agree about whether the matter may be disposed of without oral argument; if agreed, Parties who wish to supplement their papers with additional written submissions may do so by sending a copy to the other parties to the proceedings by email and to the Registrar. The Registrar must be emailed at the address set out below by not later than noon on the Tuesday before the week in which the matter is set down. Any other party may respond to the additional submissions by forwarding their “response” to the other parties and the Registrar by not later than noon on the Thursday before the week in which the matter is set down.
 - 6.2. Parties may however agree to have their matter heard by way of video conferencing. This must be communicated to the Registrar by not later than noon on the Tuesday before the week in which the matter is set down. The Registrar will then refer the matter to the Judge President or the Presiding Judge who will through her/his secretary or the Registrar confirm the date and time for the video conference.
 - 6.3. If no agreement is reached about forgoing oral argument or having the matter heard by way of video conferencing, this must be communicated to the Registrar by email, not later than noon on the Tuesday before the week in which the matter is set down. The Registrar shall refer the matter to Judge President or the Presiding Judge who will determine if a hearing shall take place and if so how the matter is to proceed, by one or more of the following:

- 6.3.1. A hearing using video conferencing techniques: where this option is deemed appropriate, the Appellant shall, unless the Judge President or the Presiding Judge directs otherwise, organise the setting up of a video conference as host, and shall send a link to all Parties and the Judges involved for a time and date stipulated by the Judge President or the Presiding Judge.
 - 6.3.2. A physical Court hearing, if the circumstances so require.
 - 6.3.3. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the people involved.
- 6.4. The Appellant remains *dominus litis* and is ultimately responsible for the efficient disposal of the appeal. Where the Appellant is unrepresented, the responsibility will be that of the Respondent's legal representative.
- 6.5. Any queries thereafter, by any Party must be made by email only and addressed to the Judge President or the Presiding Judge via the Registrar or the Judge President or the Presiding Judge's Secretary and copies sent to the other Parties.
- 6.6. If both Parties agree, an appeal may for good reason, be removed from the roll. There shall be no costs order for removal of a matter. Where matters are removed by agreement the matter may not be given a priority for allocation.
- 6.7. Where the parties cannot agree to postpone or for the matter to be heard as set out above the Registrar must be informed by no later than noon on the Tuesday before the week in which the matter is set down. The Registrar will then refer the matter to Judge President or the Presiding Judge for directions.
7. In those cases where a Party appears in person:
- 7.1. that party shall approach the Registrar who shall designate an official at the Court who shall render assistance to that party; or
 - 7.2. where such a party's contact details are known, the Registrar shall or, the Secretary of the Judge President or the Presiding Judge shall endeavour to communicate the relevant information to the unrepresented Party. Where such litigant has personal access to teleconferencing facilities, a link may be set up accordingly, if the Judge President or the Presiding Judge so directs.

COMMUNICATION

The practice note as well as any other communication which has to be addressed to the Registrar must be sent by email to: CPhophi@judiciary.org.za

ETIQUETTE IN VIDEO CONFERENCE HEARINGS

8. The Judges and persons appearing in video hearings shall wear formal attire but need not be robed.
9. Participants shall ensure that there is no ambient noise in the room which can interfere with the audio quality during the hearing.
10. In general, subject to any *ad hoc* directives given by the Judge(s), the participants shall mute their microphones when not speaking.
11. The Judge(s) shall invite participants to speak and everyone shall be alerted to the Judges directions in this regard.
12. Participants shall remain in the hearing and leave it only when the proceedings have concluded.
13. No photos may be taken or distributed/ published of the proceedings.

ORDERS AND JUDGMENTS

14. Orders and judgments of the Court shall be prepared in hard copy, signed, a copy retained by the Judge, a copy sent to the Registrar, and communicated to the Parties by email.

B WAGLAY
JUDGE PRESIDENT
THE LABOUR APPEAL COURT OF SOUTH AFRICA