



OFFICE OF THE DEPUTY JUDGE PRESIDENT

(HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG)
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NOTICE

TO:

1. Judges of the Gauteng Division, Johannesburg
2. Chief Registrar, Gauteng Division, Johannesburg
3. Legal Practice Council – Gauteng
4. Law Society of South Africa
5. Gauteng Family Law Forum
6. Gauteng Attorneys Association
7. Pretoria Attorneys Association
8. Johannesburg Attorneys Association
9. West Rand Attorneys Association
10. South African Black Women in Law
11. National Association of Democratic Lawyers
12. Black Lawyers Association
13. South African Women Lawyers Association
14. South African Medical Malpractice Lawyers Association
15. Personal Injury Plaintiff Lawyers Association
16. South African Medico-Legal Association
17. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
18. Office of the State Attorneys, Pretoria and Johannesburg
19. Solicitor General
20. Office of the Family Advocate, Pretoria and Johannesburg
21. Legal Aid South Africa
22. Johannesburg Society of Advocates
23. Pretoria Society of Advocates
24. Gauteng Society of Advocates
25. Pan African Bar Association of South Africa
26. General Council of the Bar of South Africa
27. National Bar Council of South Africa

28. **South African Bar Association**
29. **National Forum of Advocates**
30. **North Gauteng Association of Advocates**
31. **Church Square Association of Advocates**
32. **Advocates for Transformation**
33. **Legal Division of the Department of Health: Gauteng**
34. **Legal Division of the Department of Sport, Arts, Culture and Recreation**
35. **Gauteng Department of Agriculture and Rural Development**
36. **Legal Services - Gauteng Provincial Department of Education**
37. **Gauteng Society of Advocates**

DATE : 19 January 2023

RE : **CLARIFICATION NOTE ABOUT JUDGMENTS AND ORDERS IN DAMAGES CLAIMS AGAINST ANY ORGAN OF STATE IN THE HIGH COURT IN JOHANNESBURG**

1. It has become apparent that some uncertainty exists about the enrolment of a case by a plaintiff who seeks an order of damages from an organ of state. This clarification notice serves to resolve uncertainty.
2. In any case against an organ of state where a **settlement agreement** has been concluded the case must be enrolled in the **Settlements Court**.
 - a. This court's remit was expanded in terms of the revision of Directive 1 of 2021, dated 1 December 2022 to include all organs of state.
 - b. Chapter 9 of Directive 1 of 2021 (as amended) prescribes the steps that must be taken to present to the Settlements Court a rational foundation for the settlement reached.
 - c. The settlement Court in Johannesburg can be accessed on a three –week turnaround.

3. In any case against an organ of state where **default judgment** is sought the case must be enrolled on the **General Civil Trial Roll**.
 - a. Chapter 7 of the Directive 1 of 2021 (as amended by paras 4, 5, 6 and 7 of the revision of 1 December 2022) sets out the declaration that the plaintiff must make to the registrar to obtain a set down date. Regrettably, the lead times for enrolment of default judgments in the trial court as at the time of writing are unacceptably long and practical methods to reduce the time are being explored.
 - b. The trial judge must be presented with the relevant evidence to justify the claim and the quantum of damages sought. Where it is appropriate to do so, evidence may be adduced on affidavit.
 - c. Such a case must not be enrolled in the Unopposed Motion Court which is not able to conduct the appropriate interrogation of the order sought. Where such a matter is enrolled on the Unopposed Motion Court it shall be removed and no costs shall be allowed.
4. Typically, the organs of state that are frequent litigants are the Road Accident Fund, PRASA, the MEC for Health, Gauteng, and the Minister of Police. Other organs of state occasionally are subject to damages claims too.
5. It is appropriate to remind practitioners of the rationale for these procedures. In all the cases public money is being spent. It is incumbent on the courts not to be a rubber stamp for either settlements or default judgments which are not rationally premised. Regrettably, experience has shown that there are frequent

settlements reached which are irrational. Similarly, where an organ of state is remiss in engaging with a plaintiff and a default judgment *per se* is justified, it remains appropriate that a court making an order of court by default does not inadvertently endorse an opportunistic overreaching at the public expense.

6. Compliance with this procedure shall obviate disappointments and delays.

Yours faithfully

*Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature*

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**