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REPUBLIC OF SOUTH AFRICA

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THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION

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04 May 2020

**COVID-19 DIRECTIVE 5B OF 2020**

WHEREAS the lockdown period reduced to Alert Level 4 has been declared with effect from 1 May 2020;

AND WHEREAS the Minister of Cooperative Governance and Traditional Affairs upon the recommendation of the Minister of Health and in consultation with the Cabinet, has in terms of Regulation 3(2) read with Regulation 15(1) of the Regulations issued on 29 April 2020 under Government Gazette No. 43258, declared Alert Level 4 of Covid-19 applicable from 1 May 2020 and to remain in force up to the declaration of different Alert Levels for the duration of the National State of Disaster;

AND WHEREAS the Chief Justice of the Republic of South Africa on 2 May 2020 issued directions regarding the operation of courts;

AND WHEREAS on 2 May 2020 this Division issued Covid-19 Directive **5A**;

AND WHEREAS the Minister of Justice and Constitutional Development on 4 May 2020 and after consultation with the Minister of COGTA issued directions under Government Gazette No. 43268 NO.R. 489 to address prevention and combating of the spread of Covid-19 in all courts, courts precincts and justice service points in the country;

AND WHEREAS in the Minister of Justice's directions 24 to 28, resolution of disputes mechanism is introduced subject to any directions relating to operation of courts issued by the Chief Justice and respective Heads of Court relating to operations of courts and dealing with civil cases;

AND WHEREAS resolution of dispute mechanism aforesaid, appears to be in line with regulation 13 of the Regulations issued by the Minister of COGTA on 29 April 2020 as per Government Gazette no 43258, NO. R.480;

AND WHEREAS in terms of paragraph 2.14 of the Division Practice Directive dated 9 January 2020 reference is made to consideration of voluntary mediation as envisaged in sub-rule 11 of Rule 37A,

AND WHEREAS rule 41A of the Uniform Rules of Court which came into effect on 9 March 2020 under Government Gazette No. 43000 dated 7 February 2020 introduced a "*mediation as a dispute of resolution mechanism*";

AND WHEREAS we are living during trying times, where civil trials cannot effectively be conducted or disposed of during lockdown period which have immensely disrupted the Division civil trial rolls;

IT IS HEREBY, directed as follows regarding other matters enrolled during Alert Level 4 of Covid-19 or which might be enrolled during a different Alert Level of Covid-19 with restrictions not allowing return to normality:

#### CIVIL TRIAL MATTERS ENROLLED DURING LOCKDOWN

1. All civil trial matters on the roll during the lockdown period or any extension thereof, shall be regarded as having been removed from the trial rolls until the end of Alert Level 4 lockdown

period or any extension thereof or under different Alert Level of Covid-19 with restrictions making it not possible to return to normality.

2. To ensure that civil trial rolls do not come to a halt due to the lockdown period which has caused and continue to cause uncertainty to the litigants and or practitioners whose matters are on the roll during the lockdown period, everyone is urged and encouraged to:

2.1 remotely or electronically or by any other means resort to meaningful pre-trial conferences as envisaged in paragraph 2.1 of the Division Practice Directives dated 9 January 2020 read with sub-rule (10) of Rule 37A;

2.2 resort to engaging each other as envisaged in paragraph 2.12 of the Division Practice Directive dated 9 January 2020. This will ensure early settlements even during the lockdown period;

2.3 to seriously explore settlements and if need be, refer the matter for voluntary mediation as contemplated in paragraph 2.13 of the Division Practice Directives dated 9 January 2020 read with sub-rule 11 of Rule 37A and Annexure 1 B item 4 of the Minister of Justice and Constitutional Development directions issued on 4 May 2020 in terms of which “Alternative Dispute Resolution Mechanisms” is classified as permitted services in terms of Alert Level 4.

3. For the purpose as indicated in paragraphs 2.1 to 2.3 above, parties or legal representatives where the state or organ of the state is involved, are hereby urged to seriously consider opting to refer the disputes as follows:

3.1 to mediation as contemplated in Regulation 13(1)(a) issued by the Minister of COGTA on 29 April 2020;

3.2 for arbitration as contemplated in Regulation 13(1)(b) issued on 29 April 2020 by the Minister of COGTA.

- 3.3 to resort to asking the office of Solicitor General to assist in coordinating and overseeing the process as contemplated in Regulation 13(2)(a) issued by the Minister of COGTA on 29 April 2020.
- 3.4 to resort to agreeing that a Judge who has retired from active service to act as a mediator or arbitrator as the case may be, as contemplated in Regulation 13(2)(b) of the Regulations issued by the Minister of COGTA on 29 April 2020 and also as contemplated in directive 27 issued by the Minister of Justice on 4 May 2020.
4. The office of the State Attorney in the area of Mpumalanga that is, in whose area of jurisdiction a dispute arises, shall in terms of Regulation 13(3) of the Regulations issued by the Minister of COGTA, immediately upon knowledge of a dispute against the state or any organ of the state, which may potentially result in litigation, engage the party raising the dispute or the parties' legal representatives to consider mediation or arbitration. This should be read together with directive 28 of the Minister of Justice's directives issued on 4 May 2020 which requires a suitable person to be designated to assist the parties who wish to utilize alternative dispute resolution mechanisms to resolve their disputes.
5. As contemplated in Directive 27 issued by the Minister of Justice and Constitutional Development, an official of the department or any other suitable person, must be designated to assist parties who wish to utilize alternative dispute mechanism to resolve their disputes.
6. Parties involved in dispute involving the State or organ of State and intending to resolve disputes through mediation may in terms of Minister of Justice's Directive 25 (b) issued on 4 May 2020 follow the procedure in rule 41A of the Uniform Rules of Court.
7. As indicated in paragraph 2.1 of the Directive issued by this Division on 25 March 2020, parties who fail to hold a meaningful pre-trial conference as envisaged in paragraphs 2.11 to 2.13 of the Division Practice Directive dated 9 January 2020, now read with paragraphs 2 to 6 above, in respect of civil trial matters enrolled during Alert Level 4 lockdown period or extension thereof, run the risk of having their matters enrolled on the second case management roll after the lifting of the lockdown period instead of being enrolled on the trial roll.

### MATTERS ON THE CASE MANAGEMENT ROLL DURING LOCKDOWN

8. All matters which are enrolled on any case management roll during the lockdown period whether motion, trial or appeal matters, shall be regarded as removed from such case management roll or rolls to be re-enrolled after the end of lockdown period.

### URGENT MATTERS DURING LOCKDOWN

9. Any party wishing to launch an urgent application during the lockdown period shall do so by phoning the urgent cell phone number: **0817377649** for directive as to how and which official to contact for filing and mode of filing.
10. The judge to whom an urgent application is allocated shall decide whether the matter is so urgent to be dealt with during the lockdown period.

### CRIMINAL MATTERS ENROLLED DURING LOCKDOWN PERIOD

11. Criminal matters in respect of prioritized cases or trials on matters listed in annexure 1 A of the Minister of Justice's Directive 25 (b) issued on 4 May 2020 may at the request of the roll planner or at the request of the accused legal representative be enrolled to be heard during the lockdown period provided necessary measures as contemplated in the applicable regulations and directions are put in place to avoid possible spread of Covid-19 virus.

### BAIL APPEAL DURING LOCKDOWN

12. Any bail appeal intended to be heard during the lockdown period can be so enrolled after having contacted the following officials at these email addresses who in turn will direct when and where set of court papers should be handed over:

Mbombela Cases: [MNhlapo@judiciary.org.za](mailto:MNhlapo@judiciary.org.za) and

[cc: MMasekoameng@judiciary.org.za](mailto:MMasekoameng@judiciary.org.za)

Middelburg Cases: [AMalambe@judiciary.org.za](mailto:AMalambe@judiciary.org.za) and cc:

[MMasekoameng@judiciary.org.za](mailto:MMasekoameng@judiciary.org.za)

EMAILS ADDRESSES TO BE USED FROM SATURDAY 9 MAY 2020

13. With effect from 9 May 2020 and in complying with this Directive and Covid-19 Directive 5A dated 2 May 2020 and any other directive previously issued and not inconsistent with this Directive and Directive 5A, only the email addresses indicated in paragraph 12 above shall be used during the lockdown period.

14. Any other communication with the office of the Judge President should be directed to:  
PMaitsapo@judiciary.org.za

CONCLUSION

15. Previous Covid-19 lockdown Directives issued by this Division shall remain in force, unless in conflict with or impliedly substituted by this Directive No. 5B, Directive No. 5A dated 2 May 2020 and Directive No.5 dated 26 April 2020.

**BY DIRECTIVE OF THE JUDGE PRESIDENT**



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**M F LEGODI**  
**JUDGE PRESIDENT OF MPUMALANGA DIVISION**