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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

OFFICE OF THE CHIEF OF JUSTICE

NOTICE 254 OF 2020

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2 May 2020

DIRECTIVES ISSUED BY CHIEF JUSTICE MOGOENG MOGOENG IN TERMS OF SECTION 8 (3) *(b)* OF THE SUPERIOR COURTS ACT 10 OF 2013 FOR THE MANAGEMENT OF COURTS DURING THE NATIONAL STATE OF DISASTER PERIOD

PLEASE TAKE NOTICE THAT THE FOLLOWING DIRECTIVES SHALL APPLY TO THE REMAINDER OF THE NATIONAL STATE OF DISASTER PERIOD:

A. PURPOSE

1. The purpose of these Directives is to –

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1.1. provide guidance in relation to how judicial functions are to be managed and performed during the remaining period of the national state of disaster; and

1.2. delegate, to all Heads of Court, the authority to take such action and issue such Directions as may be necessary to give effect to these Directives.

B. GENERAL

2. Parties wishing to have a matter, which has been set down for hearing during the national state of disaster period, removed from the roll, shall jointly do so by issuing notice, in accordance with the practice of the Court or Division concerned.

C. CRIMINAL TRIALS

3. Criminal trials already set down for hearing during the national state of disaster period shall be dealt with and disposed of in a manner determined by the Head of Court.

D. CIVIL TRIALS

4. Subject to the provisions of paragraphs 6 and 7, all civil trials enrolled for hearing during the period of the national state of disaster may be removed from the trial roll, and their re-enrolment shall be in accordance with a procedure determined by the Head of Court.

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5. The Head of Court or, as the case may be, the Registrar or Clerk of the Court, may either –

   5.1. re-enrol the matters for hearing on the earliest available suitable dates; or

   5.2. direct that the parties apply for fresh set down dates in which case, the legal representatives of the parties shall, in the spirit of cooperation, confer with one another with a view to agreeing on suitable alternative trial dates and shall, upon reaching agreement, apply to the Registrar or Clerk of the Court for suitable dates as are available to be allocated.

6. Should the parties be unable to reach agreement as contemplated in paragraph 5.2, either party may request that the matter be placed before a case management Judicial Officer in order to facilitate the expeditious re-enrolment of the matter.

7. Cases not removed from the roll and those re-enrolled in accordance with paragraphs 5 and 6, shall be dealt with in accordance with a procedure determined by the Head of Court.

8. The parties shall further inform the Registrar or Clerk of the Court of any matter that is capable of settlement.

9. When a matter has become settled during the period of the national state of disaster, and the parties are in agreement on the terms of the order, the Registrar or Clerk of the Court may be requested to place the matter before

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a Judicial Officer for the granting of an order. The Judicial Officer may then deal with the matter in a manner that she or he deems appropriate.

E. APPLICATIONS

(i) Unopposed applications

10. Unopposed applications already enrolled for hearing during the period of the national state of disaster shall be dealt with in the following manner:

10.1. Where it is inappropriate to proceed with the matters by video conferencing or other electronic means, the matters may be postponed to dates after the national state of disaster. Matters suitable to be disposed of without an oral hearing, shall, unless the Judicial Officer concerned determines otherwise, be dealt with on the papers which shall include such written submissions from the parties as may be directed by the Judicial Officer. In instances where oral hearing is to take place, the Judicial Officer may direct that such hearings be by way of video conferencing or other electronic means which are appropriate in the circumstances.

10.2. Any *rule nisi* with a return date that falls within the period of the national state of disaster, and which was granted prior thereto, may be extended to dates beyond the period of the national state of disaster. Where this cannot be achieved, for reasons of urgency, the matters are to be referred to a Judicial Officer on duty to determine the future conduct thereof.

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11. Urgent applications shall be dealt with by a Judicial Officer on duty, subject to such directives as she or he may issue. This principle applies, subject to appropriate adjustments, to any court that requires more than one Judicial Officer to process or dispose of a matter.

(ii) Opposed applications

12. Save where a litigant is unrepresented and he or she does not have access to email facilities, heads of argument shall be filed electronically.

13. The parties shall further endeavour to reach agreement dispensing with the presentation of oral argument and shall, to that end, inform the Judicial Officer presiding in the matter of their decision by no later than noon on the preceding Friday.

14. Where the parties have been unable to reach consensus as envisaged in paragraph 13, or where the presiding Judicial Officer directs that argument be presented, the Judicial Officer may further direct that the matter be heard by way of video conferencing or other electronic means which are appropriate in the circumstances, and the Registrar or Clerk of the Court shall provide the parties with relevant information to facilitate the hearing.

F. APPEALS

15. Barring changes and adaptations in relation to process and hearings necessitated by the period of the national state of disaster, the Constitutional Court shall process and dispose of all matters in line with its Rules and the Constitution.

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16. The Presiding Judge shall solicit the views of the parties prior to the appeal panel making a determination in terms of section 19*(a)* of the Superior Courts Act.

17. In the event of the appeal panel determining that oral submissions are to be made, appropriate measures shall be taken to eliminate the need for practitioners to attend court, and the presiding Judge may direct that the hearing be by video conference or other electronic means which are appropriate in the circumstances, and on such terms as she or he may determine.

G. APPLICATIONS FOR LEAVE TO APPEAL

18. The provisions of paragraphs 16 and 17 of these Directives shall apply, with the necessary adaptation, to applications for leave to appeal.

H. JUDICIAL CASE FLOW MANAGEMENT

19. Judicial Case Flow Management conferences and civil roll call enrolled during the period of the national state of disaster shall be dealt with in a manner to be determined by the Head of Court. To that end, the Head of court may, where appropriate, communicate electronically with the parties and issue such directives as may be necessary to ensure the trial readiness of any of the matters.

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I. CONCLUSION

20. The Heads of Court shall, during the period of the national state of disaster, issue such Directions as may be necessary to manage particular circumstances not addressed by these Directives that are peculiar to their Courts. Those Directions shall not be inconsistent with these Directives.

21. The measures referred to in the Directives issued on 20 March 2020 shall remain in force during the period of the national state of disaster. The measures referred to in the Directives issued on 17 April 2020 are hereby repealed.

MOGOENG MOGOENG
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