



## Pagination of Court Files in Civil Procedure: "A Thing of the Past" in Evolving Digital Technology

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### Abstract

*Pagination of the court files is a practice that has been used by the courts for centuries. The significance of pagination is shown by incorporating pagination into the rules of the courts. The current rules require legal practitioners to physically or manually paginate the court files. More often than not, candidate legal practitioners are asked to attend to the pagination of the court files. Technology is advancing regularly and the South African courts ought to be abreast with these development. This implies that there comes a time when the rules of indexing and pagination will be "abrogated by disuse". The implementation of the CaseLines system in the courts is a path that strives towards using digital technology in civil proceedings. By introducing the CaseLines system, the South African courts are showing that they fully appreciate the provisions of the Electronic Communications and Transactions Act 25 of 2002. It appears that South African courts are competing with the United Kingdom's Electronic Working Pilot Scheme, which is regulated by Practice Direction 510. This is an attempt to fully embrace technology in civil procedure in the United Kingdom. This article reviews pagination in the context of the utilization of technology in civil proceedings.*

**Keywords:** Pagination; technology; a thing of the past; civil procedure; Electronic Communications and Transactions Act; Rules of courts; United Kingdom; Practice Direction 510.

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## 1 INTRODUCTION

Pagination is one of the oldest civil litigation legacies that our courts preserved for decades in South Africa.<sup>1</sup> Various rules of different courts regulate the practice of pagination of the court file.<sup>2</sup> The parties are obliged to conform to the pagination rules before the set down notice is requested from the court.<sup>3</sup> Therefore, legal practitioners must conform to pagination rules in practice.<sup>4</sup> It all begins in the court of first instance.<sup>5</sup> For example, in the magistrates' courts there are practice directives that require parties to paginate the court's file.<sup>6</sup> Viewed from a logical perspective, the rule assists the court to easily access the pleadings during the trial proceedings.<sup>7</sup> Indexing and pagination of court files is important because the same prevents chaos.<sup>8</sup>

Technology, on the other hand, is constantly advancing and legal practitioners are now using electronic communication in storing court files in practice.<sup>9</sup> Further, legal practitioners more often than not use candidate attorneys to attend to the pagination of the court file.<sup>10</sup> Due to the development of technology, it is necessary to consider amending the rules that require parties to paginate court files.<sup>11</sup>

This article critically highlights the reasons for paginating the court files; evaluates the relevant rules of the respective courts, as well as practice directives that govern the pagination of court files. In addition, the article examines the pagination practices in the United Kingdom. Further, the author analyses the impact of technology on South African courts; provides recommendations and subsequently concludes that the rules of indexing and pagination are slowly "abrogated by disuse" in the developing world of digital technology and that they will in the future be "a thing of the past".

## 2 WHAT ARE THE REASONS FOR PAGINATING COURT FILES?

Pagination is an important process of civil litigation because it makes it easy for the courts to page through the file without wasting time.<sup>12</sup> In addition, pagination allows the legal practitioners to coherently follow their arguments when presenting their cases in civil trials.<sup>13</sup> Pagination of the court bundles ensures that the evidence is presented in a manner that is structured.<sup>14</sup> Further, pagination also becomes more significant when legal practitioners cross examine witnesses.<sup>15</sup>

Pagination is important because the Uniform Rules of Court compels legal practitioners to conform to the respective rules. Rule 62(4) of the Uniform Rules of Court states:

an applicant or plaintiff *shall* not later than five days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and *shall* prepare and deliver a complete index thereof.

The construction of the rule 62(4) shows that this rule is compulsory in practice. This is demonstrated by the use of words such as *shall*. The grammatical interpretation of the word *shall* confirms that the rule is mandatory.

To show that pagination is significant in civil proceedings, the court in *Makuwa v Poslson*<sup>16</sup>

1 Hurter "The Litigant in Person and the Access to Justice Dilemma: Quo Vadis South Africa" 2016 *CILSA* 428–54.

2 Uniform Rules of Court of 2009; Magistrates' Court Rules of 1968.

3 Van Blerk *Preparation for Civil Trials* (2019) 175.

4 Rule 6.2 of the Practice Directives for the Gauteng Local Division of the High Court of 2017 ("the Practice Manual"); Andrews *Court Civil Proceedings Arbitration & Mediation* (2019) 378; Van Blerk *Civil Trials* 175–176.

5 Broodryk *Eckard's Principles of Civil Procedure* (2019) 211.

6 Broodryk *Civil Procedure* 212; Civil Practice Directives for the Regional Courts in South Africa, 2017.

7 Pete *et al Civil Practice, A Practical Guide: Procedural Law* (2017) 297.

8 *Makuwa v Poslson* 2007 3 SA 84 (T).

9 Judge President's Practice Directive 1 of 2020; Papadopoulos and Snail *Cyberlaw@SAll: The Law of the Internet in South Africa* (2012) 1–349 and Van der Merwe *et al Information and Communications Technology Law* (2016) 117, 121–122 and 369.

10 Pete *et al Procedural Law* 297–298.

11 The Practice Directive of 2020.

12 Van Blerk *Civil Trials* 176.

13 *Ibid.*

14 Broodryk *Civil Procedure* 212.

15 *Ibid.*

16 2007 3 SA 84 (T).

awarded costs *de bonis propriis* because the legal practitioner did not conform to the rule 62(4) of the Uniform Rules of Court. The court file was not paginated as required in terms of the rules.<sup>17</sup> The court held that:

It is evident that the court awards costs *de bonis propriis* when the legal practitioner is grossly negligent or fails to comply with the court rules as stated in *Star Marine Yacht Services v Nortier*. The decision of the *Makuwa* case and *Star Marine* to award punitive costs to the legal practitioners illustrates the importance of pagination in practice. In the case of *The Ebenhaeser Communal Property Association and Others v The Minister of Department of Rural Development and Land Reform*<sup>18</sup> the court awarded costs *de bonis propriis* to a legal practitioner who failed to comply with indexing and pagination rules and could not provide justifiable reasons why the rules were not conformed to.<sup>19</sup>

The legal practitioner raised budget limitation as a justification for not complying with the practice directive. The legal practitioner argued that she "did everything within her power and ability and within the severe time constraints and budget limitations to comply with the court directives."<sup>20</sup>

The court stated that non-compliance was the main reason why the trial did not proceed.<sup>21</sup> The court considered practice directives 8 and 10, which put emphasis on the significance of indexing and paginating of the court file. The legal practitioner failed to comply with these directives.<sup>22</sup> The court held that the practice directive "imposes an obligation upon the plaintiff to index and paginate the court file before the plaintiff applies for a date."<sup>23</sup> The court concluded that:

In my view, the conduct of Parker substantially and materially deviated from the standard expected of legal practitioners, was irresponsible, grossly negligent and displayed lack of care. Her conduct demonstrated either a wanton disregard for the Rules and Practice Directions of this Court or ignorance thereof, and was discourteous to the other parties. This was a serious dereliction of duty which prejudiced all the parties. Parker, as aforementioned, not only failed in complying with Practice and other directions, but was remiss in regard to almost every step of preparation for trial. As a consequence, as aforementioned, the trial could not proceed as planned. I am satisfied that the circumstances of this case warrant punitive costs to be paid *de bonis propriis* by Parker on an attorney client scale so that the Landowner Defendants would not be out of pocket.<sup>24</sup>

The decision of the court in this case is correct because it demonstrates the significance of indexing and pagination rules and practice directives. It also illustrates the harsh approach followed by the court when legal practitioners fail to comply with the said rules. Costs *de bonis propriis* are awarded to show the seriousness of the courts in demonstrating their displeasure when indexing and pagination rules are not followed by practitioners.

### 3 CONSTITUTIONAL COURT RULES OF 2003

Rule 20 obliges the parties to the pagination process in the Constitutional Court.<sup>25</sup> The rule requires parties to number the pages manually when there are new documents presented to

17 The court held that ... Secondly, the excipient, who is dominus litis in this part of the proceedings, has neither complied with rules 62(4) of the Uniform Rules nor with the practice in this Division as provided for in Practice Manual: CA 4.1. It is a duty of the excipient to collate, paginate and index the papers. This is not merely for the convenience of the parties, but more particularly for the court. Rule 62(4) has been in existence for many years and the Practice Manual fortifies the rules of court to enhance the efficacy of the courts and overall administration of justice. Judges have frequently warned that the courts will not tolerate non-compliance with rule 62(4) [see: *Star Marine Yacht Services v Nortier* 1993 (1) SA 120 (SECLD) at 121D-E]. The Practice Manual is there to assist practitioners to know what is expected of them so as to avoid failures, delays, frustration and resultant wasted costs. Practitioners must act in accordance with rules of court and the manual.

18 2019 3 All SA 530 (LCC).

19 *The Ebenhaeser Communal Property Association and Others v The Minister of Department of Rural Development and Land Reform* 2019 3 All SA 530 (LCC) para 3 (hereinafter referred to as *The Ebenhaeser* case).

20 *The Ebenhaeser* case para 42

21 *The Ebenhaeser* case para 3.

22 *The Ebenhaeser* case para 5.

23 *The Ebenhaeser* case para 10.

24 *The Ebenhaeser* case para 54.

25 Rule 20(2)(d) of the Rules of the Constitutional Court of 2003

the Constitutional Court. Still, it is observed that this is not in-line with advancing technology.<sup>26</sup> Rule 20(2)(d) states that:

The pages *shall* be numbered clearly and consecutively and every tenth line on each page *shall be numbered and pagination* [my emphasis] used in the court *a quo* shall be retained where possible.<sup>27</sup>

It appears that rule 20 is mandatory judging from the use of the word *shall* in its text. The position set out in rule 20 calls for a review of the pagination process of the Constitutional Court Rules. It is suggested that if documents are electronically submitted and electronically numbered, the same will satisfy the pagination process. This illustrates that technology replaces the conventional method of manual pagination of the court.<sup>28</sup> Cabral *et al* have opined that technology improves access to justice.<sup>29</sup>

When considering the billable hours spent on indexing and paginating court files and the digital method of filing and storing the files, the latter is far cheaper. A legal practitioner who works in a very small law firm, and attends to indexing and pagination for five hours including travelling hours to court, will bill less hours than hours spent on drawing heads of argument when using tariff or fees gazetted for 2020,<sup>30</sup> as illustrated in *Jonker and Others v Taxing Master of the High Court and Another*.<sup>31</sup>

A tariff is charged on "arranging record for printing or typing, excluding unnecessary documents therefrom, and preparing an index and list of documents not included in the record on appeal, per quarter of an hour."<sup>32</sup> The digital means of conducting civil proceedings is more advantageous to the practitioners than driving to court merely to paginate court files.

Moreover, the electronic means of filing the documents will save the candidate legal practitioners' time because more often than not they are sent to paginate the court files.<sup>33</sup> Not only that, the utilisation of technology will save the fuel used to drive to the Constitutional Court to physically paginate the court files. Further, the maintenance of the vehicle will be reduced by the application of technology in civil proceedings. Instead of paging through hard copy lever-arch files, the judges and the parties to the proceedings will page through touch screen when using technology.<sup>34</sup>

In addition, where the court files consists of more than one or two lever-arch files for one matter, usage of technology will save the plaintiff's legal practitioners' time as pagination of more than two files takes quite a long time. For instance, in class action matters, the lever-arch files may be more than five to ten. The time spent on paginating these files could be used to bill and that brings more money to the law firms. Van der Merwe argues that an electronically stored file assists the courts and legal practitioners because the digital filing of pleadings is more manageable as opposed to hard copy lever-arch files.<sup>35</sup>

A classic example of how technology can effectively improve the current system in practice is shown by using the CaseLines system, which requires parties to file and upload pleadings chronologically without physically paginating the court file.<sup>36</sup> The effective application of the CaseLines system was illustrated in *Chongqin Gingxin Industries SA Pty Limited v Ye and Others*.<sup>37</sup> Further, the utilisation of technology has enhanced the current system in the

26 Uniform Rules of Court of 2009; Magistrates' Courts Rules; rule 6.2.1 of the Practice Manual.

27 Rule 20(2)(d) of the Rules of the Constitutional Court of 2003.

28 Broodryk *Erkards's Principles of Civil Procedure in the Magistrates' Courts* 212.

29 Cabral *et al* "Using Technology to Enhance Access to Justice" 2012 *Harvard Journal of Law and Technology* 241–323.

30 *Government Gazette* No. 43592 (7 August 2020); *The President of the Republic of South Africa and Others v Gauteng Lions Rugby Union Case CCT 16/98* (22 November 2001); *Jonker and Others v Taxing Master of the High Court and Another* (2769/2017) 2019 ZAFSHC 56 (17 May 2019).

31 Case no. 2769/2017 2019 ZAFSHC 56 (17 May 2019).

32 Item 2 part B of *Government Gazette* No 43592 (7 August 2020). *Cannon South Africa v The Commissioner: South Africa Revenue Custom and Excise* Case no. 2671/2016P (7 October 2016)

33 *Pete et al Civil Procedure* 297.

34 Mabeka "An Analysis of the Implementation of the CaseLines System in South African Courts in the Light of the Provisions of Section 27 of the Electronic Communications and Transactions Act 25 of 2002: A Beautiful Dream to Come True in Civil Procedure" 2021 *PER* 1727–3781; Van der Merwe *et al Information and Communications Technology Law* 2nd ed (2016) 117.

35 Van der Merwe *et al* (2016) *Information and Communications Technology Law* 2nd ed 4–5.

36 The Judge President's Practice Directive 1 of 2020; The Judge President's Practice Directive 2 of 2020, The Judge President's Practice Directive 1 of 2021.

37 2021 3 SA 189 GJ.

Constitutional Court in various cases where proceedings were conducted online through YouTube.<sup>38</sup>

In cases such as *Zuma v The Office of the Public Protector and Others*,<sup>39</sup> *Minister of Finance v Afribusines*,<sup>40</sup> *Chairperson of the Council of the University of South Africa and Others v Afriforum*,<sup>41</sup> *Booi v Amathole District Municipality and Others*,<sup>42</sup> as well as *David v The Premier of the Limpopo Province*,<sup>43</sup> the Constitutional Court proceedings were conducted online through YouTube. These cases demonstrate that the advancing technology enhances the current system. Evidently, the costs that are incurred in printing and photocopying are significantly reduced. Therefore, there is a necessity to develop the pagination practice to align it with technology.

The application of technology in civil proceedings will particularly reduce the costs in class actions, for example, because the court files that are paginated in class action proceedings are more than ten lever-arch files for just one matter.<sup>44</sup> Paginating these files is a nightmare and sometimes it takes more than just one day to complete pagination.<sup>45</sup> This shows that the use of technology is cheaper than the manual or physical pagination of court files.

The significance of paginating the court files in the Constitutional Court was illustrated in *Shilubana and Others v Nwamitwa*.<sup>46</sup> In this case, some documents that formed part of the court file were not paginated. The court compelled parties to paginate the necessary documents, and this was later again affirmed by the Constitutional Court in *Koyabe and Others v Minister for Home Affairs*.<sup>47</sup>

It is evident that the Constitutional Court views indexing and pagination rules as an essential process in litigation that must be adhered to by legal practitioners. This approach, however, is not appreciative of the advances in technology. There is a need to modify civil courts' processes to be in line with surfacing and development of technology. The courts must replace the manual practice of pagination with digital indexing and pagination.

#### 4 SUPREME COURT OF APPEAL RULES

Rule 6 provides that parties must paginate court documents, or at least keep the pagination of lower courts.<sup>48</sup>

This is subject to whether there are added documents included in the appeal, in which case, parties will be required to re-paginate the court file.<sup>49</sup>

Rule 6(5)(a) asserts that:

Every application, answer and reply -

(a) shall -

(i) be clear and succinct and to the point;

(ii) furnish fairly all such information as may be necessary to enable the Court to decide the application;

(iii) deal with the merits of the case only in so far as is necessary for the purpose of explaining

38 *Zuma v The Office of the Public Protector and Other* Case no. CCT286/20 (27 May 2021); *Minister of Finance v Afribusines* NCP Case no. CCT279/20 (25 May 2021); *Chairperson of the Council of University of South Africa and Others v Afriforum* NCP Case no. CCT135/20 (20 May 2021); *Booi v Amathole District Municipality and Others* Case no. CCT 119/20 (18 May 2021); as well as *David v The Premier of the Limpopo Province* Case no. CCT 174/20 (13 May 2021).

39 Case no. CCT286/20 (27 May 2021).

40 NCP Case no. CCT279/20 (25 May 2021).

41 NCP Case no. CCT135/20 (20 May 2021).

42 Case no. CCT 119/20 (18 May 2021).

43 Case no. CCT 174/20 (13 May 2021).

44 *Mukaddam and Others v Pioneer Food (Pty) Ltd and Others* 2013 5 SA 89 (CC); Hurter "Class Action: Failure to Comply with Guidelines Laid Down by Courts Ruled Fatal" 2010 TSAR 409-417; Hurter "Some Thoughts on Current Developments Relating to Class Actions in South African Law as Viewed Against Leading Foreign Jurisdictions" 2006 CILSA 485-503.

45 *Children's Resources Centre Trust and Others v Pioneer Food Pty Ltd and Others* 2013 2 SA 213 (SCA); *Mukaddam and Others v Pioneer Food (Pty) Ltd and Others* 2013 5 SA 89 (CC).

46 *Shilubana and Others v Nwamitwa* 2008 9 BCLR 914 (CC).

47 *Koyabe and Others v Minister for Home Affairs* 2009 12 BCLR 1192 (CC).

48 Rule 6(5) of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa of 1998 ("Supreme Court of Appeal Rules").

49 See Supreme Court of Appeal Rules.

- and supporting the particular grounds upon which leave to appeal is sought or opposed;
- (iv) be properly and separately paginated; and
- (b) shall not -
  - (i) be accompanied by the record, or
  - (ii) traverse extraneous matters.<sup>50</sup>

The construction of this rule shows that pagination is mandatory. This is demonstrated by the use of the word *shall*, which obliges legal practitioners to ensure that the court file is paginated.

Furthermore, rule 8 forces parties to ensure that the record is numbered and paginated. Rule 8(6)(c) states that:

The pages *shall be numbered* clearly and consecutively, and every tenth line on each page *shall be numbered and the pagination* used in the court a quo shall be retained where possible.

The wording of this rule is, to a certain extent, akin to rule 6. The rule reiterates the significance of paginating the court file. The use of the word *shall* shows that pagination is compulsory. Thus, the plaintiff or legal practitioners must paginate the court file.

Rule 8 requires the party to keep the pagination of the court of first instance.<sup>51</sup> If, however, this is not possible, the parties may have to re-paginate the record. Rule 8(6)(c) states:

The pages *shall be numbered* clearly and consecutively, and every tenth line on each page *shall be numbered and the pagination* used in the court a quo shall be retained where possible.<sup>52</sup>

This rule is somehow similar to rule 6 because it is a reiteration of the significance of the pagination of the court file. The use of the word *shall* once again shows that pagination is obligatory. It is argued that the rules must be amended in a manner that does not expect parties to the proceedings to file original documents after filing electronically.

The court in *Gaobepe v Britz*<sup>53</sup> relaxed the application of indexing and pagination rules where the respondent had challenged and did not paginate the file.<sup>54</sup> The court allowed the respondent to proceed and file heads of arguments.<sup>55</sup> Here too, it appears that rules 6 and 8 are not yet in line with technology. Recently, the Supreme Court of Appeal demonstrated more flexibility in *Rajvee Soni v The State* by delivering a judgment electronically.<sup>56</sup> This too calls for the modification or amendment of these rules to allow parties to use electronic means of keeping the court documents indexed and paginated by the use of online methods.

## 5 PRACTICE MANUAL OF THE GAUTENG LOCAL DIVISION – HIGH COURT

The Practice Manual of the Gauteng Local Division in the High Court of 2017 (“the Practice Manual”) regulates processes in this court.

The Practice Manual enables the smooth and orderly operation of the courts.<sup>57</sup> One of the items of the Practice Manual relates to indexing and pagination of court files.<sup>58</sup> Item 6.8 in particular provides that the court files must be indexed and paginated.<sup>59</sup>

Item 6.4.3 states:

attention is drawn to the requirement in respect of pagination, indexing and binding of papers which must occur not less than five days prior to the date allocated for the hearing of the trial.<sup>60</sup>

The construction of the item 6.4.3 illustrates that parties are obliged to respect and conform to the Practice Manual,<sup>61</sup> represented by the use of words such as *must*. Therefore, the parties to

<sup>50</sup> Rule 6(5) of the Supreme Court of Appeal Rules.

<sup>51</sup> Rule 8 of the Supreme Court of Appeal Rules.

<sup>52</sup> Rule 8(6)(c) of the Supreme Court of Appeal Rules.

<sup>53</sup> *Gaobepe v Britz* Case no. A79/2013 2015 ZAFSHC 33 (26 February 2015).

<sup>54</sup> *Gaobepe* paras 15–16.

<sup>55</sup> *Gaobepe* para 16.

<sup>56</sup> Case no. 465/2019 2021 ZASCA (5 May 2021).

<sup>57</sup> Item 2 of the Practice Manual.

<sup>58</sup> Practice Manual.

<sup>59</sup> Item 6.8 of the Practice Manual.

<sup>60</sup> Item 6.4.3 of the Practice Manual.

<sup>61</sup> Item 6.8 of the Practice Manual.

the proceedings must paginate the court file before the trial commences.

In addition, it is crucial to highlight the relevant aspects of the provisions of item 6.8. Item 6.8.1 asserts that:

The *plaintiff shall (my emphasis)* not less than ten days prior to the date allocated for the hearing of the trial-collate, number consecutively and suitably bind all the pleadings relating to the trial as separate bundle and ensure that they are in court file.<sup>62</sup>

If the plaintiff fails to comply with the indexing and pagination rules, the court will compel such pagination, as it was the case in *Maseka v Law Society of Northern Province*,<sup>63</sup> and *East Rand Bulk Pty Ltd v Thompson*.<sup>64</sup> In these judgments the court emphasised the importance of complying with the practice of pagination of court files.<sup>65</sup> This decision was later confirmed by the High Court in *Calitz v The Commissioner for the South African Revenue Service and Others*.<sup>66</sup> In this case, a notice was served to the applicant to ensure that the court papers are paginated.<sup>67</sup> The court emphasized the significance of paginating the court file.<sup>68</sup> The very same court in a subsequent judgment illustrated and affirmed the importance of paginating the court files.<sup>69</sup>

There are authors such as Baboolal-Frank<sup>70</sup> who agree that pagination is vital in litigation.<sup>71</sup> Baboolal-Frank asserts:

To a litigants aghast, after the very tedious process of pagination the court files and their own files and on the day of trial/application the court file goes walkabout.<sup>72</sup>

Hurter asserts that pagination of the court documents is significant in litigation.<sup>73</sup>

Van der Walt supports Hurter and affirms that there is an excellent reason why the rules require parties to paginate the court file.<sup>74</sup> Hurter asserts that:

Expanded judicial case management (through the amendment of existing rules of court) would also go a long way towards making it easier for litigants in person to comply with court rules and orders. Undoubtedly, lawyers opposing litigants in person will have a contribution to make here by taking over certain procedural functions as in overseas jurisdictions, such as pagination of court documents.<sup>75</sup>

Evidently, court files must be paginated in a manner that makes the duties of judges easier.<sup>76</sup>

The Practice Directive of 2020 in the Gauteng High Court repeals the provisions of the Practice Manual in the matters that are regulated in the CaseLines system<sup>77</sup> that was introduced

62 Item 6.8.2 states: "1.2 collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file; 1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof; 1.4 collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto; 1.5 prepare and attach an index to the pleadings bundle, the notices bundle and the pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading, notice or document as a separate item." In addition, item 6.8.2 asserts that "in binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open."

63 *Maseka v Law Society of the Northern Province* Case no. 443/06 2010 ZANWHC 1 January 2010.

64 *East Rand Bulk Pty Ltd v Thompson* Case no. 17986/12 2014 ZAGP JHC 29 28 February 2014.

65 *East Rand Bulk* para 25.

66 *Calitz v The Commissioner for the South African Revenue Service and Others* Case no. 102927/2017 2017 ZAGP JHC 209 21 June 2017.

67 *Calitz* paras 4–6.

68 *Calitz* paras 10–14.

69 *Absa Bank Limited v Dlamini* 2008 (2) SA 262 (T).

70 Baboolal-Frank "Revolutionising the Civil Courts in South Africa Through Information" 2015 *University of Pretoria* 1–9.

71 Baboolal-Frank 4–5 and Hurter 2016 *CILSA* 452.

72 Baboolal-Frank 1.

73 Hurter 2016 *CILSA* 452.

74 Van Der Walt and Slade "Public and Changing Circumstances: *Harvey v Umhlatuze Municipality & Others*" 2012 *SALJ* 219–253.

75 Hurter 2016 *CILSA* 452.

76 Van Blerk *Civil Trials* 176.

77 CaseLines system is a new system introduced in January 2020, which does away with paperwork in civil proceedings. The Registrar creates a file and thereafter he/she invites parties to upload the pleadings through the CaseLines system. Thereafter, all processes are conducted online through the CaseLines system. For example, a default judgment may be granted online.

in January 2020, namely “Special Motions and Commercial Court matters”.<sup>78</sup>

There is no doubt that the High Court regards pagination of the court files as one of the critical processes that must be adhered to in litigation.

## 6 MAGISTRATES’ COURT PRACTICE DIRECTIONS

*Civil Practice Directives* regulate pagination in the Magistrates’ Courts.<sup>79</sup> The provisions of *Civil Practice Directives* were passed to compel the parties to index and paginate court documents.<sup>80</sup> These provisions are items 4.7, 4.10 and 5.1, and they all emphasize the significance of indexing and paginating the court file.<sup>81</sup> Item 4.7 requires the clerk of the court to paginate the court file in the case of an unrepresented party.<sup>82</sup> Item 4.10 obliges parties to paginate the file, including affidavits and “notice of motion”.<sup>83</sup> It is evident that the Magistrates’ Court too views indexing and pagination of court files as a crucial process, obligating legal practitioners to conform with the rules.

## 7 PAGINATION OF THE COURT FILES IN THE UNITED KINGDOM

Just as it is the case in South Africa, the United Kingdom regards the rules of indexing and pagination as critical in civil proceedings. In *R v Qu and Others*,<sup>84</sup> the court highlighted the significance of indexing and paginating the evidence presented in the court file.

Subsequently, in *PM Project Services Ltd v Dairy Crest Ltd*,<sup>85</sup> the court confirmed that pagination is crucial in civil proceedings.

In *White Winston Select Asset Funds LLC & Anor v Mahon & Anor*,<sup>86</sup> the court reiterated the importance of arranging the bundle in chronological order.<sup>87</sup> Authors such as Greenwell and Heatley, support the courts and aver that the court bundles must be paginated because there may be costs awarded “for failing by the parties in the proper preparation of the bundles.”<sup>88</sup>

The pagination process in the United Kingdom is regulated by Practice Direction 52C.<sup>89</sup> This practice direction provides that the court bundle must be paginated for appeal hearings.<sup>90</sup> Paragraph 27(13)(b) states that:

- Bundle format:** Core, supplementary and unagreed documents bundles *must*—
- (a) be bound and any ring binder folder must be in fully working order;
  - (b) be paginated. Page numbering must not reduce the font size of any document below 12 points.
  - (c) contain an index at the front referring to relevant page numbers; and
  - (d) except for core bundles, be in chronological order.<sup>91</sup>

The wording construction of the above practice direction shows that pagination is a compulsory process that legal practitioners in the United Kingdom must comply with.<sup>92</sup>

Although the provisions of the Practice Direction 510 – Electronic Working Pilot Scheme (hereinafter referred to as the Practice Direction 510) enable parties to use electronic filing processes, parties to the proceedings are still required to submit hard copies.<sup>93</sup> The parties are however required to index and paginate hard copies of documents electronically.<sup>94</sup> This is indicative of the fact that the United Kingdom regards pagination of the court files as a very crucial process that ought to be conformed to by parties to the proceedings.

The Practice Direction 510 further reiterates the importance of pagination of the court file

78 Practice Directive of 2020.

79 Civil Practice Directives for Regional Courts in South Africa of 2017 (“Civil Practice Directives”).

80 Item 4.7; 4.10 and 5.1 of the Civil Practice Directive.

81 Item 4.7; 4.10 and 5.1 7-8 of the Civil Practice Directive.

82 Item 4.7 7 of the Civil Practice Directive.

83 Item 4.10 of the Civil Practice Directive.

84 2012 Costs LR 599.

85 2016 4 Costs LR 735.

86 2019 EWHC 1381 Ch.

87 *White Winston Select Asset Funds LLC & Anor v Mahon & Anor* 2019 EWHC 1381 Ch para 45.

88 Greenwell and Heatley “Bundles of Fun-Tackling Court Bundles” 2019 *Commercial Litigation Journal* 1–10.

89 Practice Direction 52C.

90 *Ibid.*

91 Paragraph 27(13)(b) of Practice Direction 52C.

92 *Andrews Civil Proceedings* 23.

93 Practice Direction 510.

94 Paragraph 10 of the Practice Direction 510.



by including paragraph 11.4, which asserts that:

The claimant, applicant or petitioner, as appropriate, *shall* be responsible for ensuring the paper copy is indexed and corresponds exactly with the electronic version of the bundle with sequential pagination.<sup>95</sup>

Ambrose *et al.* argue that the court files must be in bundles<sup>96</sup> and they are expected to be contained in “ring or lever-arch files” and there is a limitation of 300 pages per file.<sup>97</sup> Di Mambro confirms that parties are obliged to ensure that hard copies are indexed and paginated in the same format as “the electronic version”.<sup>98</sup>

The United Kingdom rules do not want the court files or bundles to be overfilled.<sup>99</sup> The importance of pagination of the court file was illustrated in *Leofelis SA v Lonsdale Sports Ltd*.<sup>100</sup> If there is more than one file, the bundles must be in different colours.<sup>101</sup> In the alternative, the bundles must clearly be marked by distinguishing letters, and the parties to the proceedings must use the same coding for separate bundles.<sup>102</sup> This was affirmed in cases such as *London and South East Railway Ltd v British Transport Police Authority*,<sup>103</sup> *Parr v Keystone Healthcare Ltd & Ors*,<sup>104</sup> *White Winston Select Asset Funds LCC & Anor v Mahon & Anor*,<sup>105</sup> as well as *Invista Textiles (UK) Ltd & Anor v Botes & Ors*.<sup>106</sup>

Ambrose *et al* indicate that the defendant may be asked to prepare the court bundle, including pagination, if the defendant is in a better financial position than the plaintiff to do so. This was affirmed in *Maltez v Lewis*.<sup>107</sup> The United Kingdom has advanced to the extent of introducing Online County Courts and Practice Direction 510, which only operates online or through technology means. The United Kingdom’s Practice Direction 510<sup>108</sup> fully embrace technology and do away with the paperwork as seen in cases such as *JHP v XYZ*,<sup>109</sup> *Bi v Mohamed*,<sup>110</sup> *J v K*,<sup>111</sup> and *Taberna Europe v Selskabet*.<sup>112</sup>

The Practice Direction 510 also obliges the parties to the proceedings to file court documents in PDF format.<sup>113</sup> The latter is significant because it keeps documents to its original form.<sup>114</sup> Confidential documents must further be sealed “electronically by the court”, despite the requirement that hard copies must still be filed.<sup>115</sup> These hard copies ought to be paginated and kept safe as they may be inspected when necessary.<sup>116</sup> The implications of implementing the Practice Direction 510, as well as the Online County Courts in the United Kingdom are that the pagination of court files will become “a thing of the past”.

Items 3.5 and 4 of the Practice Direction 510 indicate that the original file copies are kept so that when needed by the parties, they are available. The electronic file falls within the ambit of the meaning of data. The provisions of section 15(2) of the Electronic Communications Act of 2000 views data as authentic. This implies that such data is regarded as best evidence. When section 15(2) of the Electronic Communications Act of 2000 is compared to section 15 of the

95 Paragraph 11.4 of the Practice Direction 510.

96 Ambrose *et al Civil Practice* 1072.

97 *Ibid.*

98 Di Mambro “Civil Procedure Rules and PD amendments” 2015 *Civil Court News* 73–203.

99 See Ambrose *et al Civil Practice* 1072; Andrews *Civil Proceedings* 23.

100 *Leofelis SA v Lonsdale Sports Ltd* 2008 EWCA Civ. 640.

101 Ambrose *et al Civil Practice* 1072; Andrews *Civil Proceedings* 23.

102 Ambrose *et al Civil Practice* 1072.

103 *London and South East Railway Ltd v British Transport Police Authority* 2009 EWHC 1255.

104 2019 EWCA Civ. 1246.

105 2019 EWHC 1381 Ch.

106 2019 EWHC 58 Ch.

107 *Maltez v Lewis* 1999 16 Const LJ 65; Ambrose *et al Civil Practice* 1073.

108 Practice Direction 510 is also referred to as the Electronic Working Pilot Scheme. This pilot enhances the Civil Procedure Rules such as 5.5 and 7.12. It permits parties to file and serve pleadings electronically. It also allows issuing of court processes electronically. It applies courts such as the Chancery Division of the High Court and the Commercial Court. It creates an online system that is available to the parties 24-hours and it applies in applications proceedings.

109 *JHP v XYZ* 2015 EWHC; *Bi v Mohamed* 2016 EWHC 506; *J v K* 2019 EWHC Civ. 5.

110 *Bi v Mohamed* 2016 EWHC 506.

111 *J v K* 2019 EWHC Civ. 5.

112 2016 EWCA Civ. 1262.

113 Practice Direction 510; Ambrose *et al Civil Practice* 1072.

114 Item 3.3 (c) of the Practice Direction 510.

115 Ambrose *et al Civil Practice* 1072.

116 *Ibid.*

ECT Act, which deals with “admissibility of data messages”; a conclusion is drawn that both the UK and South Africa consider electronic data as best evidence, unless proven otherwise.<sup>117</sup> It appears that when there is a rebuttal about the originality or accuracy of the electronic files, the original hard copies will be used to confirm whether such electronic file is indeed the best evidence available according to items 3.5 and 4 of the Practice Direction 510.

## 8 THE IMPACT OF TECHNOLOGY ON PAGINATION IN SOUTH AFRICAN COURTS

Technology law is significant in considering the modification of pagination in practice because the court bundles contain documents such as the summons, notices and pleadings, which become data messages when construed in light of the ECT Act.<sup>118</sup> It is common cause that data messages are not paginated but the pages are chronologically numbered and stored in electronic files. For this reason the author discusses the relevant provisions of the ECT Act immediately below.

The ECT Act was passed to regulate electronic communications. Section 1 of the ECT Act defines data as follows:

- ‘data message’ means data generated, sent, received or stored by electronic means and includes-
- a. voice, where the voice is used in an automated transaction; and
  - b. a stored record.<sup>119</sup>

The above shows that the process of producing summonses or pleadings by using a computer or electronic device is embedded within the ambit of electronic communications.<sup>120</sup> These summonses and pleadings fall within the scope of “data” or “data messages” in context of section 1 of the ECT Act.<sup>121</sup> Electronic communication is described as including “indirect communications” in terms of the provisions of the Regulation of Interception of Communications and Provisions of Communication-Related Information Act 70 of 2002. Indirect communication is defined to include data in terms of section 1 of RICA.<sup>122</sup>

Developing technology demonstrates that the court files will, in the future, be presented in the form of data as opposed to hard copy “lever-arch files”. South Africa signed and ratified the UNCITRAL Model Law Electronic Commerce of 1996 (“UNCITRAL”). Article 2(a) of the UNCITRAL describes “data messages” as meaning:

- information generated, sent, received or stored by electronic (My emphasis), optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.*<sup>123</sup>

Section 1 of the ECT Act defines “data messages” as

- data generated, sent, received or stored by electronic means [my emphasis] and includes -*
- a. voice, where the voice is used in an automated transaction; and
  - b. a stored record.<sup>124</sup>

The construction of both Article 2(a) of the UNCITRAL and section 1 of the ECT Act, demonstrate that the first part of the first sentence that is highlighted in italics, is the same or formulated verbatim. The only difference relates to the provisions in section 1(a) and (b). This shows that the legislature intended to incorporate the provisions of Article 2(a) of the UNCITRAL into the ECT Act.

Further, South Africa incorporated the meaning of data that is provided in this convention into the provisions of the ECT Act. This convention is important because the court files are

117 Section 15 of the Electronic Communications and Transactions Act (ECT Act); *Sebenza Shipping Forwarding Pty Ltd v Passenger Rail Agency of South Africa SOC Ltd* Case no.43909/2016 (28 November 2017) para 9; *S v Tiry and Others* 2021 1 SACR 349 (SCA); section 15(2) of the Electronic Communications Act of 2000; Items 3.5 and 4 of the Practice Direction 510.

118 Mabeka and Songca “The Interpretation and Evaluation of Legislative Provisions Relating to South African Civil Procedure Processes in the Age of Electronic Technology” 2019 *THRHR* 429–443.

119 Section 1 of the ECT Act.

120 Mabeka and Songca 2019 *THRHR* 436–437; Mabeka *The Impact of e-Technology on Law of Civil Procedure in South Africa* (LLD Thesis, University of South Africa, 2018) 93–155 (“Mabeka Thesis”).

121 Mabeka Thesis 93–155.

122 Section 1 of RICA.

123 Article 2(a) of the UNCITRAL.

124 Section 1 of the ECT Act.

accessible as data or data messages when filed online or electronically. In *S v Panayiotou*,<sup>125</sup> the court accepted cell phone and video recording, and radio recording evidence as data messages.<sup>126</sup>

It appears that the court file that is accessible in the data text format is regarded as original documents in terms of sections 11 and 14 of the ECT Act.<sup>127</sup> This, however, must satisfy the requirement in subsection 3(b).<sup>128</sup> Thus, the court file must be readable,<sup>129</sup> and it must enable parties to store it,<sup>130</sup> including the “opponents” file.<sup>131</sup> In addition, the file must easily be retrievable for the defendant or the respondent in the proceedings.<sup>132</sup> The construction of section 11 provision shows that the manual pagination of the original court files will become “a thing of the past”.

Moreover, section 14 of the ECT Act places a further requirement on the originality of the data text. This provision obliges the parties to satisfy the integrity test.<sup>133</sup> Section 14 asserts that:

- (1) Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if -
  - a. the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and
  - b. that information is capable of being displayed or produced to the person to whom it is to be presented.
- (2) For the purposes of subsection 1(a), the integrity must be assessed
  - a. by considering whether the information has remained *complete and unaltered*, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;
  - b. in the light of the *purpose* for which the information was generated; and
  - c. having regard to *all other relevant circumstances* [my emphasis].<sup>134</sup>

The interpretation of this provision within the context of paginating the original court file shows that parties to the proceedings must make sure that the data messages are not tampered with and that they are complete.<sup>135</sup> This will be accomplished by using online indexing and pagination methods.

Furthermore, the data messages ought to be preserved to be in line with the manner in which such data is produced.<sup>136</sup> The last integrity requirement in terms of subsection 3(b), is that the circumstances of each case must be considered<sup>137</sup> and this is something that South African courts will have to decide on in the future. It is submitted that the last integrity requirement provides for discretion, which the courts must use when the integrity and originality of the data message is questioned and subsequently evaluated by the court.

It is submitted that the courts must develop factors such as considering the financial status of the parties in question, and if justified, apply the UK principle that the wealthier litigant pays the costs associated with indexing and pagination. In addition, the court must consider the area in which the court is situated. For example, the court must consider the reality of limited access to computers in rural areas, which forces the parties to use internet cafes. This

<sup>125</sup> Case no. 49106 2020 JOL KZD.

<sup>126</sup> *S v Panayiotou* 2018 1 All SA 224 (ECP) para 84.

<sup>127</sup> Section 11 of the ECT Act states that: “(1) Information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a data message. (2) Information is not without legal force and effect merely on the grounds that it is not contained in the data message purporting to give rise to such legal force and effect, but is merely referred to in such data message. (3) Information incorporated into an agreement and that is not in the public domain is regarded as having been incorporated into a data message if such information is (a) referred to in a way in which a reasonable person would have noticed the reference thereto and (b) incorporation thereof; and (c) accessible in a form in which it may be read, stored and retrieved by the other party, whether electronically or as a computer printout as long as such information is reasonably capable of being reduced to electronic form by the party incorporating it” [my emphasis].

<sup>128</sup> Section 11(3)(b).

<sup>129</sup> Section 11(3)(b).

<sup>130</sup> Section 11(3)(b).

<sup>131</sup> *Ibid.*

<sup>132</sup> Section 11(3)(b).

<sup>133</sup> Section 14(2).

<sup>134</sup> Section 14.

<sup>135</sup> Section 14(2).

<sup>136</sup> Section 14(2)(a).

<sup>137</sup> Section 14(2)(b).

is a considerable risk because the plaintiff may forget to delete the file on the internet café's computer and another user may have access to the data text court file and tamper with it. In such instances, the integrity test used by the court must be stricter because of the greater chance to tamper with the evidence.

Moreover, the court must consider the nightmare caused by hackers who unlawfully intercept data messages without the consent or knowledge of the parties to the proceedings. Consequently, the courts must give the plaintiff the benefit of the doubt in testing and satisfying the integrity requirement, as well as the originality of the data messages. It is observed that the ECT Act provisions enable the court to use data messages as court files or bundles, which must satisfy the obligations that are provided in sections 11 and 14 of the ECT Act. This implies that the court files must be scanned and saved as PDF documents to maintain the originality of such documents.<sup>138</sup> These stipulations are evidence of the need to stay abreast with technology laws in the future. Thus, the electronic pagination of court files that employs data text or messages are measured against the ECT Act in compliance with the general requirements of indexing and paginating electronically.

Further, the data messages should be viewed as the best evidence in civil litigation in terms of section 15 of the ECT Act. This is due to the fact that data messages are original unless there is evidence suggesting otherwise.<sup>139</sup> In *Sebenza Shipping & Forwarding Pty Ltd v Passenger Rail Agency of South Africa SOC Ltd*,<sup>140</sup> the court had to consider whether evidence sent electronically could be admissible as best evidence in terms of section 15 of the ECT Act. The court found that the evidence was indeed best evidence. In *Manyi v Dhlamini*<sup>141</sup> the court accepted WhatsApp messages as best evidence.<sup>142</sup> Recently, in *S v Tiry and Others*<sup>143</sup> the court considered the admissibility of evidence stored as data for four years and held that the same was indeed best evidence.

The author's construction of sections 11, 14 and 15 is supported by the introduction of the new CaseLines system that was presented to the judiciary in January 2020.<sup>144</sup> This is now contained in the Practice Directive of 2020. It appears that the CaseLines system is only piloted in the Gauteng High Court, and it allows parties to conduct litigation online in some cases such as "opposed and unopposed motion".<sup>145</sup>

The CaseLines system requires the Registrar to send an invitation to the parties to participate in online litigation.<sup>146</sup> In terms of item 3 of the Practice Directive of 2020, both the plaintiff and the defendant must upload the relevant documents online, and a decision may be made without directly or personally engaging with parties to the trial proceedings.<sup>147</sup> For example, when there is an application for a default judgment that is uploaded into the CaseLines system, there is no need for parties to physically appear in court because a default judgment may be granted online.<sup>148</sup> Thus, a default judgment can be processed and issued online under the CaseLines system.<sup>149</sup> This is a step taken by the judiciary to pave a positive path towards embracing technology in the Gauteng High Court.

The CaseLines system does away with manual pagination and compels parties to "ensure that an electronic version of the appeal case bundle and annexures/exhibits mirroring the original index of the case is scanned and uploaded onto the CaseLines system platform."<sup>150</sup> This means that in the future, court files will be in an electronic format, and the method that is incorporated into the Practice Directive of 2020 should be followed as provided in item 3.8.6.1. The author suggests that there is another way in which the court files may be arranged in a manner that is similar to pagination.

The author suggests that there is an alternative method that may be used instead of the

138 Item 6 of the E-Rules: Draft Amended Uniform Rules, these are not yet gazetted; the comments were sent to the Rules Board on 14 May 2021 for consideration <http://www.justice.gov.za> (accessed 21-06-2021).

139 *Ibid.*

140 2019 2 SA 318 (GJ).

141 Case no. 36077/13 2018 ZAGPPHC 563 (18 July 2019).

142 *Manyi v Dhlamini* Case no. 36077/13 2018 ZAGPPHC 563 (18 July 2019) para 28.

143 2021 1 SACR 349 (SCA).

144 See Practice Directive of 2020.

145 Item 3 of the Practice Directive of 2020.

146 *Ibid.*

147 *Ibid.*

148 Item 3.8.4 of the Practice Directive of 2020.

149 Item 3.8.4 of the Practice Directive of 2020.

150 Item 3.8.6.1 of the Practice Directive of 2020.

manual indexing and pagination. For instance, the Registrar must create one file for each matter, and documents must be saved in that file chronologically. For example, a notice of motion should be filed as a first document and after that, the relevant affidavits ought to be filed as file 2, 3 and so on. These documents should be followed by the answering affidavit and replying affidavits up until the heads of arguments are filed. In this way, indexing and pagination could very well become “a thing of the past”.

There is an increased recognition of technology in civil proceedings by the South African courts. In the case of *CMC Woodworking Machinery v Odendaal Kitchens*,<sup>151</sup> for example, the court allowed a party to serve summons through Facebook.<sup>152</sup> The judgment was based on pragmatic consideration in that it recognised the utilization of the internet to effect service when the defendant is avoiding the plaintiff. The court further concluded that if the defendant did not have internet, the plaintiff could insert a notice in a newspaper. In *Manuel v Economic Freedom Fighters*,<sup>153</sup> the court accepted evidence extracted from Facebook and social media.

Subsequently, in *Spring Forest Trading v Wilbery (Pty) Ltd*,<sup>154</sup> although not dealing with pagination directly, demonstrates the court’s general embrace of technology. Here, the court accepted emails as means of varying an agreement that contained a non-variation clause.<sup>155</sup> Recently, in *Global and Local Investment Advisors v Fouche*,<sup>156</sup> the court endorsed the decision in the *Spring Forest Trading* case.

This calls for modification of pagination rules to be in line with technology.

The courts are nowadays conducting hearings remotely and they are enforcing the CaseLines system in cases such as *Aarifah Security Services CC v Jakoita Properties (Pty)Ltd and Others*;<sup>157</sup> *Chongqin Gingxin Industries SA (Pty) Limited v Ye and Others*;<sup>158</sup> *Markit Systems (Pty) Limited v Fulcrum Group Pty Limited*.<sup>159</sup> These cases affirm that the application of technology in civil proceedings is far more effective and timeous than the “conventional method”, which requires manual pagination. This is indicative of the fact that pagination will indeed become “a thing of the past”.

## 10 HOW CAN PAGINATION BE ADDRESSED USING TECHNOLOGY GOING FOWARD

The author submits that the Registrar must create a file for each matter. The file must be archived on the website of the respective court. Thereafter the parties to the proceedings must draft an index in a manner that incorporates all documents that are contained in the electronic file in a chronological order, and these should be chronologically saved and filed in an electronic archived file per case or matter. For example, after summons is electronically filed in the suggested archived file, a notice of intention to defend should be saved as the next file so that the judge can simply electronically page through the documents during the civil trial.

The electronic storing of the court file chronologically should suffice, as opposed to expecting parties to send a candidate attorney to paginate the court file physically. This will save both the courts and the parties huge legal costs associated with the manual indexing and pagination of court files. The same applies to the requirement that bulky records should be bound in terms of rule 20 of the Constitutional Court Rules.

Further, rules 6 and 8 of the Supreme Court of Appeal rules, as well as the Civil Practice Directives 4.7, 4.10 and 5.1 must also be amended and modified to incorporate technology fully. This will, in the future, do away with the paperwork in all courts and not just in the Gauteng High Court.

151 2012 5 SA 604 (KZN).

152 *CMC Woodworking Machinery v Odendaal Kitchens* 2012 5 SA 604 (KZN) paras 9–11.

153 2019 3 All SA 584 GJ.

154 2015 2 SA 118 (SCA).

155 *Spring Forest Trading v Wilbery (Pty) Ltd* See 2015 2 SA 118 (SCA) paras 28–32.

156 2020 JOL 46944 (SCA).

157 2020 4 All SA 730 (GJ).

158 2021 3 SA 189 (GJ).

159 Case no. 39734/2018 2021 ZAGP JHB 36 (8 April 2021).

## 11 CONCLUSION

It is evident that there was a very good reason why the courts introduced rules on the indexing and pagination of court files in the first place. This is illustrated by case law that award costs *de bonis propriis* against legal practitioners who fail to comply with the relevant rules as seen in cases such as *Shilubana*, *Makuwa*, *The Star Marine Yacht Services v Nortier*, and *The Ebenhaeser* respectively. These costs were awarded as a punishment for failing to comply with the rules of indexing and pagination.

As important as rules of pagination are, the emergence of technology is gradually abrogating these rules by disuse in practice. For example, the introduction of the Online County Court in the United Kingdom confirms the abrogation of pagination by disuse. In addition, the implementation of the Practice Direction 510 is an explicit demonstration of embracing technology in the United Kingdom.

In South Africa, the provisions of the Practice Direction of 2020 show a positive path towards the implementation of technology in the courts. When South African courts fully use the CaseLines system that is incorporated into the Practice Direction of 2020 in other courts, the rules of indexing and pagination can become "a thing of the past".