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JUDGE PRESIDENT'S CHAMBERS
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**DIRECTIONS ISSUED BY THE JUDGE PRESIDENT FOR THE
MANAGEMENT OF THE HIGH COURT, EASTERN CAPE DURING
THE NATIONAL STATE OF DISASTER**

PREAMBLE

WHEREAS, on 2 May 2020, the Chief Justice, acting in terms of section 8(3) (b) of the Superior Courts Act 10 of 2013, issued Directives for the management of the courts during the national state of disaster;

WHEREAS, in those Directives, the Chief Justice, *inter alia*, delegated to all Heads of Court the authority to issue Directions necessary to –

- (i) give effect to the Directives; and
- (ii) manage particular circumstances not addressed in the Directives that are peculiar to the various courts;

WHEREAS, the High Court has inherent power to protect and regulate its own process, taking into account the interests of justice;

WHEREAS, the right of everyone to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court must be recognized;

WHEREAS, it is in the public interest that persons exercising their right of access to court do so cognizant of the risk of the rapid spread of Covid-19 and its impact upon the health and welfare of the public;

AND, WHEREAS it is deemed appropriate to issue Directions to give effect to the right of access to justice in the context of the declared national state of disaster by facilitating the enrolment of civil and criminal matters, and by determining an appropriate mode for the hearing and disposal thereof in an environment that is conducive to the curtailment of the spread of Covid-19,

NOW, THEREFORE, I, the undersigned, **Selby Mfanelo Mbenenge**, hereby direct as follows:

A. GENERAL

1. All persons entering the court building –

1.1 must –

1.1.1 wear a cloth mask or any other suitable item that covers the mouth and nose;

1.1.2 at all times whilst waiting outside or inside the court building or courtrooms maintain physical distance of at least 1.5 metres; and

- 1.1.3 wash their hands with a sanitizing liquid (including alcohol-based sanitizers or water and soap) available at the entrance to the court building; and
 - 1.2 may be subjected to –
 - 1.2.1 temperature screening; and
 - 1.2.2 completing a register that will be kept at all entrances to the court building.
2. The result of the screening will be recorded and persons with an elevated temperature (above 37.2 °C) will be refused access to the court building.
3. Persons who, 14 days prior to seeking entry to the court building have been in contact with, or exposed to, another person who has tested positive for Covid-19 or who on the information supplied are considered a Covid-19 risk, will be refused entry to the court building.
4. Failure to comply with the provisions of paragraph 1 above shall result in the defaulting person being refused entry to the court building.
5. Subject to what is contained in these Directions, dealing with matters (both civil and criminal) by way of physical appearance in open court shall be the last resort.

B. THE ISSUING AND SERVICE OF COURT PROCESS

6. Unless the exigencies of a matter clearly dictate otherwise, the issuing of court process shall take place by prior arrangement with the Registrar, who shall, with due regard to safety and sanitization, provide the party with a date and time for the physical submission of the documents at the court building and the manner in which they are to be received.
7. The exchange of hard copies of court papers in pending matters shall be minimized, and service in such instances shall be done *via* email or other forms of electronic transmission between the parties during normal business hours: Provided that the filing of such process in the court file shall be the responsibility of the litigant initiating the proceedings acting in accordance with paragraph 6 above.

C. CRIMINAL TRIALS

8. In order to minimize the risk of contamination and the spread of infection to accused persons, members of the public, legal practitioners, members of the National Prosecuting Authority, members of the South African Police Service, court staff, members of the judiciary and members of Correctional Services, the protocol contained in Schedule 1 to these Directions shall be implemented and adhered to when a determination has been made that criminal proceedings shall be by way of physical appearance in open court.
9. All criminal trials enrolled for hearing during the national state of disaster in which compliance with the protocol cannot be achieved, shall be postponed to dates beyond the period of the national state of disaster.

10. The protocol may, from time to time, be amended as circumstances may dictate.
11. Notwithstanding what is contained in the preceding paragraphs, the manner in which enrolled criminal proceedings shall be dealt with may be determined by the presiding Judge.

D. CIVIL TRIALS AND ROLL CALL

12. The readiness or otherwise of civil trials which have not been removed from the trial roll as a result of the declaration of the national state of disaster shall be determined by the roll call Judge, otherwise than in open court.
13. In order to facilitate the decision of the roll call Judge the parties shall, by not later than 10 days before the allocated trial date, and after having held a telephonic or videoconference pre-trial meeting, electronically file a joint practice note together with the requisite trial readiness checklist (Form 2), and written submissions, not exceeding two typed pages dealing with the trial readiness of the matter. In the practice note the parties shall address the following matters:
 - 13.1 whether the matter is capable of settlement and should remain on the trial roll for that purpose;
 - 13.2 a clear and concise statement of any outstanding issues for determination;

- 13.3 whether the outstanding issues are capable of determination without the hearing of oral evidence, in which event, if the parties agree that the matter be determined without hearing oral evidence, they shall be required to set out a statement of the agreed facts upon which oral argument is to be addressed by way of videoconference or other electronic means; and
- 13.4 in the event of the matter not being capable of a hearing as envisaged in paragraph 13.3 –
 - 13.4.1 the reasons therefor;
 - 13.4.2 the total number of witnesses; and
 - 13.4.3 the suggested logistics of conducting the trial by way of videoconference, alternatively where a trial by videoconference is not considered feasible or desirable, to state the reasons therefor and to set out the suggested arrangements with due consideration to the prevention of the spread of Covid-19 infection or contamination to litigants, legal practitioners, court staff and other court attendees.
14. Should any party fail or be unwilling to take part in the pre-trial meeting referred to in paragraph 13 –
 - 14.1 the other party may file the practice note together with reasons why the joint practice note could not be filed; and

14.2 the roll call Judge may-

14.2.1 convene a pre-trial meeting by videoconference or any other appropriate manner; or

14.2.2 where appropriate, grant a punitive costs order.

15. Trial matters that have become settled may, subject to such further directives as may be issued by the presiding Judge, be finalised in the manner envisaged in paragraph 6 of the Directives issued by the Chief Justice.
16. Civil trials certified trial ready and enrolled for hearing shall proceed in a manner determined by the presiding Judge.
17. The protocol set out in Schedule 1 shall, with the necessary adaptation, apply to civil trials proceeding by way of physical appearance in open court.

E. MOTION PROCEEDINGS

(i) Unopposed motion court

18. A party may request that a matter, which is not identified as urgent, be enrolled on the unopposed motion court roll, upon notice to the Registrar and, where applicable, to the other party or parties to the proceedings.
19. The notice referred to in paragraph 18 shall contain the following information:

- 19.1 the nature of the matter and the relief sought;
 - 19.2 whether the matter is opposed or unopposed;
 - 19.3 if opposed, a brief statement of the issue(s) for determination;
 - 19.4 where a matter requires evidence to be adduced, whether that evidence may conveniently be received on affidavit; and
 - 19.5 the cellphone numbers and electronic mail addresses of the party concerned, and where she/he is legally represented, that of her/his attorneys of record and the legal practitioner who will appear at the hearing of the matter.
20. Unopposed applications shall be enrolled by the Registrar drawing a court roll.
 21. Notice of the enrolment of the matter will be by publication of the court roll.
 22. Unless otherwise directed by the presiding Judge, all matters enrolled for hearing on the unopposed motion court roll –
 - 22.1 will be heard by way of videoconference;
 - 22.2 requiring the presentation of evidence, e.g. to establish the quantum of damages, or uncontested divorce matters, may be dealt with by the filing of an affidavit together with an appropriate

draft order as directed by the presiding Judge or by way of videoconference for the reception of the relevant evidence.

23. Any party seeking a deviation from the mode of hearing envisaged in paragraph 22, shall, upon notice to the other party, where appropriate, inform the presiding Judge accordingly, and both parties may make brief written submissions in relation thereto. The notice and the submissions must reach the presiding Judge by not later than noon on the preceding Friday.

(ii) Opposed motion court

24. A party may request the enrolment of an opposed matter to serve on the opposed motion court upon notice to the Registrar and to all the other parties to the proceedings.
25. The notice must be accompanied by a practice note which shall set out –
- 25.1 a description of the nature of the dispute;
 - 25.2 in the event of the matter being considered to be urgent, the reasons therefor;
 - 25.3 the issues to be decided;
 - 25.4 the relief sought by the party who seeks the enrolment of the matter;

- 25.5 the failure, if any, of a party to the proceedings to comply with the Uniform Rules of Court relating to the filing of affidavits in application proceedings; and
 - 25.6 the manner in which a failure as envisaged in paragraph 25.5 may be addressed to ensure that a matter is ready for hearing.
26. The parties shall file a joint practice note by not later than noon on the Friday preceding the hearing of the matter which shall set out any agreement reached by the parties as to the mode of the hearing of the matter. Should the parties fail to reach agreement they must state –
- 26.1 the reasons for such failure; and
 - 26.2 the brief submissions of each party with regard to the mode of the hearing of the matter.
27. Should any party fail or be unwilling to comply with paragraph 26 –
- 27.1 the other party may file the practice note together with reasons why the joint practice note could not be filed; and
 - 27.2 the presiding Judge may, where appropriate, grant a punitive costs order.
28. These Directions do not detract from the obligations of the parties with regard to the filing of heads of argument and a practice note as required in terms of the Eastern Cape Practice Directions.

29. Matters enrolled for hearing in the opposed motion court shall, unless otherwise directed by the presiding Judge, be dealt with by videoconference hearing. The presiding Judge may request that the legal representatives create an electronic indexed copy of the file in order to facilitate the videoconference hearing.

F. JUDICIAL CASE FLOW MANAGEMENT CONFERENCES

30. Unless directed otherwise, there will be no case flow management conferences held before a Judge in chambers. Instead, the case management judge will communicate electronically with the parties by electronic mail or a pre-arranged videoconference, and issue such directives as may be necessary to ensure the trial readiness of the matter.
31. Any pre-trial meeting which is to take place in compliance with rule 37A of the Uniform Rules of Court may be held telephonically or by videoconferencing, and the minutes of the meeting may be filed electronically with the Registrar.
32. The minute may be accompanied by such written submissions which either party may deem appropriate in the circumstances, and which are aimed at the enhancement of the trial readiness of the matter.
33. Should the parties reach agreement with regard to any aspect relevant to the trial readiness of the matter, the Registrar must be requested to place it before the case flow management Judge.

G. APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS

34. Applications for leave to appeal are enrolled for hearing in consultation with the Judge against whose order leave to appeal is sought.
35. The parties to applications for leave to appeal and appeals enrolled for hearing must by no later than seven days before the hearing of the matter file a joint practice note wherein they record any agreement reached with regard to the mode of the hearing of the application or the appeal. In the absence of an agreement, the parties may make brief submissions –
 - 35.1 in relation to why the matter cannot be disposed of without the hearing of oral argument as envisaged section 19 (a) of the Superior Courts Act 10 of 2013; and
 - 35.2 in the event of any party being of the view that the hearing of oral argument in open court cannot be dispensed with, the reasons therefor.
36. The practice note must contain the cellular phone number and electronic mail details of the legal practitioners who will appear at the hearing of the matter.
37. Should the parties agree that the matter may be disposed of without the hearing of oral argument, they may, with the leave of the presiding Judge, each file supplementary heads of argument not exceeding five pages within five days of such agreement.

38. The presiding Judge may direct that the matter be heard and disposed of by way of a videoconference, or make such other directives as may be appropriate in the circumstances.

H. VIRTUAL HEARINGS

39. Virtual hearings are court hearings and the decorum of the occasion should be observed as closely as it is in a courtroom with the presiding Judge present, notwithstanding the domestic location of some or all of the participants.
40. The manner of address during virtual hearings will be the same as that which applies during hearings involving physical appearance.
41. Judges and legal practitioners will be required to robe. The presiding Judge may, however, elect to dispense with any of the customary formalities and, in that event, the parties will be required to act accordingly.
42. All videoconference hearings shall be recorded by the presiding Judge and the record shall be lodged with the Registrar of the relevant court for record keeping purposes. A copy of the videoconference hearing shall also be published by the Registrar in an appropriate format on a publicly accessible platform.
43. No party, participant or guest attendee in a videoconference hearing shall be entitled to record the proceedings and/or to broadcast same without the authorization of the presiding Judge.

44. The presiding Judge may make provision for the live-streaming of the hearing where this is appropriate to meet the requirements of open and public court hearings, subject to the ordinary rules and principles which govern the public broadcasting of court proceedings.
45. Accredited court reporters and other members of the press/ media shall be entitled to observe videoconference proceedings. To facilitate such participation, the Registrar shall maintain a list of members of the media who, should they wish, may be invited to observe videoconference proceedings.
46. The videoconference platform to be utilized for videoconference hearings may include Microsoft Teams, Cisco Webex and Zoom, as may be determined by the presiding Judge. All participants are required to observe any hearings directives as may be issued by the presiding Judge prior to the hearing.

I. TAXATIONS

(i) Introduction

47. All parties are encouraged to settle bills of costs and where this is not possible, all attempts must be made to limit the issues for decision by the Taxing Master.

(ii) Settled bills of costs

48. Where bills of costs have been settled between the parties, the Notice of Intention to Tax and the entire bill with all supporting vouchers, should be

- lodged, under cover of a letter from the legal practitioner, which must specify the e-mail address as to where the *allocatur* is to be sent.
49. A box will be provided at the entrance of the High Court to lodge the bills.
50. The duly endorsed *allocatur* will be returned to the attorney/s concerned by electronic mail within three court days after receipt of same and no follow-up electronic mails should be addressed to the Taxing Master during this time.
51. All taxation queries should be addressed to the respective Taxing Masters as follows:
- 51.1 **Mthatha** – NNdlebe@judiciary.org.za
- 51.2 **East London** – TMafalala@judiciary.org.za
- 51.3 **Bhisho** – TMafalala@judiciary.org.za
- 51.4 **Grahamstown** – SKlue@judiciary.org.za
- 51.5 **Port Elizabeth** – LMarshall-Reen@judiciary.org.za

(iii) Unopposed taxations

52. Full copies of the duly endorsed Notice of Intention to Tax, the bill and supporting vouchers should be lodged at the entrance of the High Court, where a box will be provided, once the *dies* have expired for the filing of objections. This must be accompanied by a covering letter clearly

identifying the electronic mail address to which the taxed bill is to be returned.

53. The same process will then follow as per settled bills, with the entire bill and an extra copy of the *allocatur*, to be sent to the Taxing Master indicating clearly that the bill has in fact been taxed on an unopposed basis.
54. The duly stamped *allocatur* will then be electronically mailed to the attorney concerned in accordance with paragraph 50.

(iv) Opposed taxations

55. No taxation dates and in person taxations will be dealt with during the national state of disaster, until further notice.
56. Should any party wish to proceed with an opposed taxation, complete copies of the bills, supporting vouchers, the objections and the reply to the objections must be lodged with the Taxing Master, as set out under paragraph 52.
57. A covering letter to the above is required, which must include the electronic mail contact details of both sets of attorneys.
58. The Taxing Master will then within three court days acknowledge receipt of the bills lodged for taxation and no follow-up electronic mails should be addressed to the Taxing Master during this period.
59. The Taxing Master will proceed, in the absence of both parties, to tax the bills on the basis of the objections and the reply within a period of 21 court

days. No follow-up electronic mails are to be addressed to the Taxing Master during this period. Should the Taxing Master not be able to complete the bill during this timeframe, the parties will be advised accordingly.

60. Once a bill has been taxed, the bill will be scanned and electronically mailed to both parties, who will have five court days within which to make written representations as to any decision made by the Taxing Master.
61. Alternatively to paragraph 60, should either party wish to be heard by the Taxing Master, a time should be arranged where both parties can address the Taxing Master, either telephonically, or by way of a virtual hearing or any other electronic means which is appropriate in the circumstances.
62. The same process for allocation of the bill will then apply, in accordance with paragraphs 53 and 54.

(v) *Dies in terms of rule 70*

63. Except for timeframes specifically mentioned in these Directions, all other *dies* as per rule 70 of the Uniform Rules of Court run in the normal course.

J. IMPLEMENTATION OF DIGITAL ELECTRONIC FILING AND CASE MANAGEMENT SYSTEM: CASELINES

64. The Eastern Cape Division of the High Court is implementing a digital / electronic registry, case management and litigation system. The system is called Caselines and has already been implemented in the Gauteng Division as part of the Office of the Chief Justice's Court Online Project.

65. The system functions by way of case file creation by the Registrar; party / legal representative invitation to the case file; document filing by uploading a digital copy to the case file and case presentation. It allows litigants to file pleadings and all relevant court process digitally. The case file is available for use by the parties and the presiding judge during case presentation at trial or, in the case of applications and appeals, during argument.
66. The CaseLines system will be implemented in three phases, as set out in Schedule 2 hereto. The relevant commencement dates of the phased introduction of the system will be determined by the Judge President in due course.

K. DELIVERY OF JUDGMENTS

67. Judgments not delivered *ex tempore* immediately upon the finalization of a hearing shall be handed down in the unopposed motion court on Tuesday, on a date specified by the Judge concerned, unless the exigencies of the matter require otherwise.
68. A signed copy of the judgment in Portable Document Format shall be sent to the parties by electronic mail.
69. The Registrar shall be informed of the date of delivery of the judgment.

L. COMMENCEMENT

70. These Directions shall come into operation on Monday, 18 May 2020.

A handwritten signature in black ink, appearing to be 'S M MBENENGE', is written over a horizontal line. The signature is somewhat scribbled and overlaps the line.

S M MBENENGE

JUDGE PRESIDENT: EASTERN CAPE

12 MAY 2020

SCHEDULE 1

PROTOCOL FOR THE CONDUCT OF CRIMINAL TRIALS IN OPEN COURT

A. INTRODUCTION

1. A designated official referred to as “*the Compliance Officer*” must be appointed to ensure the implementation of, and compliance with, this protocol.
2. The Compliance Officer shall –
 - 2.1. stipulate the number of persons allowed to enter the courtroom so as to ensure compliance with the stipulated physical distancing requirements;
 - 2.2. in conjunction with the Head of Court, identify the courtrooms suitable for the maintenance of physical distancing, and the installation of additional equipment to promote the safety of persons present in the relevant courtroom;
 - 2.3. oversee the installation of the equipment envisaged in paragraph 2.2, as also the regular cleaning and sanitization of the courtrooms during use and at the end of proceedings on each day;
 - 2.4. enforce the restriction placed on the number of persons that may enter and, for this purpose may attend, a designated courtroom before and during proceedings;
 - 2.5. implement and monitor measures to be taken so as to maintain safe distancing of all persons inside the courtrooms, the wearing of protective equipment including face masks and face shields or masks, as also the provision of hand sanitizers in the courtrooms.

B. ENTRANCE TO THE COURTROOM

3. Only persons with a material interest in a case placed on the court roll will be permitted to enter the courtroom, and no other person or persons shall enter same.
4. Persons with a material interest in a particular matter are, in relation thereto –
 - 4.1. accused persons;
 - 4.2. legal practitioners and members of the National Prosecuting Authority;
 - 4.3. witnesses;
 - 4.4. designated court staff;
 - 4.5. persons needed to provide support to accused persons and witnesses, including family members and persons accompanying children; and

4.6. members of the media.

5. The number of persons allowed to enter the courtroom will be determined with reference to the contents of this protocol and the need to ensure physical distancing.

C. COURTS AND TRIALS

6. Each courtroom identified for use for the conduct of a criminal trial must be sanitized, decontaminated, and cleaned daily before the commencement of proceedings in the morning and after the termination of court proceedings.
7. During adjournments all commonly used or touched surfaces in the courtroom must be sanitized and decontaminated.
8. Court proceedings will commence at 10:00 and be adjourned no later than 15:00 to allow for the sanitization and decontamination of courtrooms.
9. Doors to and windows of the courtroom will, as far as possible, remain open to ensure adequate ventilation.
10. Physical distancing in the courtroom, as stipulated in the Directions, must be maintained. To this end, markers are to be placed on the seats and desks, and the occupants of the courtroom are to comply therewith.
11. All persons inside a courtroom must wear face shields or masks. Each courtroom must be supplied with at least one bottle of hand sanitizer.
12. Any member of the South African Police Service or of the Correctional Services responsible for escorting an accused person must ensure compliance, by that accused person, with the abovementioned requirements.
13. At the end of a court day all holding cells and other areas used by detained accused or court orderlies must be cleaned, decontaminated and sanitized.
14. Postponements of criminal trials, where the accused are in custody, will be conducted by audiovisual means, or, where appropriate, in terms of the provisions of section 159 of the Criminal Procedure Act 51 of 1977.

SCHEDULE 2

PHASED IMPLEMENTATION OF THE CASELINES SYSTEM

Phase One: New Cases

1. All new applications, including interlocutory applications, actions, applications for leave to appeal and appeals commenced on or after [date as yet to be proclaimed] shall be commenced on the CaseLines system.
2. It shall be the responsibility of the parties' legal representatives to file all process in such matters by uploading same to the allocated case file on CaseLines.
3. The filing of process shall occur within the time periods stipulated in the Rules of Court.
4. The management and enrolment of matters entered on the CaseLines system shall be in accordance with the ordinary Rules applicable to such matters.
5. As from the commencement date set out above, no hardcopy case files shall be maintained for purposes of adjudication, save in respect of those matters where one or more of the parties is unrepresented. In such event, the hardcopy file shall be maintained as a duplicate of the process entered upon CaseLines.
6. In order to facilitate the phased implementation of the system, legal practitioners practicing within the Division are required to supply to the Registrar of the seat of the Court where they customarily practice, such details as the Registrar may require to register them as users of the CaseLines system. The Registrars are directed to furnish practitioners with a Registration Form to be completed by practitioners and submitted by electronic mail to facilitate their registration.
7. The Chief Registrar shall, by no later than a date one month prior to the commencement date, issue a notice to practitioners detailing the procedures to be followed to register and initiate a case on the CaseLines system.
8. The notice shall include a step-by-step guide to the use of the CaseLines system.

Phase Two: Migration of Pending Cases to Digital Platform

9. A commencement date for this phase shall be determined by the Judge President having regard to the progress made in the implementation of the system.
10. In this phase all pending cases in which no application for a hearing date has been made or no hearing date has been allocated, shall be migrated to a digital record on CaseLines.
11. The Registrar shall in respect of each pending case register a case file and thereafter invite the legal representative on record to the case file.
12. The legal representatives on record shall, within 10 days of receipt of the invitation to the case, file scan and upload the record to the CaseLines system.

13. In those pending cases in which one or more of the parties is unrepresented, the Registrar shall appoint a represented party as the party responsible for the uploading of the digital record.
14. Upon completion of the digital migration of the existing record in a case all further lodging and filing of court process shall be undertaken electronically on the CaseLines system.
15. A Supplementary Directive will be issued in due course to regulate the procedure and time frames for digital migration in specified categories of cases falling within this phase.

Phase Three: Full Implementation

16. A commencement date for this phase shall be determined by the Judge President or, where necessary, having regard to the progress made in the implementation of the system.
17. In this final phase all pending matters in which trial dates or hearing dates have already been allocated shall, before the scheduled hearing date, be migrated to digital format on the CaseLines system.
18. The procedure set out in paragraphs 11, 12 and 13 shall apply.
19. Upon completion of the digital migration envisaged above the legal representatives shall deliver to the Registrar a joint Practice Note which shall, *inter alia*, certify that the existing case file has been fully entered on the CaseLines system. The Practice Note shall serve before the Roll Call Judge and shall be taken into account in final certification that the matter is ready to proceed to trial.
20. All further court documents and process shall be filed on the CaseLines system.
21. The Judge President or, as the case may be, the Head of Court may issue Supplementary Directions to further regulate the full implementation of the CaseLines system.
