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MR JUSTICE E.M MAKGOBA

HIGH COURT OF SOUTH AFRICA, LIMPOPO DIVISION, POLOKWANE

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20 July 2021

## **JUDGE PRESIDENT'S PRACTICE DIRECTIVES**

- TO: 1. ALL LEGAL PRACTITIONERS**
- 2. REGISTRARS**
- 3. JUDGES' SECRETARIES**

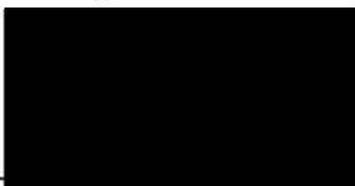
### **RE: VIRTUAL HEARINGS**

I hereby publish the directives and guidelines for virtual hearings in the Limpopo Division, Polokwane and Limpopo Local Division, Thohoyandou for your information.

Kindly note that the virtual hearings are not compulsory but will be implemented at the choice or prerogative of a particular Judge and by agreement with the legal representatives of the parties.

I trust that you will find all in order.

Kind regards



**E M MAKGOBA**  
**JUDGE PRESIDENT OF THE HIGH COURT,**  
**LIMPOPO DIVISION**



## REPUBLIC OF SOUTH AFRICA

**VIRTUAL HEARINGS DIRECTIVES AND GUIDELINES FOR THE HIGH COURT LIMPOPO DIVISION**

1. These directives and guidelines set out how, and under what conditions, all matters enrolled shall be undertaken during the lockdown period. The purpose of these directives is eliminate or minimize physical contact among persons.
2. Matters on paper (Appeals and Applications) shall not, except where directed otherwise by the Judge/s seized with the matter, enjoy an oral hearing in open Court. Submissions may be advanced via email or oral hearings may be dealt with via online where the parties wish to be heard orally, in accordance with ad hoc directives issued by the Judge/s which are appropriate to the circumstances.
3. Matters that require evidence to be adduced shall not, in general, be conducted in open Court, and the Judge/s seized with the matter shall exercise a discretion about an appropriate mode of hearing, which may include receiving evidence on affidavit and the utilisation of online hearing, and if otherwise unavoidable, the convening of a physical hearing.
4. The Judge/s seized with the matter in which online hearing is used shall exercise a discretion as to any responsibility to set this up as well as the liability for costs implications of such utilisation.

**URGENT COURT**

5. The urgent court shall operate as follows:

- 5.1. Conduct hearings online via Zoom, MS Team or any other reliable electronic means.
- 5.2. Only where it is impossible to arrange online hearing, the Judge/s seized with the matter may direct a hearing in which the representatives of the parties may physically appear.
- 5.3. Urgent applications shall be heard on Tuesdays at 10h00
- 5.4. Should the matter be so urgent that it will not wait to be heard the following Tuesday, it may be enrolled to be heard on any day of the week, and the person applying for such urgent relief shall communicate with the urgent Judge secretary before filing any papers to determine when the Judge on duty will be available to hear the matter.
- 5.5. Service of processes in all urgent matters shall comply with the rules of Court. Where agreement can be reached by the representatives of all the parties to vary the requirements of the rules to facilitate a wholly electronic exchange of papers, condonation shall be granted *ipso facto*.
- 5.6. The roll for urgent applications to be heard on a Tuesday shall close on Thursday at 12h00.
- 5.7. The applicant shall unless the Judge/s seized with the matter directs otherwise, organise the online hearing and shall send a link to all the interested parties.
- 5.8. The order and judgment shall be communicated to the parties by email by the allocated Judge/s.

## **OPPOSED MOTION COURT**

6. The opposed motion court shall operate as follows:
  - 6.1. Conduct hearings online via Zoom, MS Team or any other reliable electronic means.
  - 6.2. The Judge/s to whom a matter is allocated shall, not later than 5 days before the week in which the matter is set down, notify the parties

that he/she is seized with the matter and all further communication about the matter shall be directly, by email only to the email address stipulated by that Judge/s.

- 6.3. If both parties agree, an opposed motion may be removed from the roll. There shall be no costs order for removal of the matter.
- 6.4. The parties shall endeavour to agree about whether the matter may be disposed of without oral argument; if agreed, counsel for any party who wishes to supplement the papers with additional written submissions must do so in a practice note sent by email to the email address designated by the Judge/s secretary, by not later than Friday before the week in which the matter is set down.
- 6.5. If no agreement is reached about forgoing oral argument, that must be communicated to the Judge/s in a practice note sent by email, not later than noon on the Friday before the week in which the matter is set down, and a hearing shall take place as directed by the Judge/s seized with the matter, which may include one or more of the following options:
  - 6.5.1. An online hearing may be convened where this option is chosen, the applicant shall unless the allocated Judge/s directs otherwise, undertake to organise the setting up of the online hearing, and shall send a link to all the parties and Judge/s involved at a time allocated by a Judge/s.
  - 6.5.2. A physical court hearing, if the circumstances so require.
  - 6.5.3. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the people involved.
- 6.6. If in the opinion of the Judge/s seized with the matter that there is any issue that needs clarity in a case where the parties have agreed to dispose of the matter without oral arguments, the Judge/s may at any time before delivery of the judgment request the parties to file supplementary heads of argument on that specific issue.
- 6.7. Any queries by any party must be made by email only and addressed to the Presiding Judge/s via the Judge/s secretary and copies sent to the other parties.

- 6.8. In those cases where a party appears in person:
  - 6.8.1. That litigant shall approach the designated official at the Court building who shall render assistance to that litigant through the use of the virtual courtroom. A notice to that effect shall be posted in the foyer of the Court.
  - 6.8.2. Or, where such a litigant's contact details are known, the secretary of the Judge/s shall endeavour to make contact to communicate the relevant information. Where such litigant has personal access to online facilities, a link may be set up accordingly, if the Judge/s so directs.
- 6.9. The applicant remains *dominus litis* and is ultimately responsible for the efficient disposal of the application. Where the applicant is unrepresented, the respondent shall assume the responsibility.
- 6.10. The order and judgment shall be communicated to the parties by email by the allocated Judge/s.

## THE UNOPPOSED MOTION COURT

7. The unopposed motion court shall operate as follows:
  - 7.1. Conduct hearings online via Zoom, MS Team platform or any other reliable electronic means.
  - 7.2. Only where it is impossible to arrange online hearing, the Judge seized with the matter may direct a hearing in which the representative of the parties may physically appear.
  - 7.3. When the matter is not ripe for disposal, the parties may remove the matter from the roll by notice.
  - 7.4. If an applicant wishes to contribute any written submissions about the unopposed matter, such written contribution should be included with a practice note sent by email to the email address stipulated by the Judge.
  - 7.5. If the applicant takes the view that an oral submission is necessary, that view must be stated in a practice note sent by email to the email

address stipulated by the Judge, whereupon the Judge shall issue an ad hoc directive as to the holding of the online hearing.

- 7.6. The practice note must give an address and cell phone number of the counsel moving the matter to enable the Judge to make contact about the online hearing, and also to facilitate the prospects of the Judge having a query that might need to be addressed to the counsel for input.
- 7.7. A respondent who despite been late to file opposing papers, but wishes to oppose the granting of the order, must communicate that fact by email to the secretary of the allocated Judge and to the applicant and otherwise comply with this directive.
- 7.8. A respondent who appears in person and who goes to the Court building shall make his or her presence and intention known to the Registrar, and a notice to this effect shall be placed on the foyer notices board, indicating the court official who is to be approached. Counsel or attorney for an applicant must at once when it becomes known that there is opposition, regardless of its merits, communicate that fact to the allocated Judge.
- 7.9. The customary draft orders (including counsel's email address and cell phone number) in word format must be sent by email to the secretary of the allocated Judge by not later than the Friday before the week in which the matter is set down.
- 7.10. The Judge shall either refuse the order, or grant it in part or whole or grant any other order as is deemed appropriate.
- 7.11. Copies of signed orders shall be sent to the parties by email on the email address furnished on the draft order.
- 7.12. The original of the order shall be sent to the Registrar whilst one copy shall be retained by the Judge.

## **CIVIL TRIALS**

### **THE CIVIL TRIAL ROLL CALL**

8. There shall be no physical civil trial roll call. Instead the following procedure shall apply:

### **PRACTICE NOTE REQUIRED**

- 8.1. The parties shall submit joint practice note after a special pre-trial conference at which the logistics of conducting the trial are addressed. If a plaintiff cannot obtain cooperation from the defendant, the plaintiff must submit its own practice note and explain why a joint practice note was impossible to be composed. Lack of cooperation by either party shall attract punitive costs orders by the Court.
- 8.2. The practice note must reach the secretary of the ADJP or secretary of the Judge allocated for that purpose by not later than 11h00 two court days before the set down. If no practice note is timeously received, the matter shall automatically be removed. If the practice note is non-compliant with the practice manual or directive, the matter shall be automatically removed. This directive shall be strictly applied.
- 8.3. The practice note must in addition to the information required in terms of the practice manual, contain the names, email addresses and cell phone numbers of all counsel. Counsel must hold themselves ready to receive communication from the Judge or Judge's secretary during the two days until set down date.

### **SETTLED MATTERS**

- 8.4. Matters that are settled shall be made orders as part of the civil roll call. The settlement must be accompanied by a deed of settlement, draft order in word format and joint memorandum of settlement which must be sent by email to the Judge's secretary. The orders will be

transmitted to the parties by the Judge or their secretaries allocated to the matters.

- 8.5. In matters where settlement negotiations are still ongoing, the matter will be stood down to the settlement roll. If on the date of the settlement roll the matter is still not settled, the matter will be removed from the roll and the plaintiff can apply for another date of hearing.
- 8.6. In respect of any matter which had become settled, and in which it is necessary to adduce evidence to establish a quantum of damages, the relevant evidence must be contained in an affidavit and annexed together with the draft order in word format, to the practice note. If the Judge deems it necessary, counsel shall be contacted to procure further submissions. An order in respect thereof shall be made and transmitted by email to the parties.

## **MATTERS READY TO GO TO TRIAL**

- 8.7. All matters in which the parties are ready and wish to proceed to trial, the parties must indicate in the practice note:
  - 8.7.1. What arrangements they have put in place to facilitate the hosting of an online hearing for the disposal of the matter.
  - 8.7.2. What evidence can be adduced on affidavit.
  - 8.7.3. To what extent a physical hearing is unavoidable.
- 8.8. The Judge allocated to deal with the matter shall communicate via email, or otherwise, with counsel and, having regard to the arrangements the parties have made or are capable of making, exercise a discretion as to how the matter is to be disposed of and shall give ad hoc directives. Counsel must keep themselves available to be contacted. Such directives, without limiting the scope of the discretion being exercised, may include:
  - 8.8.1. The admission of evidence remotely using online hearing techniques;
  - 8.8.2. Physical hearing for all or part of the evidence;
  - 8.8.3. Admitting evidence by affidavit;

- 8.8.4. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the persons involved.
- 8.8.5. Conduct hearings online via Zoom, MS Team or any other reliable electronic means.

## **MATTERS NOT RIPE TO GO FOR TRIAL**

- 8.9. No matter of any kind will be stood down until later in the day or week where the matter is not ready for trial, they shall be removed from the roll. Should the matter be later settled, it should not be re-enrolled in the trial roll, but should be enrolled in the settlement roll.
- 8.10. Where the only issue outstanding is liability for costs, such question shall be reserved for decision at a later date and shall not be dealt with as part of the civil trial roll process.
- 8.11. The allocations shall be published by email to the professional bodies and to the parties' attorneys at the email address given in the practice note.

## **LITIGANTS APPEARING IN PERSON**

- 8.12. In those cases where a party appears in person:
  - 8.12.1. And goes to the Court building, that litigant shall approach the designated official at the Court building who shall render assistance to that litigant through the use of the virtual courtroom, or otherwise assist as directed by the Judge seized with the matter. A notice to this effect that shall be posted in the foyer of the Court.
  - 8.12.2. And if such litigant's contact details are known, the secretary of the Judge to whom the matter is allocated shall endeavour to make contact to communicate the relevant information. Where such litigant has personal access to online

hearing facilities, the necessary link may set up accordingly, if the Judge so directs

## REMOVAL OF MATTERS BY PARTIES BEFORE DUE DATE

- 8.13. If the parties to any matter agree not to deal with the matter under these conditions, the parties must, to enable the Civil Registrar to compose the roll, at least 5 clear court days before the trial set-down date, formally remove the matter from the roll and email a copy thereof to the Civil Registrar. No costs orders shall be made for removal of the matter.

## APPEALS

9. All appeals set down shall be disposed of without an oral hearing in open court, pursuant to section 19(a) of the Superior Courts Act, and the Court shall rely on the heads of argument filed; subject to the following:
  - 9.1. If both parties agree, an appeal may be removed from the roll. There shall be no costs order.
  - 9.2. If counsel for any party wishes to supplement the papers with additional submissions, they must be made in a practice note sent by email to the secretary of the presiding Senior Judge at least two days before the date of the set down.
  - 9.3. If counsel for any party wishes to make oral submissions, that wish must be stated in the practice note and the broad ambit thereof be stated.
  - 9.4. The presiding Judge/s shall exercise a discretion as to the disposal of the matter and may issue ad hoc directives which may include, inter alia, one or more of these options:
    - 9.4.1. A hearing using online techniques; where the option is chosen, the appellant shall, unless otherwise directed by the presiding

Judge/s, undertake to organise the setting up of online hearing as host, and shall send a link to all parties involved for a meeting at a time and date stipulated by the presiding Judge/s. Conduct hearings via Zoom, MS Team or any other reliable electronic means.

- 9.4.2. After the end of the lockdown period, a physical court hearing, if appropriate in the circumstances.
- 9.4.3. Any other procedure or technique that may afford an elimination or limitation of risk of physical proximity among the people involved, including, e.g., interrogatives sent to the parties by email or other means.
- 9.5. Any queries by a party must be made by email only and addressed to the presiding Judge/s via the Judge/s secretary and copies sent to the other parties.
- 9.6. The appellant remains *dominus litis* and is ultimately responsible for the efficient disposal of the appeal.
- 9.7. The order and judgment shall be communicated to the parties by email by the presiding Senior Judge.

## **APPLICATIONS FOR LEAVE TO APPEAL**

10. All applications for leave to appeal shall be initiated by an email to the Registrar and copied to the secretary of the presiding Judge.
11. The presiding Judge shall exercise a discretion about an appropriate mode of hearing to address the application.

## **BAIL APPEALS**

12. A bail appeal shall after consultation with the Director of Public Prosecutions, be initiated by email to the Registrar.

13. The Director of Public Prosecutions shall liaise with the Registrar and ADJP or a Judge assigned for that purpose concerning the allocation of a Judge to hear the matter.
14. The allocated Judge shall exercise a discretion about an appropriate mode of hearing to address the application.

## **DIVORCES**

15. Uncontested divorces shall continue to be dealt with in the unopposed motion court.
16. If the divorce does not involve minor children, it must be dealt with by adducing evidence on affidavit and no party shall testify in person, save where the Judge orders otherwise.
17. A practice note must be submitted with the set down notice which must include:
  - 17.1. Submissions, if any, by counsel for the party;
  - 17.2. A request, if any, to make oral submissions;
  - 17.3. An affidavit setting out the relevant evidence;
  - 17.4. A certified copy of the marriage certificate with an affidavit from the counsel stating that the original was examined and it is true copy;
  - 17.5. And a draft order in word format which must contain the name, email and cell phone details of counsel.
18. All matters that do involve minor children, must be dealt with by adducing evidence on affidavit and no party shall testify in person, save where the Judge orders otherwise.
19. A practice note must be submitted with the set down notice which must include:
  - 19.1. Submissions, if any, by counsel for the party;
  - 19.2. A request, if any, to make oral submissions;
  - 19.3. An affidavit setting out the relevant evidence, which evidence must address in detail the arrangements contemplated for the minor children and the views of the Family Advocate, if any;

- 19.4. A certified copy of the settlement agreement;
  - 19.5. A certified copy of the marriage certificate with an affidavit from counsel stating that the original was examined and it is a true copy;
  - 19.6. And a draft order in word format containing the name, email and cell phone details of counsel.
20. In both categories where they do involve or do not involve minor children, counsel must keep themselves available to be contacted on the date of the set down by email or cell phone.
21. In both categories where they do involve or do not involve the minor children, where the filing of the practice note with the set down is not possible, the practice note may be submitted at any time before or on the date of the set down.
22. In both categories the matters may be disposed of at the discretion of the allocated Judge, in respect which ad hoc directives may be issued, which include:
- 22.1. Disposal without a hearing;
  - 22.2. Disposal during online hearing which either party may host;
  - 22.3. Disposal at a physical traditional hearing.
23. Unopposed divorces in which the party appears in person shall be disposed of at the discretion of the allocated Judge, in respect of which ad hoc directives may be issued, which may include:
- 23.1. Disposal of the matter during online hearing; which will be conducted via Zoom, MS Team or any other reliable electronic means.
  - 23.2. Disposal at a physical traditional hearing.
24. In those cases where an unrepresented party:
- 24.1. Goes to Court building, that party shall approach the designated official at the Court building who shall render assistance to that litigant through the use of the virtual courtroom. A notice to this effect shall be posted in the foyer of the court.
  - 24.2. Can be contacted because the relevant contact details are known, the secretary of the Judge shall endeavour to make contact to communicate the relevant information concerning the hearing.
  - 24.3. Has personal access to online facilities, an appropriate link may be set up accordingly, as the Judge directs.

## **ETIQUETTE FOR ONLINE HEARINGS**

25. The judge or persons appearing on online hearings shall wear formal attire or be robed.
26. Participants shall ensure that there is no ambient noise in the room which can interfere with the audio quality during the hearing.
27. In general, subject to any ad hoc directives given by the Judge, the participants shall mute their microphones when not actually speaking.
28. The Judge shall invite participants to speak and everyone shall be alerted to the Judge's directions in this regard.
29. Participants shall remain in the hearing and leave it only when the proceedings have concluded.
30. The Judge shall give instructions as to the recordings of the proceedings;
  - 30.1. Where a party is responsible thereof, an audio file shall immediately, at the close of the proceedings be sent to the Judge at a stipulated email address for retention by the Judge until such time as the Registrar can take custody thereof.
  - 30.2. If the Judge or the Judge's secretary or a stenographer records the proceedings, the Judge shall retain the audio file, until such time as the Registrar can take custody thereof.

## **ADMISSIONS OF LEGAL PRACTITIONERS**

31. Admissions of legal practitioners shall continue to be dealt with on Fridays together with appeals.
32. The application must be served at the Legal Practice Counsel (LPC), and the LPC if it wishes to contribute to the application must do so not later than three days before the date of hearing.
33. Admissions applications shall otherwise be disposed of in the same manner as set out in paragraphs 7.4 to 7.6 above.

34. Counsel moving the matter must furnish an affidavit by email to the Senior Judge seized with the roll of admissions or Judge's secretary that he or she has examined the original documents relating to the degrees conferred on the candidate for admission and verifies that they appear to be authentic.
35. The senior Judge seized with the roll of admissions shall give directions on the manner of hearing; in the absence of an ad hoc directive:
  - 35.1. The Senior Judge or Judge's secretary shall host the online hearing and send a link to an email address stipulated by counsel moving the application; that counsel must invite the candidate for admission to join.
  - 35.2. The oath of office shall be administered during the hearing.
  - 35.3. The oath of office form shall thereafter be emailed to counsel moving the application who must cause the candidate for admission to sign it, scan it, and then transmit the scanned document to the secretary of the Senior Judge who shall oversee its completion
  - 35.4. A hard copy of the oath of office form shall be sent to the LPC and an email copy sent to the counsel who moved the application.
  - 35.5. The certificate issued by the Registrar shall be available for upliftment at the Registrar's office.
  - 35.6. All enquiries relating to admissions must be directed to the Registrar by email.

## **PARTICIPANTS**

36. At the commencement of the hearing, the legal practitioner(s) for each of the parties will place themselves on record and, provide the court with their respective LPC practice numbers should the Court request same.
37. All the participants are to ensure the proper functioning of the facilities, viz. the audio and camera prior to the commencement of the proceedings.
38. The plaintiff or applicant shall be responsible for the recording of the proceedings. [NB: This need not include the video but include the audio record proceedings.] The responsible party must be prepared to share the

recording capabilities with the court or the Judge should they be so requested.

39. No other person may record the proceedings without prior permission of the presiding Judge.
40. All legal practitioners are to join the hearing promptly 15 (fifteen) minutes before the scheduled commencement time.
41. The participants in the trial proceedings are to provide a list of all persons who are present with them during the hearing. The list to be provided to the Judges secretary by email by no later than 15 (fifteen) minutes before the commencement of the trial.
42. The witnesses are not allowed to view the trial proceedings by any means whilst waiting for their turn to testify.
43. The parties are to ensure that their trial bundle are filed by no later than Friday of the preceding set down date of indexing and pagination of the court file. This bundle should be clearly marked, indexed and paginated.
44. Witnesses must be suitably dressed for the court hearing.

## **VISUAL AND AUDIO**

45. During motion hearings, only the Judge and the presenting legal practitioner will be visible to attendees.
46. Legal practitioners must ensure that their camera is level with their faces and that their screens are upright so that they do not appear to be looking up or down, or leaning back and away from the screen, which shows the ceiling or the upper part of the wall. Legal practitioners should position themselves so that viewers will see at least a head and shoulders picture filling the centre of the screen.
47. During trials the whole room must be visible to the judge and audio should at all times be on. The parties may elect one of the following options:
  - 47.1. All the parties and witnesses to be in one room, a video showing all or at the very least the party leading evidence including the legal practitioners, witnesses and translator, and audio to be on throughout.

- 47.2. Each legal team in a separate room together with witnesses, video showing all present including the legal practitioners, witnesses and translator, and audio to be on throughout.
48. Parties are urged to comply with the COVID-19 protocols during the proceedings. Should the mask interfere with the sound quality, the mask to be taken off when speaking. This format is suggested to ensure proper recording of the proceedings
49. Where interpreters are used, they are allowed to be in the same room with the witness, seated and both being visible on monitor.
50. The court must be satisfied that the integrity of the hearing is not compromised by the format used.

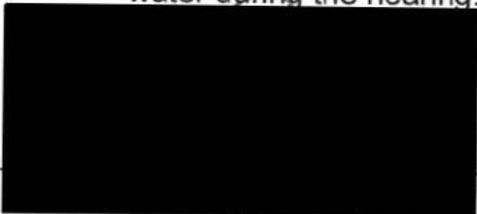
## **CRIMINAL COURT**

51. Criminal hearings will continue to be dealt with through physical Court hearing, and with preference given to older cases, those with witnesses of advanced age and also those which involves minor children.
52. The allocated Judge shall exercise a discretion whether any other matter deserves preference.
53. Parties are urged to comply with COVID-19 protocols during the proceedings.

## **GENERAL**

54. It is important to use correct email address for any aspect dealt with in this directives. Incorrect and abusive use of email addresses will lead to the issue being raised in such email not being attended to. In particular, emails sent to the email address of the Judge President regarding an issue covered in the directives will be ignored.
55. The legal practitioners must make sure that all devices are fully charged and remained plugged in during the hearing to ensure that the proceedings are not interrupted in the event of load-shedding.

56. Legal practitioners must ensure that they are able to access their authorities and references without obstructing the Court's view of the participants.
57. In the event that the legal practitioner is viewing materials on a separate screen, the practitioner must position the screen so that it is not necessary to turn away from the camera. The legal practitioner must also place anything that they may need to pick up during the hearing, for example, a book, document or glass in such a position that they do not have to lean forward or reach in front of their faces in order to obtain the item in question.
58. The legal practitioners must make sure that their background is not distracting. The room must be private and closed. No other persons and/or animals, should enter the room during the course of the hearing.
59. In case of computers, tablets and/or phones are used to receive mail via email, SMS and/or WhatsApp, the notification sounds on all these devices are to be switched to silent, in order to avoid any interferences with the proceedings.
60. In the event of a loss of connection, an adjournment or recess, parties may switch off videos and mute microphones, or leave the hearing and use the same link to re-join the hearing. The party responsible for hosting the conference must obtain the other parties contact details for in case it is necessary to send out a new link.
61. All the participants should refrain from drinking or eating anything other than water during the hearing.



EM MAKGOBA

20/07/2021

**JUDGE PRESIDENT OF THE LIMPOPO DIVISION  
OF THE HIGH COURT OF SOUTH AFRICA**

