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REPUBLIC OF SOUTH AFRICA
KWAZULU-NATAL HIGH COURTS

THE HONOURABLE JUDGE PRESIDENT MR JUSTICE A.N. JAPPIE

DIRECTIVES (21 August 2020)

To give effect to the requirements of social distancing and after consultation with the Deputy Judge President, the Society of Advocates, the Legal Practice Council and the Registrars of the Division and seeking to strike a balance between access to Justice and the lack of infrastructure, equipment and personnel, the following Directives will apply in the High Court of KwaZulu-Natal from 21 August 2020 and the remaining period of the extended Lockdown (level 2).

CRIMINAL TRIALS

1. Criminal trials will be conducted commencing from Monday 24 August 2020 during the remaining period of the lockdown, subject to the availability of courts.
2. At present it is anticipated that given the infrastructure only 2 Criminal Courts, A and B will be operational in Durban and 3 Courts A, C and D in Pietermaritzburg.
3. The Director of Public Prosecutions and/or Legal Practitioners are to inform witnesses timeously that their presence at court will be required.
4. Bail and Bail Appeals which in the opinion of the Judge President/ Deputy Judge President and or the Senior Judge require urgent attention may be dealt with at their discretion and direction.
5. Preference will be given to part heard matters.
6. The DPP is required to notify the Judge President/ Deputy Judge President and or the Senior Judge by the Wednesday preceding the week the matter is to commence for allocation to a Judge.

Consultations

7. In order to obviate or overcome problems relating to consultations with witnesses and accused persons who are in custody at correctional centers, the first day of a trial may be utilized to conduct consultations by both the state and defence counsel. The trial proceedings should commence on the following day in earnest to ensure proceedings are finalized insofar as possible in the session.
8. In all **criminal** trial matters detainees will complete a Covid 19 compliance form (which is to be completed each day by Capt Govender (Dbn) and Capt Sithole (Pmb) and which is thereafter to be filed with the Covid 19 compliance officer at the end of each week). Witnesses and accused on bail will also be required to complete a similar form which is to be completed by the Investigating Officer and handed to the Covid 19 compliance officer at the end of each week.

Criminal pre-trials

9. Criminal pre-trials will also resume in both Durban and Pietermaritzburg High Court on the already allocated dates onward. At present the dates for Durban are 24 August and 14 September 2020 and for Pietermaritzburg 27 August and 17 September 2017 respectively. The parties must ensure that pre-trials take place as scheduled and not to be adjourned or postponed for flimsy reasons. In conducting criminal pre-trial proceedings, a similar procedure as outlined in paragraphs 4 and 5 under the heading Motion Court herein or adhered to during admissions will be followed.

CIVIL TRIALS

1. Civil trials will re-commence from 24 August 2020 during the remaining lockdown period, subject to the availability of courts. At present it is anticipated that given the infrastructure only 4 Civil Courts, D, E, G and L will be operational in Durban and 3 Courts E, F and G in Pietermaritzburg.
2. Matters may be removed from the trial roll with the consent of all the parties.
3. There will be a trial roll call every Monday. Parties are to notify the Judge

President/Deputy Judge President and/or the Senior Judge's Registrar on the Wednesday prior to the Monday whether the matter has become settled and/or if the parties require the matter to be adjourned to an arranged date or to be allocated to a Judge.

4. A draft consent order is to be emailed to the Judge President/Deputy Judge President and/or Senior Judge on duty on the Friday preceding the Monday roll call.
5. Matters which have become settled prior to the trial date may be brought forward by arrangement with the Judge President/Deputy Judge President and/or Senior Judge's Registrar where an order is required consequent upon such settlement.
6. To maintain social distancing only legal practitioners and the instructing attorney will be allowed in the court building. All persons wishing to enter the court precinct must comply with the social distancing regulations as contained in the applicable various Government Notices.
7. In **civil** trial matters witnesses will be required to complete a Covid 19 compliance form. This will be completed by the Usher and filed with the Covid 19 compliance officer each day the matter proceeds.

MOTION COURT

1. The motion court in Durban will convene in "C" court and in "H" court in Pietermaritzburg. The motion court will deal with all urgent applications, unopposed motions, divorces and rule 43 applications. The Judge allocated motion court will decide how the proceedings are to be conducted
2. Urgent matters which have not been enrolled on the motion court roll are to be referred to the Judge President/Deputy Judge President and/or Senior Civil Judge on duty for allocation **only** if the motion court Judge is still in motion court.
3. The motion court rolls will be published 2 court days in advance and will reflect the time slot allocated to each matter.
4. A group of five matters will be disposed of in ten minute intervals and the times will be reflected on the motion court roll.
5. Only 5 matters at a time will be dealt with in the motion court. The legal practitioners

will be required to remain in court until all 5 matters have been dealt with and then leave the court room and the court precinct.

6. Should a Legal practitioner not appear at the allocated time slot and have failed to communicate with the presiding Judge's registrar regarding his/her matter, the matter will be struck off the roll. No matter will be re-enrolled. Legal practitioners will be required to obtain a new date in the normal course.
7. To maintain social distancing in the motion court only legal practitioners and/or the instructing attorney will be allowed in court, the exception being in divorce matters.
8. No orders or court processes will be handed in at the hearing. All draft orders for motion court are to be placed in the court file before the roll closes. In the event of this not being possible, then parties are to email the draft order to the Judge's registrar.

OPPOSED MOTIONS

1. All Judges will be allocated opposed motions.
2. All opposed motions will be disposed of in the following manner:
 - 2.1. Parties are to ensure strict compliance with practice directive 9 in particular practice directive 9.4.1.
 - 2.2. Parties are to file all heads of arguments, practice notes and unreported authorities electronically;
 - 2.3. In respect of all opposed matters and opposed rule 43 applications the legal representatives of the parties shall provide a joint statement indicating inter alia the issues in dispute and which of those issues the presiding Judge will be required to rule on.
3. Parties can elect to have the issues decided on the papers without the need for an oral hearing. The presiding Judge may direct that further written submissions be filed.
4. In the event of parties deeming it necessary for oral argument to be heard then:
 - 4.1. The Presiding Judge may at his/her discretion convene a court for this purpose on a date and time to be arranged.
 - 4.2. In the alternative the Presiding Judge may in his/her discretion convene a hearing by way of video conferencing or any other electronic means which are

appropriate;

- 4.3. If the options in 4.1 and 4.2 cannot be achieved, the matter will be adjourned to a date to be arranged.
5. In respect of the opposed motions being adjourned to a future date such Presiding Judge will be deemed to be seized with the matter.

APPEALS

1. All Judges will be allocated appeals.
2. The presiding Judge shall solicit the views of the parties prior to the appeal panel making a determination in terms of section 19 of the Superior Courts Act.
3. Having made such determination, the appeal may be disposed of in terms of section 19. At the appeal panel's discretion the appeal may be disposed of as follows:
 - 3.1. a court may be convened for the purpose of deciding the appeal;
 - 3.2. convene a hearing by way of video conferencing or any other electronic means which are appropriate;
4. In the event of the appeal not being disposed of as per paragraph 4 above, it is to be adjourned to a date to be arranged.
5. In respect of those appeals which have been adjourned to a future date such Presiding panel will be deemed to be seized with the matter.

JUDICIAL CASE FLOW MANAGEMENT

The parties are to comply with the directive issued on 5 August 2020.

LEAVE TO APPEALS

The manner in which leave to appeals are to be dealt with are to be left to the discretion of the individual Judges.

GENERAL

REGISTRARS' OFFICE

1. The Registrars' Office at the Durban and Pietermaritzburg High Court are to have on duty such staff necessary to comply with the above directives and the various regulations issued.
2. The Registrar's office will be opened to issue new processes and for the filing of documents. In respect of the issuing of bulk processes the legal practitioners will be required to leave these at the general office with the necessary email and mobile contact details. Once these have been issued the Registrar's office will make contact for collection on a suitable date and time.
3. To maintain social distancing only two parties at a time will be allowed into the general office for this purpose.
4. The Registrar will be enrolling new matters.
5. There will be a registrar on duty during court hours.
6. Urgent matters or matters outside of court hours will be dealt with by the after hour's registrar and duty Judge mindful of the curfew imposed.



JUDGE PRESIDENT – A N JAPPIE

KWAZULU-NATAL HIGH COURT

21 August 2020