



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE JUDGE PRESIDENT M F LEGODI
MPUMALANGA DIVISION OF THE HIGH COURT**

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THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION
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ROOM CF65
NELSPRUIT

03 JUNE 2020

ALERT LEVEL 3 COVID-19 DIRECTIVE 6

WHEREAS the Minister of Gogta on 28 May 2020 in Government Notice No. 608 determined Alert Level regulations to apply nationally from 1 June 2020;

AND WHEREAS Chapter 4 of Alert Level 3 regulations was added to and after Chapter 3 of the Alert Level 4 Regulations of 29 April 2020 published under Government Notice No.R. 480;

AND WHEREAS Alert Level 4 Regulations appear not to have been materially substituted or amended in Alert Level 3 Regulations;

AND WHEREAS regulations 32 to 48 of Alert Level 3 regulations have been added to and after regulation 31 of the Alert Level 4 Regulations;

AND WHEREAS the regulations issued on 28 May 2020 under Alert Level 3 in main, have been declared by Davis J on 2 June 2020 under Pretoria Case number 21442/2020 invalid and unconstitutional for lack of rationality;

AND WHEREAS Davis J suspended declaration of unconstitutionality and invalidity for a period of 14 days;

AND WHEREAS the Minister of Justice on 2 June 2020 issued Directions under Government Notice No. 623;

AND WHEREAS in paragraph 3 of the Minister of Justice's Directions, it is provided that these Directions (referring to the Minister Directions) must be read with the Directives issued from time to time by the Chief Justice and Heads of court in terms of the Superior Courts Act, 2013 (Act No. 10 of 2013);

AND WHEREAS in paragraph 31 of the Minister's Directions, a judicial officer who presides over any matter in court may, where the interests of justice so require, order that the application of any provision of these Directions be deviated from;

AND THEREFORE WHEREAS the Minister of Justice recognizes the constitutional and legislative authority of the judiciary regarding the management and judicial power of the Judiciary regarding judicial functions and management thereof;

AND WHEREAS in item B.9. of the Annexure to the Minister of Justice's Directions amongst others, the issuing of all court processes and filing of court papers, are allowed;

AND WHEREAS in terms paragraph 26 of the Minister's Directions safety measures at courts, court houses and justice service points during the period of state of national disaster, is the responsibility the Court Manager referred to as "Compliance Officer";

AND WHEREAS amongst others, compliance officer must ensure that social distancing is observed in order to curb the spread of covid-19 infections;

AND WHEREAS this Division wish to facilitate adjudication of opposed and unopposed applications during June/ July 2020 recess period and thereafter;

AND WHEREAS June/July recess period is intended to introduce new enrolment of opposed and unopposed applications to address the back-log caused by the lockdown;

AND WHEREAS the Chief Registrar of this Division in consultation with the Compliance Officer has been requested to look into the ways and means of allowing the issuing of new court processes without flouting safety measures and health protocols;

IT IS HEREBY DIRECTED as follows regarding new enrollment of the opposed, unopposed applications and appeal matters where the parties have agreed in writing to the disposal of the matter without appearance in court or where any of the parties undertake to set-up reliable virtual link with recording facilities unless the parties agree thereto in writing to dispense with such recordings:

Enrolment of opposed motion matters during recess and lockdown period

1. The opposed applications shall be enrolled to be heard on every Wednesday of the recess period being Wednesdays **1,8,15 and 22 July 2020**.
2. The number of matters to be heard on each Wednesday shall be limited to 12.
3. The parties shall consult the office of the Registrar for enrolment of matters on any of the dates indicated in paragraph 1 above.
4. The parties or their legal representatives shall jointly complete Form B referred to in paragraph 7.2 of the Practice Directive dated 9 January 2020 and thereafter file the form with the Registrar when a set of court papers is handed over to the Registrar by the applicant or applicant's attorneys as per paragraphs 15.1 to 15.5 read with the second paragraph 15.8 of COVID-Directive 5A dated 2 May 2020.
5. Any matter which does not comply with the directive herein will not be heard and on the close of the roll it will not allocated.
6. The particulars of the party, attorney or counsel who is instructed to settle the papers including written heads and or instructed to argue the matter through video link including their telephone numbers, cell phone numbers and email addresses shall be provided on Form B.
7. It should further be indicated in Form B or on a separate "Practice Note" whether the parties have agreed to the disposal of the matter without oral argument and appearance

in court; or whether the parties have agreed that the proceedings be conducted through the video link and if so, what arrangements are made to set up the video link and who would be responsible for the recording of the proceedings conducted through video link.

8. In the event the parties so agree to dispense with oral argument, the parties may if they so wish file what is termed "*Oral Argument*" of not more than 5 pages. This will be in addition to the written heads that would have been filed in the normal course. In the *Oral Argument* document, facts and/or points of law may succinctly be set out as if it was to form part of an oral argument.
9. Furthermore, the party responsible for the video conferencing must undertake to make the recording of the proceedings available to the Registrar within 2 days from the date of the hearing of the application, unless the parties have agreed to dispense with such recordings.

Enrolment of unopposed matters during recess and lockdown period

10. During the recess period starting from Monday 29 June 2020 to Friday 24 July 2020 the following dates shall be used to enroll new unopposed matters of not more than 150 matters per day:
 - 10.1 **Mondays: 29 June, 6,13 and 20 July 2020.**
 - 10.2 **Fridays:3,10,17 and 24 July 2020.**
11. The enrolment of unopposed matters to be heard on any of the dates indicated in paragraph 10, above shall be arranged with the Registrar in a manner as may be determined by the Chief Registrar taking into account what is provided in Covid-19 Directive 5A dated 2 May 2020.
12. The close of the roll shall be as in paragraph 8.4 of the Practice Directive dated 9 January 2020, that is: The applicant shall ensure that papers are ready, indexed, paginated and bound together and filed with the Registrar's clerk by not later than 12h00 on a Monday

and or Friday preceding the hearing on the following Monday or Friday of the motion week.

13. The filing as envisaged in paragraph 12 above, shall be by contacting respective Registrar Offices at the email addresses indicated hereunder for the purpose of arranging when and how filing shall take place or as per general directive the Chief Registrar may issue.
14. When a set of court papers is filed as indicated above, on top thereof, a document referred to as “Practice Note” shall be filed indicating whether the applicant dispenses with appearance and oral argument or whether he or she opts for proceedings to be conducted by video link and if so what arrangements are to be made by the applicant to set up the virtual link, provided that the judge ceased with a matter may ultimately direct how the matter will be dealt with or disposed of.
15. Failure to comply with any of the directives above will result in the matter not being allocated and any such matter will be removed from roll on the close of the roll.
16. A matter so removed from the roll shall not be re-enrolled for another date unless an affidavit is filed explaining the un-readiness of the matter on the date it was previously enrolled.

Enrolment of uncontested divorce matters

17. Uncontested divorce matters shall continue to be enrolled on the unopposed motion roll including Rule 43 applications.
18. In order to avoid appearance in court either the plaintiff or the defendant, shall file an affidavit dealing with every piece of evidence that would have been necessary to obtain a decree of divorce and other related matters dealing with custody, maintenance and so forth.

19. The other spouse where a deed of settlement is relied upon, shall also file a supplementary affidavit confirming the agreement and any other issue relevant to or averred in the main affidavit so filed.

Admissions applications

20. Admission applications shall continue to be enrolled on the unopposed motion roll and a set of court papers shall be handed over to the respective Registrars as per arrangement contemplated in paragraph 13 read with paragraphs 12 and 14 above.
21. In the Practice Note, it must also be indicated how is proposed the oath should be administered remotely.
22. The Judges who are ceased with an admission application will make a final determination whether or not to hear an admission application taking into account the challenges of administering an oath remotely.

Enrolment of appeal matters

23. Appeals matters shall be enrolled and continue to be heard during the current lockdown period or during any extended lockdown period.
24. The dates for enrolment of appeal matters shall be determined by the respective Registrars' office and no more than five appeal matters shall be enrolled per day. Appeal matters requiring three judges (that is, appeal against judgment of a judge) shall not be enrolled on the same day as appeal matters requiring two judges (that is, appeal against a decision of a magistrate).
25. The parties or parties' legal representatives shall obtain a date from the Registrar and insert such a date in Form F dealing with the case management of appeal matters which Form F must be completed by both parties and parties' legal representatives.

26. The appellant or appellant's legal representatives shall be responsible for preparing a set or sets of court papers and complying with paragraphs 15.1 to 15.4 added to paragraph 15 of Covid-19 Directive 5 dated 26 April 2020 in terms of paragraph 4 of COVID-19 Directive 5A dated 2 May 2020.
27. The parties or parties' legal representatives shall also comply with the second paragraph 15.8 added to paragraph 15 of Covid-19 Directive 5 dated 26 April 2020 in terms of paragraph 4 of COVID-19 Directive 5A dated 2 May 2020.
28. None compliance with any of the directives herein will result in the matter not been allocated on the close of the roll.
29. Under no circumstances will court papers be accepted after the close of the roll and this shall also apply to both opposed and unopposed matters.

No filing by emails

30. There shall be no filing of court papers by email as this Division is not equipped with Case-Line system.
31. Filing by email of any court papers or documents shall be ignored and deleted from the inbox mail.

Email addresses

32. The email addresses hereunder shall be used only for the purpose of making arrangements with the respective Registrars' office to hand over set of court papers before the close of the roll as set out in this Directive and in some respect read with the Practice Directive dated 9 January 2020.

For Mbombela cases email to: MNhlapo@judiciary.org.za;
Pceko@judiciary.org.za

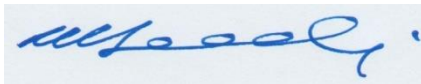
cc:MMasekoameng@judiciary.org.za, and
Flegodi@judiciary.org.za

For Middelburg cases email to: AMalambe@judiciary.org.za;
cc:MMasekoameng@judiciary.org.za;and
Flegodi@judiciary.org.za

CONCLUSION

33. The Directives herein shall apply with immediate effect and any previous Covid-19 Directives issued by this Division shall remain in force unless such previous directive is in conflict with these Directives.

BY DIRECTIVE OF THE JUDGE PRESIDENT

A handwritten signature in blue ink, appearing to read 'MF Legodi', is displayed within a light blue rectangular box.

MF LEGODI
JUDGE PRESIDENT OF MPUMALANGA DIVISION OF THE HIGH COURT