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16 April 2020

**DIRECTIVES ISSUED BY CHIEF JUSTICE MOGOENG MOGOENG  
IN TERMS OF SECTION 8 (3) (b) OF THE SUPERIOR COURTS ACT  
10 OF 2013 FOR THE MANAGEMENT OF THE SUPERIOR COURTS  
DURING THE EXTENDED LOCKDOWN PERIOD**

**PLEASE TAKE NOTICE THAT THE FOLLOWING DIRECTIVES  
SHALL APPLY TO THE EXTENDED PERIOD OF THE LOCKDOWN  
AS PROCLAIMED BY THE PRESIDENT ON THURSDAY, 09 APRIL  
2020:**

**A. GENERALLY**

1. Parties wishing to have a matter, which has been set down for hearing during the lockdown period, removed from the roll shall jointly do so by issuing notice thereof to the Registrar.
2. Subject to the directives set out herein below, only urgent applications and urgent matters arising out of or from the activities associated with disaster management shall be heard during the extended lockdown period.

**B. CRIMINAL TRIALS**

3. Criminal cases already set down for hearing during the lockdown period shall be brought forward by arrangement with all the relevant parties, and postponed to dates beyond the lockdown period. To the extent that accused persons may be in *absentia* and/or awaiting trial prisoners, the provisions of section 159 of the Criminal Procedure Act 51 of 1977 shall be invoked.

**C. CIVIL TRIALS**

4. Subject to the provisions of paragraphs 5 to 6 below, all civil trials enrolled for hearing during the lockdown period shall forthwith be removed from the trial roll.
5. The legal representatives of the parties shall, in the spirit of cooperation, confer with one another so as to agree on suitable alternative trial dates and shall, upon reaching agreement, inform the Registrar, accordingly.
6. The parties shall further inform the Registrar of any agreement reached that any particular matter is capable of settlement.
7. In the event of any settlement talks held by the parties' legal representatives yielding positive results and the matter becoming settled during the lockdown period, and the parties being in agreement in relation to the terms of the order, the Registrar may be requested to place the matter before a judge in chambers for the granting of a consent order.

## **D. APPLICATIONS**

### **(i) Unopposed applications**

8. Subject to what is set out in paragraph 9 below, there shall be no formal open court sittings during the lockdown period, save for urgent applications referred to in paragraph A.2 above, which shall include bail applications.
9. Unopposed applications already enrolled for hearing during the lockdown period shall be dealt with in the following manner:
  - 9.1 The Registrar shall draw a roll of unopposed applications identified as capable of being dealt with by way of video-conferencing and shall thereupon provide the parties with the necessary information to facilitate the hearing of such matters.
  - 9.2 Matters not capable of being dealt with in the manner provided for in paragraph 9.1 above shall be removed from the roll.
  - 9.3 Any *rule nisi* with a return date falling within the lockdown period, and which was granted prior thereto, shall be extended to dates beyond the lockdown period. Where this cannot be achieved, for reasons of urgency, the matters are to be referred to the duty judge for directions as to the future conduct thereof.
10. Urgent applications shall be being dealt with by the duty judge concerned, subject to such directives as she/he may issue.

**(ii) Opposed applications**

11. Parties are required to file their heads of argument electronically.
12. The parties shall further endeavour to reach agreement dispensing with the presentation of oral argument and shall, to that end, inform the judge presiding in the matter of their decision by no later than noon on the preceding Friday.
13. Matters where the parties have been unable to reach consensus as envisaged in paragraph 12 above or matters where the presiding judge directs that argument be presented, shall be heard by way of video conferencing, and the Registrar shall provide the parties with relevant information to facilitate such hearing.

**E. APPEALS**

14. The provisions of section 19 (a) of the Superior Courts Act shall *mutatis mutandis* apply to the hearing of appeals, save that the presiding judge or, in the case of the Supreme Court of Appeal, the President, shall solicit the views of the parties prior to making a determination in terms of the section
15. In the event that it has been determined by the judges to whom the appeal has been allocated that oral submissions are to be made in pursuit of the appeal, precautions shall be put in place to eliminate the need for practitioners to attend court. To that end, the hearing shall be by video conference on such terms as may be determined by the presiding judge or, in the case of the Supreme Court of Appeal, the President.

**F. APPLICATIONS FOR LEAVE TO APPEAL**

16. The provisions of paragraph E of these directives applicable to appeals shall apply *mutatis mutandis* to applications for leave to appeal.

**G. JUDICIAL CASE FLOW MANAGEMENT**

17. There shall be no judicial case flow management conferences held before a judge in chambers or civil roll call hearings convened during the lockdown period. Instead, the case management judge or assigned roll call judge shall communicate electronically with the parties and issue such directives as may be necessary to ensure the trial readiness of the matter.

**H. CONCLUSION**

18. The Heads of the Superior Courts shall where necessary issue Circulars, not inconsistent with these directives, to manage such matters as are relevant to their particular Courts which are not addressed herein.
19. The measures referred to in the directives issued on 17 March 2020 shall, *mutatis mutandis*, continue being of force during the extended lockdown period.
20. These directives shall be interpreted and given effect to within the spirit and purport of any regulatory instrument that may be issued by the

designated Minister in terms of the Disaster Management Act 57 of 2002, for the management of courts and administration of justice during the lockdown period.

**MOGOENG MOGOENG**

**CHIEF JUSTICE: SOUTH AFRICA**