



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE JUDGE PRESIDENT M F LEGODI
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THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION

1ST FLOOR

ROOM CF65

NELSPRUIT

26 APRIL 2020

COVID-19 DIRECTIVE 5 OF 2020

WHEREAS the Chief Justice of the Republic of South Africa issued a directive on 17 April 2020 concerning matters enrolled for hearing during the lockdown period;

AND WHEREAS the President of the Republic of South Africa on 23 April 2020 announced the extension of the lockdown period reduced to level 4;

AND WHEREAS the workforce or personnel for essential services during the extended level 4 lockdown period as per the announcement by the President is limited to one third;

IT IS HEREBY DIRECTED as follows regarding the categories of matters on the roll during the extended lock down or during any further such extension, including matters that are enrolled up to 31 May 2020:

APPEAL MATTERS

1. As per paragraph 16 of the Directives issued by the Chief Justice on 17 April 2020, section 19(a) of the Superior Courts Acts shall apply to the hearing of appeals, save that the presiding Judge shall solicit the views of the parties prior to the appeal panel making a determination in terms of that section.
2. Section 19(a) of the Superior Courts Act provides that the Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law dispose of an appeal without the hearing of oral argument. As a result, it is hereby directed as follows:
 - 2.1 Parties or their legal representatives in all appeal matters enrolled for hearing during the lockdown period including those matters which might be on the roll within 2 weeks after the end of the extended lockdown period or further extended lockdown period are hereby directed to indicate not later than Friday, 1 May 2020 by way of an email to MMasokoameng@judiciary.org.za; AMalambe@judiciary.org.za, MNhlapo@judiciary.org.za, PCeko@judiciary.org.za, FLegodi@judiciary.org.za, Pmaitsapo@judiciary.org.za LRameregi@judiciary.org.za, whether they agree to the dispensing of oral argument.
 - 2.2 In the event the parties so agree, they shall as per directive of the panel of the appeal court ceased with an appeal matter, file what is termed “Oral Argument” of not more than five pages to be filed as so directed by the appeal panel. This will be in addition to the written heads that would have been filed in the normal course.
 - 2.2.1 *“In the oral argument document “, facts and or points of law shall succinctly be set out as if it was to be an oral argument.*
 - 2.3 As contemplated in paragraph 17 of the Practice Directive issued by the Chief Justice on 17 April 2020, read with Section 19(a) of the Superior Courts Acts, the appeal panel may determine that oral submissions are to be made, in which case appropriate measures shall be taken to eliminate the need for practitioners to attend court, and the presiding Judge may direct that the hearing be by video conference or other electronic measures which are appropriate and available and on such terms as the presiding Judge may direct.

- 2.4 Should it not be possible or appropriate to dispense with oral argument and or to conduct the appeal proceedings without appearance in court during the extended lockdown period or during any further extended lockdown period, the matter shall be postponed *sine die* due to the lockdown and shall be enrolled by the Registrar on the case management roll after the lockdown period.
- 2.5 Appeal panel to whom an appeal matter is allocated may at any time before a judgment is handed down or in the course of reading of court papers in a matter direct the parties to file further written heads on any issue that might be material to proper determination of issues in the matter.

APPLICATIONS FOR LEAVE TO APPEAL

3. Applications for leave to appeal shall be dealt with as provided for in paragraphs 1 to 2.4 above, unless such an application for leave to appeal is classified as urgent, in which case, it shall be dealt with as urgent and shall be so enrolled as per the directive of the Judge to whom the matter is allocated.

OPPOSED MATTERS

4. Opposed matters which are already enrolled for hearing during the extended lockdown period or during any further extension of the lockdown period, shall be considered without oral argument, and or appearance in court on the date of hearing, provided the parties agree thereto as contemplated in paragraph 14 of the Chief Justice Directive issued on 17 April 2020.
- 4.1 Paragraphs 2.1 to 2.2 including paragraph 2.5 above, shall *mutatis mutandis* apply to the opposed matters.
5. In the event the parties object to the disposal of an opposed matters without the appearance in court and without oral argument due to the lockdown, the Judge to whom a matter is allocated may direct that the matter be heard by way of video conferencing or other electronic measures available and possible in the circumstances, as contemplated in paragraph 15 of the Chief Justice directive issued on 17 April 2020.

6. When an opposed matter enrolled during lockdown period cannot be considered without dispensing of oral argument, and is not possible to hear the matter during the lockdown period by way of video conferencing or other electronic means, the Judge to whom the matter is allocated shall postpone the matter without a date due to the lockdown and shall direct the Registrar to place the matter on the case management roll on a date after the lockdown period.

UNOPPOSED MATTERS

7. In terms of paragraph 11.1 of the Chief Justice Directives issued on 17 April 2020, matters already enrolled for hearing during the lockdown period, shall not be dealt with in an open court.
8. Unopposed matters so enrolled during the lockdown period, shall be disposed of without an oral hearing, and shall, unless the Judge to whom such matters are allocated, determine otherwise, shall be dealt with as follows:
 - 8.1 By making an endorsement on the file indicating why an order could not be granted and or allowing the party to file supplementary affidavit if need be addressing a particular aspect raised by the Judge concerned as per the endorsement, or
 - 8.2 Dispose of such matters on papers which may include such written submissions from the parties as may be directed by the Judge to whom such a matter or matters are allocated.
 - 8.3 Should there be a need to conduct hearing of an unopposed matter or matters by way of video conferencing or other appropriate and available measures in the circumstance, the Judge to whom such a matter or matters are allocated, may so direct.
 - 8.4 Any unopposed matter enrolled during the lockdown period in respect of which an order is not granted, shall be re-enrolled by approaching the Registrar for a date after the lockdown period, provided that where supplementary affidavit was directed, such a matter or matters will only be so enrolled after the filing of the said supplementary affidavit.

CIVIL MATTERS

9. Any civil trial matters affected by the extension of the lockdown or by any further extension thereof, shall be dealt with in accordance with the procedure and directives set out in the Practice Note /Directive no 4 dated 14 April 2020 in particular paragraphs 5 to 9 thereof, read with paragraph 3 of the Practice Note/ Directive 3 dated 10 April 2020.
10. The dates of trial for matters affected by the extended lockdown or further extension of the lockdown, except damages claim matters which have not been allocated new trial dates, shall be allocated new dates in due course and parties will be duly informed within a reasonable time.

TIME-LINE- PLEASE NOTE

11. Parties whose appeal, unopposed and opposed matters are on the roll from 4 May 2020 until the end of the lockdown period including 31 May 2020, I hereby directed to indicate by not later than the end of the day on 1 May 2020 whether they object to finalization of their matters without appearance in court and without oral argument.
12. For the purpose of paragraph 11 above, the email addresses in paragraph 2.1 above, shall be utilized.
13. Should there be no objection as contemplated in paragraph 11 above, it shall be assumed that the parties agree to the disposal of the matters without an appearance and oral argument and the judges to whom matters are allocated will accordingly proceed to dispose of such matters.
14. The parties will be informed of the outcome in the normal course particularly with regard to the appeal and opposed matters dealt with as contemplated in paragraph 13 above.

Service, filing, pagination and indexing

15. Service, filing, indexing and pagination **for matters which are on the roll during the lockdown period**, shall be by way of emails and for filing with the Registrar office using the following email addresses:

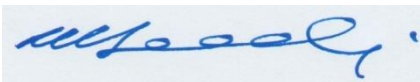
Mbombela Court: MMasekoameng@judiciary.org.za; MNhlapo@judiciary.org.za;

Middelburg Court: AMalambe@judiciary.org.za, TMaserumule@judiciary.org.za; SMokwele@judiciary.org.za, amalambe98@gmail.com

CONCLUSION

16. A directive of 25 March 2020 and directives number 2, 3, 4 and 1A of 2020 previously issued by this Division to deal with the lockdown challenges and measures, shall remain in force unless is inconsistent with this Directive no 5 of 2020.

BY DIRECTIVE OF THE JUDGE PRESIDENT



M F LEGODI
JUDGE PRESIDENT OF MPUMALANGA DIVISION