



MPUMALANGA DIVISION OF THE HIGH COURT

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THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION
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NELSPRUIT

04 May 2022

FOR ATTENTION: MIDDELBURG ATTORNEYS ASSOCIATION

Dear Middelburg Attorneys Association

**RE: ALLEGED UNCONSTITUTIONALITY OF VIRTUAL HEARINGS MADE BY
MIDDELBURG ATTORNEYS ASSOCIATION**

I refer to the above matter in particular your letter dated 4 May 2022 addressed to the Judge President and wish to confirm that same has been brought to his attention. I have been requested to respond as follows:

1. Covid has robbed us of so many lives but at the same time has brought about a way of disposing cases differently, effectively and efficiently. This has proved that cases can be dealt without physical appearances in our courts but at the same time prevent unreasonable delays, save costs, be

convenient, prevent the likelihood of prejudice and otherwise be in the interest of justice.

2. As the members of the Middelburg Attorneys might know, on 28 January 2022 Criminal and Related Matters Amendment Act 12 of 2021 was published in the Government Gazette No. 45822.
3. Section 51C which is due to take effect deals with audio-visual link proceedings other than criminal proceeding. Amongst others the section provides that ‘ **a court may of its own accord, order that a witness may give evidence by means of audio-visual link.**
4. **Seen in context, it would very difficult for any legal practitioner to come to the conclusion that audio-visual hearing would not save legal costs, be convenient, avoid unreasonable delay and that it would not be in the interest of justice.**
5. As the members of the Middelburg Attorneys Association might be aware, in terms of paragraph 2.174 of “Report Project, Project 142 “ regarding “investigation into legal fees, including access to justice and other interventions” issued by South African Law Reform Commission and widely spoken about in the media recently, the Minister of Justice is reported as having stated that “*one of the ways of ensuring access to justice and an efficient court system is through the use of technology*”.
6. Similarly, in paragraph 2.176 (a) of the Report, SACLR, has recommended that “the current paper-based legal process should be transformed into a

digital process to reduce legal fees... In in (b) the SACLR recommended that “court rules need to be amended to make provision for the digital court process”. This is said to be intended to avoid physical filing which only serve to escalate legal costs. The principle must also apply to physical hearings.

7. The point we make as the Mpumalanga Division is that audio-visual hearings is not meant for legal practitioners but rather to promote access to justice by avoiding prohibitive thereto occasioned by ever escalating legal costs.
8. Therefore, the statement “ *in addition to the above, the recent circulation of the Labour Court Directives prompted many practitioners to hold the view the fact that even virtual appearances are only allowed at the request of the Presiding Judge in unopposed matters, is unbearable and unconstitutional in the sense that access to courts is literally prevented*”, is unfortunate.
9. The statement is unfortunate because it appears to be one-sided. This unfortunate statement reminds one of a statement made by one of the practitioners in Middelburg who recently bemoaned the fact that non-physical appearance is making the legal practitioners not to be able to make a living. The assertion was unfortunate too. The point is this: If delays can be avoided, if legal costs can be saved, if it becomes convenient for a litigant and if it is in the interest of justice, so be it.
10. The statement “the request is that physical return of practitioners to appear in Court is to be allowed...”, appears to be self-serving and not looking at a bigger picture as set out in the preceding paragraphs. All what

has to be considered is what is good for the litigants and not the for the practitioners to appear in court even when is not necessary.

11. Just to conclude on the point. Many of the matters that are enrolled on the unopposed motion rolls, the banks are the applicants. Not long time ago, the Banking Association of South Africa had a meeting with the Division and they enquired whether it was not possible for unopposed matters to be finalised without appearance. This enquiry was made during that meeting. BASA was unaware that the division had already incorporated that in the Covid-19 directives. The division is wondering whether the request that is now being made by the Middelburg Attorneys Association is made with the approval of the banking institutions.

12. Covid-19 pandemic is still with us and the numbers of infections are rising. Social distancing, wearing of masks and washing of hands or sanitising is still a necessity to preserve lives and avoid spread of the infections. Even if this was not so, we will still continue to deal with unopposed matters as we are currently doing. We are finalising the amendments to the Division Practice Directive dated 9 January 2020 and same will accordingly be so incorporated.

Your request is therefore not acceded to.

KPP MAITSAPO

SECRETARY TO JUDGE PRESIDENT LEGODI

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