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Labour Courts
Private Bag X52
Braamfontein, 2017
86 Juta Street
Braamfontein, 2016

Tel: (011) 359 5700
Fax: (011) 403 2825

Also in Cape Town
Durban and
Port Elizabeth

28 April 2020

# FROM OFFICE OF THE JUDGE PRESIDENT

## URGENT DIRECTIVE IN RESPECT OF ACCESS TO THE LABOUR COURT

The following directives will apply with effect from 4 May to the end of the second Term including the period of July 2020 recess.

1. These directives are issued in conformity with the directives of the Chief Justice dated 17 March 2020 and 17 April 2020 and in terms of the authority vested in the Head of Court in terms of section 8(4) (b) of the Superior Courts Act 10 of 2013 and effective immediately upon publication.

2. These directives set out how, and under what conditions, matters enrolled in the Labour Courts will be dealt with until the end of Term 2 of 2020, including

the July 2020 recess. The previous Directives issued by me remain in force except where varied in this Directive.

3. The prospects of long term lockdown albeit progressively scaled-down restrictions in movement remain, prudent behaviour to minimise exposure to infection informs the policy choices made in these Directives.

4. The general principle to be observed is that physical contact among persons be eliminated or minimised. To this end: any matter that is non-compliant with this Directive shall not be entertained, save in certain instances specified elsewhere in this Directive or previous Directives.

5. **Motion proceedings**

Subject to what is set out herebelow, Motion Proceedings shall not, except where directed otherwise by the Judge seized with the matter, enjoy an oral hearing in open Court. Detailed submissions may be advanced via email in addition to heads of argument already filed. Oral hearings may be dealt with by video conferencing where Parties make representations to demonstrate why oral argument is indispensable to the proper adjudication of the matter: these matters will be heard in accordance with *ad hoc* directives issued by the Judge which are appropriate to the circumstances. More particularly:

5.1. The Parties shall endeavour to agree about whether the matter may be disposed of without oral argument; if agreed, Representative for any Party who wishes to supplement the papers with additional written submissions must do so and send to the Registrar by email to the email address set out below by not later than the Friday before the week in which the matter is set down.

5.2. If no agreement is reached about forgoing oral argument that must be communicated to the Registrar in a practice note sent by email, not later than noon on the Friday before the week in which the matter is set down. If oral argument is sought this note must set out why oral argument is

indispensible to the proper adjudication of the matter.The Registrar shall refer the matter to a Judge who will determine if a hearing shall take place, which may include one or more of the following options:

5.2.1. A hearing using video conferencing techniques may be convened; where this option is chosen, the Applicant shall, unless the Judge directs otherwise, undertake to organise the setting up of a video conference as host, and shall send a link to all Parties and Judge involved at a time and date stipulated by the allocated Judge.

5.2.2. A physical Court hearing, if the circumstances so require.

5.2.3. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the people involved.

5.3. The Judge seized with a matter in which video conferencing is to be used shall exercise a discretion as to any responsibility to set this up as well as the liability for the costs implications of such utilisation.

5.4. The Applicant remains *dominus litis* and is ultimately responsible for the efficient disposal of the application. Where the Applicant is unrepresented, the Respondent shall assume the responsibility.

5.5. If both Parties agree, an opposed motion may be removed from the roll. There shall be no costs order for removal of a matter.

5.6. Any queries thereafter, by any Party must be made by email only and addressed to the Presiding Judge via the Registrar or the Judge's Secretary and copies sent to the other Parties.

6. In those cases where a Party appears in person:

6.1. that litigant shall approach the Registrar who shall designate an official at the Court building who shall render assistance to that litigant; or

6.2. where such a litigant's contact details are known, the Regigtrar or where the matter is allocated, the Secretary of the Judge shall endeavour to make contact to communicate the relevant information. Where such litigant has personal access to teleconferencing facilities, a link may be set up accordingly, if the Judge so directs.

6.3. The Order and the Judgment shall be communicated to the Parties by email by the Judge.

**TRIALS**

7. These directives apply to all Trial matters set down from 4 May 2020 to the end of the second term including the July 2020 recess period.

8. All trials set down:

8.1. On 4 May 2020 and on dates thereafter until the end of Term 2 of 2020 shall remain enrolled.

8.2. The Parties shall submit a JOINT PRACTICE note after a special pre-trial conference at which the logistics of conducting the trial are addressed. If an Applicant cannot obtain cooperation from a Respondent, the Applicant must submit its own practice note and explain why a joint-practice note was impossible to be composed. Lack of co-operation by either Party may attract punitive orders by the Court.

8.3. The practice note must reach the Registrar of the seat of the Labour Court where the trial is allocated not earlier than four days and not later than by 11h00 two Court days before the set-down date. If no practice note is timeously received, the matter shall automatically be removed. If the

practice note is non-compliant with the Practice Manual or is directive, the matter shall unless one of the parties is unrepresented, be automatically removed. This directive shall be strictly applied.

8.4. The practice note must, in addition to the information required in terms of the Practice Manual, address these issues:

8.4.1. The names, email addresses and cell numbers of all representatives who will represent the parties at the hearing. . The said representatives must hold themselves ready to receive a communication from a Judge or Judge's Secretary, during the two days until set-down date.

8.4.2. All matters in which the Parties are ready and wish to proceed to trial, the Parties must indicate in the practice note:

8.4.2.1. What arrangements they have put in place to facilitate the hosting of a teleconference for the disposal of the matter.

8.4.2.2. What evidence can be adduced on affidavit.

8.4.2.3. To what extent a physical hearing is unavoidable.

8.4.3. The Judge allocated to deal with the matter shall communicate via email, or otherwise, with the Representative and, having regard to the arrangements the Parties have made or are capable of making, exercise a discretion as to how the matter is to be disposed of and shall give *ad hoc* directives. Representatives must keep themselves available to be contacted. Such directives, without limiting the scope of the discretion being exercised, may include:

8.4.3.1. The admission of evidence remotely using video conferencing techniques;

8.4.3.2. A physical Court hearing for all or part of the evidence;

8.4.3.3. Admitting evidence by affidavit;

8.4.3.4. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the persons involved.

Litigants in person

9. In those cases where a Party is unrepresented:
   9.1. In opposed matters, it is the duty of a legal representative who may be involved for a party to contact the unrepresented party and ask the party to contact the relevant Registrar who can then explain the processes set out herein.
   9.2. If such litigant's contact details are known, the Registrar/Secretary of the Judge to whom the matter is allocated, shall endeavour to make contact to communicate the relevant information. Where such litigant has personal access to teleconferencing facilities, the necessary link may be set up accordingly, if the Judge so directs.

**REMOVAL OF MATTER FROM THE ROLL**

10. If the Parties to any matter agree not to deal with the matter under these conditions, the Parties must, to enable Registrar to compose the roll, at least 5 clear Court days before the trial set-down date, formally remove the matter from the roll and email a copy thereof to the Registrar: No costs orders shall be made for removal of a matter.

**COMMUNICATION**

11. The practice note as well as any other communication which has to be addressed to the registrar must be sent by email to:

    11.1.1. In **Johannesburg** email(s) to the Registrar must be sent to FNtuli@judiciary.org.za

    11.1.2. In **Cape Town,** email(s) to the Registrar must be sent to FIsmail@judiciary.org.za.

    11.1.3. In **Durban,** email(s) to the Registrar must be sent to TVilakazi@judiciary.org.za.

    11.1.4. In **Port Elizabeth**, email(s) to the Registrar must be sent to SGerber@judiciary.org.za.

**GENERAL CONDITIONS UNDER WHICH PARTIES MAY ENTER THE COURT BUILDING WHERE A PHYSICAL HEARING HAS BEEN DIRECTED BY A JUDGE**

12. Representatives and litigants who are required to travel to the Court building, must comply where applicable with any further restrictions that may be imposed after 30 April 2020. If travel is not lawful, the matters shall be removed from the roll.

13. Anyone seeking access into the Court buildings must submit to compulsory screening, must wear a face mask and must adhere to applicable social distancing rules.

14. Only the Parties, where they do not exceed ten in number, and their Representative shall enter the Court building.

15. Any Party who does not wish to have the matter dealt with under the conditions described above must remove the matter from the roll.

16. Orders of the Court shall be prepared in hard copy, signed, a copy retained by the Judge, a copy sent to the Registrar, and a copy communicated to the Parties by email.

## ETIQUETTE IN VIDEO CONFERENCE HEARINGS

17. The Judge and persons appearing in video hearings shall wear formal attire but may not be robed.

18. Participants shall ensure that there is no ambient noise in the room which can interfere with the audio quality during the hearing.

19. In general, subject to any *ad hoc* directives given by the Judge, the participants shall mute their microphones when not actually speaking.

20. The Judge shall invite participants to speak and everyone shall be alerted to the Judge's directions in this regard.

21. Participants shall remain in the hearing and leave it only when the proceedings have concluded.

22. The Judge shall give instructions as to the recording of the proceedings;

    22.1 Where a party is responsible therefor, an audio file shall immediately, at the close of the proceedings be sent to the Judge at a stipulated email address for retention by the Judge until such time as the Registrar can take custody thereof.

22.2 If the Judge or the Judge's Secretary or a Stenographer records the proceedings, the Judge shall retain the audio file, until such time as the Registrar can take custody thereof.

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**B WAGLAY**
**JUDGE PRESIDENT OF THE LABOUR COURT OF SOUTH AFRICA**