MINUTES OF THE MEETING OF THE CIVIL SUB-COMMITTEE OF THE JOHANNESBURG MAGISTRATES AND REGIONAL COURTS HELD AT JOHANNESBURG ON THE

12th NOVEMBER 2020

PRESENT: Messrs. Lamprecht (Judiciary–Magistrates Court), Chaitram (Judiciary – Regional Court), De Wee (Court Services), Mdungwana (Court Services) Thomas & Jegels (Sheriff Jhb South), Mangaba (Sheriff Jhb Central), Ramsurjoo (State Attorney), Brucely Shipalana, J Tarica and De Klerk (JAA).

APOLOGIES: Messrs. Viana (Judiciary–Magistrates Court), Messrs Dosio (Judiciary – Regional Court), Makani (Court Services) Maluleke (Regional Court – Court Services), Ramolefe (Court Services), Adimoolam (Sheriff JHB West), and Mienkie van Dyk(JAA).

1 MINUTES

The Minutes of the previous meeting were tabled and approved

2 MATTERS ARISING FROM THE MINUTES

2.1 Ms Ramsurjoo advised that all staff members at the State Attorney's office have their own diaries which are inspected by a supervisor, and that there is a central diary per section where the attorneys report back on matters attended to. Magistrate Lamprecht advised that the problem was that many appearing in court did not have the necessary decision making authority.

2.2 Mr Tarica proposed that all the court rolls including the Pre-Trial Court Rolls should be put on the website and not only the Motion and Trial Court Rolls.

3 **NEW MATTERS**

3.1 In terms of Regulation 13 of the Disaster Management Regulations, the parties to a civil dispute against the State or any organ of State, which may potentially result in litigation, may either before or after the commencement of litigation agree to refer the dispute to mediation.

3.2 Ms Ramsurjoo advised that the State Attorney is grappling with this at present as they are being frustrated by the clients who are not giving their consent to mediate. The attorneys work on mandates from clients and cannot mediate without a mandate. As far as matters of unlawful arrest are concerned, the National Office will advise if the State Attorney can mediate on each individual matter.

3.3 Magistrate Chaitram pointed out that the law is there but not being implemented and the purpose is to shorten the proceedings. The State Attorney shall upon knowledge of a dispute engage the party raising the dispute, in considering mediation as there are matters that can be mediated.

3.4 Magistrate Chaitram advised that the Solicitor General and the Minister must put a policy in place to be approved by the Cabinet to compel compliance. Magistrate Lamprecht emphasized that the representative appearing at the formal Pre-Trial must be a person with decision making authority.

3.5 Magistrate Chaitram advised that there will be new jurisdictional areas for the Regional Court from the 1st December 2020. For instance there will be a new courts in Soweto, Protea and Kliptown and Johannesburg will no longer be used for these areas. Booysens will no longer have concurrent jurisdiction with Johannesburg. Magistrate Chaitram will circulate the Gazette.

3.6 Magistrate Chaitram advised that the sheriff's not complying strictly with the provisions of Rule 9 when serving processes, arises frequently when queries are raised with Default Judgment Applications.

Service at a domicilium address – the sheriffs are to set out in detail the circumstances leading up to the affixing of the process. Best efforts are to be made to bring to a persons attention.

Service at a registered address – Affixing of the process provided no responsible employee could be found. The sheriff is to indicate whether there is a sign

indicating that it is the registered address. If there is no sign the Magistrate Chaitram knows to request proof of the registered address.

Divorce Summons have to be served personally on the Defendant.

Sheriffs are to serve processes in accordance with the rules and not in accordance with the instructions of the attorney which is contrary to the rules. If served in that manner then the sheriff must indicate that the service was effected as instructed by the attorney.

Mr Tarica pointed out that the sheriff's get reported to the Sheriff's Board if they refuse to serve as instructed to by the attorney.

3.7 Magistrate Chaitram advised that the attorneys and sheriff's will have to work out a solution for the payment of witness fees since cheque payments have been discontinued in order to have a warrant authorized due to a witnesses non-attendance at court. Postal Orders may be a solution.

Ms de Wee advised that they have been mandated to use a new system called Mojapay for inter alia security for costs to be paid into court. It is being rolled out in all nine provinces. All the attorneys will have to register on the system.

3.8 Issues to be raised with the Legal Aid Office, Johannesburg will have to stand over to the next meeting.

3.9 Magistrate Chaitram reported a general concern that practitioners in court are not adequately observing physical distancing and have become complacent.

Magistrate Lamprecht advised that they have taken all measures to indicate with marking tapes where practitioners are to be seated.

3.10 Magistrate Lamprecht advised that she is busy compiling a notice requiring practitioners to produce certified Fidelity Fund Certificates and/or proof that they are admitted attorneys and advocates. Magistrate Chaitram advised that he would be reluctant to implement such a procedure. Candidate Attorneys are requested to show their right of appearance certificates, as some do not have the right to appear. Mr Tarica advised that the LPC has a list of admitted attorneys and advocates on their website and that some older practitioners may feel affronted by a request to produce proof of admission.

3.11 Magistrate Lamprecht circulated the Year Programme for court next year for circulation.

3.12 Magistrate Lamprecht requested that the Sheriffs compile a list with updated details of each sheriff and forward same to her

3.13 Magistrate Lamprecht enquired whether sheriffs would be prepared to consider reducing their fees for Small Claims Court matters. The biggest expense is the attachment and removal costs. Magistrate Chaitram advised that in terms of the Act Commissioners are obliged to have a financial enquiry. 9 out of 10 Defendant's do make offers to pay which is recorded with an acceleration clause. However sooner or later the matter will end up in the execution process. Mr Mangaba pointed out that for a R 400.00 judgment, the attachment and removal costs will end up being more than R 3000.00. It is more viable for the sheriff just to pay the R 400.00. The Sheriffs will discuss the issue amongst themselves.

3.14 Magistrate Chaitram advised that in RAF matters, the Defendant's attorneys are not getting involved in matters. The Plaintiff's attorneys are not to serve on the RAF where there is still an attorney on record. The Defendant;s attorneys should be Withdrawing as Attorneys of Record as they are exposing themselves to claims should default judgment be granted.

4 **NEXT MEETING**

The next meeting will be held on the **11th FEBRUARY 2021 at 14h00.**

DATED AT JOHANNESBURG THIS 12TH DAY OF NOVEMBER 2020.

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CHAIRPERSON

DATES FOR MEETINGS 2021

11 FEBRUARY 2021

13 MAY 2021

12 AUGUST 2021

11 NOVEMBER 2021