

Labour Courts
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Also in Cape Town;
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01 July 2020

Number IV

FROM THE OFFICE OF THE JUDGE PRESIDENT

DIRECTIVE IN RESPECT OF ACCESS TO THE LABOUR COURT IN LIGHT OF THE COVID-19 PANDEMIC

The following Directive will apply with effect from 06 July 2020 to the end of the Third Term and includes the terms of the previous Directives that have application. The previous Directives will therefore not apply.

1. This Directive is 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 from 06 July 2020.

2. This Directive sets out how, and under what conditions, matters enrolled or sought to be enrolled in the Labour Courts will be dealt with until the end of Term 3 of 2020.

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

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 may not be entertained.

5. Indexing and pagination of files.

   There will be no sitting at court for purposes of pagination. Parties are to bring a properly paginated bundle to be placed in the court file and filed with the Registrar or Judges secretary.

MOTION PROCEEDINGS

6. Subject to what is set out here below, 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; alternatively, detailed submissions may replace heads of argument. 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:

   6.1. 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.

6.2. 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 the practice note must set out why oral argument is indispensable 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:

6.2.1. 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.

6.2.2. **A physical Court hearing, if the circumstances so require**.

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

6.3. 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.

6.4. 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.

6.5. 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.

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

7. In those cases, where a Party appears in person:

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

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

7.3. the Order and the Judgment of the Court shall be communicated to the Parties by email by the Judge's secretary or the Registrar.

TRIALS

8. These directives apply to all Trial matters set down for term 3.

9. All trials set down:

9.1. shall remain enrolled.

9.2. 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 or respondent cannot obtain cooperation from the other side, the party 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 costs orders including punitive costs orders by the Court.

Alternatively, the parties may be called upon by the Judge to attend a zoom meeting to narrow the issue and determine the way forward.

9.3. the practice note must reach the Registrar of the seat of the Labour Court where the trial is allocated at least seven court days and not later than by 11h00 five court days before the set-down date. If no practice note is timeously received, the matter shall subject to clause 8.2 above be removed from the roll. If the practice note is non-compliant with the Practice Manual or this directive, the matter may unless one of the parties is unrepresented, be removed from the roll or the Judge allocated to hear the matter may call a zoom meeting with the parties to decide the way forward.

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

9.4.1. 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.

9.4.2. In all matters in which the Parties are ready and wish to proceed to trial, the Parties must indicate in the practice note:

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

9.4.2.2. What evidence can be adduced on affidavit.

9.4.2.3. To what extent a physical hearing is unavoidable.

9.4.3. The Judge or the Judge's secretary 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:

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

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

9.4.3.3. Admitting evidence by affidavit;

9.4.3.4. 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 (trials)

10. In those cases, where a Party is unrepresented:
    10.1. If such litigant's contact details are known, the Registrar or the 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.
    10.2. In the event that a litigant's details are unknown or he/she could not be contacted, the matter will be removed from the roll.

REMOVAL OF MATTER FROM THE ROLL (trials)

11. 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.

CONTEMPT OF COURT APPLICATIONS

12. Applications for contempt of Court are brought ex-parte and it is expected that the sheriff will serve the order. The problem is that compelling a party to appear in this period of Pandemic with the added insecurity of businesses being able to operate and the possibility of raising impossibility of compliance with the court orders does create its own problems, this however does not mean that a party with a valid court order who has sort compliance and met with non-compliance may not proceed with a contempt application.

13. An application for contempt may be brought but the return date should only be allocated in September or later and on a Friday. Return dates allocated before September 2020 will be automatically extended and the parties will be informed about the new date.

14. Parties must be mindful of the fact that the Pandemic may restrict movements or fear of travel or fear of court attendance linked to the Pandemic may hinder proper hearing of the matter, hence the court will have a discretion, notwithstanding proper service to postpone the matter.

15. The applicant in a contempt matter must provide the court with contactable details of the party/parties against whom contempt order is sought.

COMMUNICATION

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

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

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

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

15.1.4. 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

16. 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.

17. 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.

18. Only the Parties, where they do not exceed ten in number, and their Representative shall enter the Court building unless otherwise arranged with the registrar.

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

20. 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

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

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

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

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

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

26. No photos may be taken or distributed/ published of the proceedings.

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

    27.1 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.

27.2 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