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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**OFFICE OF THE CHIEF OF JUSTICE**

NO. 955

01 SEPTEMBER 2017

**PRACTICE DIRECTIVE FOR THE GAUTENG DIVISION OF THE HIGH COURT FUNCTIONING AS THE MPUMALANGA DIVISION OF THE HIGH COURT**

By virtue of the powers vested in me in terms of section 8(3) read with subsection 5 of the Superior Courts Act, 2013 (Act 10 of 2013) I, **Mogoeng Mogoeng**, the Chief Justice of the Republic of South Africa, issue the attached practice directive in relation to the Gauteng Division of the High Court of South Africa, functioning as the Mpumalanga Division of the High Court of South Africa.

The practice directive enjoys the support of the Judges President of the Gauteng Divisions of the High Court and Mpumalanga Division of the High Court.



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**Mogoeng Mogoeng**  
Chief Justice of the Republic of South Africa



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**PRACTICE DIRECTIVE FOR THE GAUTENG DIVISION OF THE HIGH COURT OF  
SOUTH AFRICA**

*Functioning as* **THE MPUMALANGA DIVISION  
OF THE HIGH COURT OF SOUTH AFRICA**

**ISSUED IN TERMS OF THE SECTION 8(3) OF THE SUPERIOR COURTS ACT, 10 OF  
2013**

**BY**

**CHIEF JUSTICE MOGOENG MOGOENG  
CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA**

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**1. Enrolment and Hearing of Matters in Mpumalanga**

**All action and motion proceedings, applications including urgent applications as well as appeals in any area in the Mpumalanga Province shall, with effect from 1 September 2017, be enrolled and heard at Mbombela and Middelburg Circuit Courts.**

**2. Civil Trials**

- a. Civil trials shall be enrolled for hearing from Monday to Friday during the 2<sup>nd</sup> to the 3<sup>rd</sup>; 5<sup>th</sup> to 6<sup>th</sup> and 8<sup>th</sup> to 9<sup>th</sup> weeks of Term in the civil Circuit Courts.
- b. At 9h00 on each Monday of the civil trial weeks, the Judge on duty at the Circuit Court shall conduct roll call for all matters enrolled for those weeks.

- c. Any party may submit to the Registrar at the Circuit Courts an application for a trial date, provided a proper pre-trial conference in compliance with the provisions of Rule 37 has been held and the minutes thereof are filed together with the application for a trial date.
- d. Further Practice Directives may be issued for the proper judicial case management of action proceedings, including the enrolment of pre-trial conferences by the Registrar before a Judge at any stage thereof from time to time.
- e. A trial date will only be allocated once a certificate of trial readiness has been issued by a Judge either during pre-trial conference or after consideration of pre-trial minutes referred to in 2.3 above.
- f. No part-heard civil trial may be postponed *sine-die*. All part-heard matters shall be postponed to a specific date during the last week of Term or during recess, if the duration required to finalise the trial is not more than five (5) Court days. If the duration required is more than five (5) days the trial shall be postponed to a date during Term allocated by the Judge President or Deputy Judge President.

### 3. Unopposed Applications

- 3.1 Unopposed applications will be heard on a Monday and Friday of the 1<sup>st</sup>; 4<sup>th</sup> and 7<sup>th</sup> weeks of every week Term in the Circuit Courts.
- 3.2 The number of matters to be heard shall, unless the Judge President or Deputy Judge President otherwise directs, be limited to 50 which shall include not more than 3 opposed Rule 43 applications and Summary Judgments respectively. Any matter on the roll in excess of the numbers mentioned herein will, barring the Judge President or Deputy Judge President's directive to the contrary, be postponed to a specific available date or *sine die* provided good cause is shown to postpone any such matter *sine die*.

- 3.3 The applicant shall ensure that the papers are ready, i.e. indexed, paginated and bound together; and that the file is submitted to the Registrar's office at the Circuit Court not later than 12h00 on the Thursday preceding the hearing on Monday. The files are to be handed over by the Registrar to the civil roll Judge on the Friday preceding the hearing on Monday.
- 3.4 For all unopposed applications enrolled in terms of this Practice Directive the files shall be submitted to the Registrar's office at the circuit not later than 12h00 on the Wednesday preceding the Friday of the hearing.
- 3.5 Unopposed applications, if postponed, shall be postponed to a specific date arranged with the Registrar, otherwise the application shall be removed from the roll and may only be re-enrolled in accordance with 3.1 to 3.3 above.

#### 4. **Opposed Applications**

- 4.1 Opposed applications will be heard on every Tuesday to Thursday of the 1<sup>st</sup>; 4<sup>th</sup> and 7<sup>th</sup> weeks of every Term in the Circuit Courts. The enrolment of opposed applications and the number of applications enrolled will be directed and controlled by the Registrar at the Circuit Court in consultation with the Judge President or Deputy Judge President or a designated Judge.
- 4.2 Any party may apply for the enrolment of an application for hearing on the opposed motion roll provided that:
- a) The papers have been indexed and paginated; and
  - b) The heads of argument have been served and filed, together with a practice note setting out in brief the nature of the application and the estimated duration of the hearing. The particulars of the unrepresented party or counsel or attorney who will be arguing the application must be furnished, including

their telephone number(s) and email address(es), if any. In addition;

- 4.3 The papers in the file must be properly indexed, paginated and bound together in bundles of not more than 100 pages each;
- 4.4 On completion of the index, it must be served immediately on the other party.
- 4.5 The applicant must serve and file heads of argument within 10 days of the date of completion of the index and the respondent must serve and file heads of argument within 10 days of the service of the applicant's heads of argument. The party filing heads of argument must ensure that the Registrar records on the court file the date of receipt of the heads of argument.
- 4.6 If any of the parties fail to file the heads of argument as provided for in 4.5 above, the other party who has served and filed heads of argument will be entitled to apply for the allocation of a date for hearing in terms of this paragraph and must state in the application that the other party has failed to file the heads of argument timeously.
- 4.7 Once the Registrar is satisfied that paragraphs 4.3 to 4.6 above have been complied with, he or she shall allocate a hearing date in terms of paragraph 4.1 above and ensure that the files are given to the Secretary or Clerk of the Judge on duty at the Circuit Court no later than 12h00 on the Thursday two weeks prior to the opposed motion week.
- 4.8 If the application would, for any reason, not be proceeded with on the date allocated, the parties must notify the Registrar thereof immediately. In the event of a postponement an onerous cost order might be made against a party at whose instance the matter cannot be proceeded with, particularly if that party failed to give timeous notice.

- 4.9 Any postponement shall be to a specific date arranged with the Registrar. Otherwise the application will be removed from the roll and will only be re-enrolled and dealt with in accordance with paragraphs 4.3 to 4.7 above and 4.8.
- 4.10 The number of opposed applications to be enrolled may change from time to time in line with paragraph 4.1 above.

## 5. Urgent Applications

- 5.1 A Judge designated to sit at the civil Circuit Court shall also hear urgent applications enrolled at that Circuit Court. Judges sitting in the Criminal Circuit Court will also preside over urgent applications should circumstances dictate, depending on his or her availability and the nature of the urgency of the matter.
- 5.2 Urgent applications will ordinarily be heard on Tuesday of each week.
- 5.3 Matters to be enrolled for hearing on Tuesdays at 10h00 in terms of 5.2 above, must be filed with the Registrar at the civil Circuit Court on the preceding Thursday not later than 12h00 to enable the Clerk of the duty Judge to prepare the files and prepare the roll for the following Tuesday.
- 5.4 Only in exceptional circumstances will an urgent application be enrolled to be heard on a date and at a time other than those set out in paragraphs 5.2 and 5.3 above. Depending on the degree of urgency, such matters will be enrolled as follows:
- 5.4.1. If the urgent application cannot be heard at 10h00 on a Tuesday, it may be enrolled on any other day of the week at 10h00. The applicant, in the founding affidavit, must set out facts that justify bringing the application on a date and time other than 10h00 on a Tuesday.

- 5.4.2 If the urgent application cannot be brought at 10h00 on any day during the week, it may be brought on any other day and at any time, provided that there is a Judge at the Circuit Court to hear the application. The applicant, in the founding affidavit, must set out facts to justify bringing an application on a day and time other than 10:00 during the week.
- 5.4.3 If a party wishes to bring an urgent application on any day or time outside of the ordinary Court hours, the Clerk of the Judge on civil Circuit Court duty, must be telephoned at a cellular phone number to be obtained from the Registrar of the Civil Circuit Court, specifying the request for the matter to be heard outside ordinary Court hours and the reasons therefor.
- 5.4.4 The enrolment of urgent applications outside Court hours or on any day other than a normal court day will only be done under exceptional circumstances based on extreme urgency. If no Judge is available on Circuit to hear the matter, the application shall be initiated in Pretoria in terms of the practice directive applicable there. In that event, the applicant shall, in the founding affidavit, concisely and clearly set out facts explaining why the application cannot wait to be heard during the following Court day or during normal court hours on the Circuit Court.
- 5.4.5 Urgent applications will not be readily entertained outside Court hours and normal Court days. They will only be enrolled and heard under exceptional circumstances depending also on the availability of a Judge on Circuit.
- 5.5 No applications brought on urgent basis will be enrolled and heard unless the affected party or parties have been given sufficient notice of the place, date and time of the hearing of the application. This includes time to prepare, file opposing papers and attend Court.

- 5.6 Sufficient time should also be given to the other party or parties in an application which is not filed with the Registrar at the Circuit Court on the Thursday preceding the Tuesday of the urgent motion week.
- 5.7 *Ex parte* applications; i.e, applications enrolled without Notice being given to the affected party or parties; will not be enrolled and heard; except where notice is not required or the order will not adversely affect any person.
- 5.8 *Ex parte* applications will only be enrolled and heard in exceptional circumstances, which must be clearly and concisely set out in the founding affidavit. Any person affected by the order obtained *ex parte*, may approach the court on 72 hours' notice to adjudicate the matter.
- 5.9 In each and every matter the reasons for urgency must be clearly and concisely set out in the founding affidavit; and it must be clear that the urgency was not self-created.
- 5.10 Any application brought on urgent basis will be struck from the roll if urgency is not evident or established during the hearing.

## 6. Appeals

- 6.1 Both criminal and civil appeals from the Magistrates' Courts shall be enrolled and heard at 09h00 on any Friday as determined by the Registrar at a Circuit Court from which the case emanates. The Registrar must ensure that the enrolment does not clash with unopposed matters enrolled on a Friday of the 1<sup>st</sup>, 4<sup>th</sup> and 7<sup>th</sup> weeks of Term in accordance with paragraph 3.1 above. The number and size of appeals so enrolled shall be determined by the Registrar, after consultation with the Judge President or Deputy Judge President.
- 6.2 Full Court appeals shall also be enrolled by the Registrar for 09h00 on any Friday as determined by the Registrar in consultation with the



Judge President or Deputy Judge President or any Judge designated by the Judge President.

## **7. Applications for Leave to Appeal and Petitions**

- 7.1 Applications for leave to appeal and petitions against matters finalised at either the civil or criminal Circuit Courts, shall be filed with the Registrar of the Circuit Court where the matter was finalised.
- 7.2 A party filing an application for leave to appeal must simultaneously file the judgment in the matter, if available.
- 7.3 As soon as the application for leave to appeal is filed, the Registrar at the Circuit Court shall forthwith forward the papers to the Clerk of the Judge who dealt with the matter.
- 7.4 That Judge shall make arrangements for the hearing of the application for leave to appeal. If the Judge is not available to hear the application, it may be heard by another Judge designated by the Judge President or Deputy Judge President.

## **8. Reviews**

- 8.1 All reviews emanating from any Magisterial District in the Mpumalanga Province shall, be filed with the Registrar of the Mbombela or Middelburg Circuit Court respectively in accordance with the jurisdictional boundaries published in Notice 1 of 2017.

## **9. Pending cases**

- 9.1 Cases pending in the Gauteng Division of the High Court, in respect of which either Mbombela or Middleburg Circuit Court would ordinarily have had jurisdiction, had those Circuit Courts been established at the time of the institution of those proceedings may, at the discretion of and

for the convenience of the parties, including an earlier hearing, be transferred to the relevant Circuit Court.

- 9.2 Matters referred to in 9.1 will only be so transferred at the request of the parties and if the Judge President is of the view that it would be expedient or in the interests of justice to hold a sitting for the hearing of that matter or matters at the Circuit Court; or if any of the parties formally apply for a transfer in terms of section 52 of the Superior Courts Act.

#### 10. **Effective Date**

This Practice Directive shall become effective from **1 September 2017**.