

30 MARCH 2020

DISPUTE RESOLUTION ALERT

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Courts' "protection orders" amid COVID-19

Following the President's unprecedented announcement that the country will go into "lockdown" for 21 days beginning on Friday, 27 March 2020, the various ministers of his Cabinet were obliged to publish regulations in term of the Disaster Management Act 57 of 2002 in respect of the functioning, or lack thereof, of services and operations under their respective portfolios.

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CLIFFE DEKKER HOFMEYR

Courts' "protection orders" amid COVID-19

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Therefore, on 26 March 2020, the Minister of Justice and Correctional Services, Ronald Lomala, issued the directions as contained in Government Notice No 43167. The aim of these regulations is, *inter alia*, to outline the operations of the courts during, and immediately post, "lockdown".

We have identified the following excerpts as being the most pertinent to the litigation practice.

1. Entry to the courts, or the court precinct, is restricted to urgent and essential matters, and only to those who have not been in contact with, or exposed to, people with COVID-19. The contingent of persons attending at court for the hearing of urgent matters will be limited to essential persons only. Essential persons include, subject to the assigned judge's discretion, persons with a material interest in the case such as litigants, accused, witnesses, those required to provide support, such as those accompanying children, victims of domestic violence or sexual abuse, and persons with disabilities, family members, and members of the media.

The court management and the judges, must, to the extent possible, ensure that the number of persons in a room be reduced to comply with safety measures and social distancing requirements.

2. All criminal trials enrolled during the lockdown are being postponed to after the lockdown, save for matters in which the "interests of justice" dictate that the matter be heard urgently.
3. Cases not identified as urgent or relating to essential services, shall not be placed on the court roll during lockdown, although the "Heads of Court" retain a discretion to hear matters via teleconference or videoconference.
4. All-time limits contained in the court rules shall be suspended until after the termination, or lapsing of the period of the National State of Disaster - i.e. there is a *dies non* on time period listed in the court rules. The only exceptions being as specifically ordered for urgent and essential cases -.
5. All evictions and the execution of attachment orders for movable and immovable property, including the removal of movable assets and sales in execution, are suspended for the duration of the lockdown.
6. The Master's office will be closed, save for payments to guardians, tutors and curators of minors and persons under curatorship, and the processing of documentation required for the burial of the deceased, and the urgent appointment of curators.

Courts' "protection orders" amid COVID-19...continued

All non-urgent matters enrolled from 27 March to 17 April 2020 are *ipso facto* removed from the roll without the parties having to comply with any of the usual formalities.

In addition to the above excerpts, the various divisions of the High Court of South Africa have issued their own directives in accordance with the Chief Justice's directive which delegates authority to the respective Judge Presidents in each jurisdiction.

In this respect, the two main seats of the High Court, being Gauteng (which includes both Johannesburg and Pretoria) and Cape Town, have taken slightly different approaches due to the availability of digital filing at the High Court in Johannesburg.

In Gauteng, the only court which will remain open to hear matters is the urgent court. No new case numbers will be issued, and no new matters may be enrolled (unless they are urgent).

The court will conduct such hearings by teleconference or videoconference, and only where this is impossible, will an in-person hearing taking place.

All non-urgent matters enrolled from 27 March to 17 April 2020 are *ipso facto* removed from the roll without the parties having to comply with any of the usual formalities.

These matters will be accommodated as follows:

Trials and interlocutory matters: as soon as possible after 28 April 2020;

Opposed motions and appeals: as soon as an assigned judge can hear the matter after 4 May 2020;

Applications with Rule *Nisi* return dates during the "lockdown" period should be brought to the attention of the Urgent Judge on duty, who will extend the Rule *Nisi* beyond the "lockdown" date; and

Unopposed motions: will be reenrolled automatically according to a published schedule.

Importantly, the advocate or attorney appearing in any allegedly urgent matter during the lockdown has to sign a certificate certifying that the matter is of such an urgent nature that it must be heard before Tuesday 21 April 2020. If a matter enrolled as such is found to not warrant a hearing during the lockdown, the assigned judge has a discretion to award punitive costs against the applying party, and the advocate or attorney can be interdicted from receiving any fees for all work relating to the matter.

In Cape Town, the court will only hear and issue urgent motion applications (including matters related to COVID-19) relating to bail, urgent maintenance, domestic violence related matters, and cases involving children. The issuing of any other actions or applications are suspended during the lockdown.

No new matters will be enrolled, and those civil trials, opposed motions, appeals and reviews already enrolled must be postponed to a date arranged with the registrar. The only new processes that will be accepted by the court at this stage are notices of intention to defend or oppose, and pleas.

Courts' "protection orders" amid COVID-19...continued

All motion court applications enrolled during the lockdown period must be postponed to a date after the lockdown, in consultation with the registrar.

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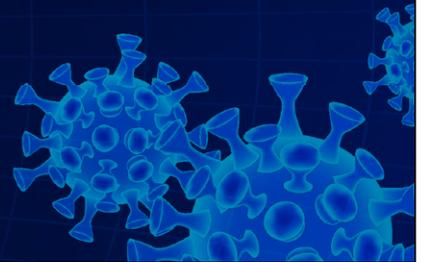
Arrangements must be made with the Judge on motion court or recess duty for all Rule *Nisi* matters with return dates during "lockdown" period. The return date must be extended until after "lockdown". If this is not achievable then the duty Judge must be approached to make the appropriate directives.

It is clear that the courts intend to operate as minimally as possible during the lockdown. Apart from the above-detailed urgent matters, the courts should be considered closed and attorney and clients are encouraged to liaise with their opponents to agree to a postponement between themselves.

*Andrew MacPherson
and Belinda Scriba*

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