



# Dispute Resolution

2 June 2026

SOUTH AFRICA

- Virtual commissioners of oaths.  
*Wag 'n bietjie!*



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## Virtual commissioners of oaths. *Wag 'n bietjie!*

There are websites openly offering online certification services to the South African public. Also, some online services ignore Regulation 6 of the Regulations Governing the Administering of an Oath or Affirmation (1972), which states unequivocally that “A commissioner of oaths shall not charge any fee for administering any oath or affirmation or attesting any declaration.” The office exists as a public service, accessible to all, without cost. A notary public may charge fees; a commissioner of oaths may not.

The Supreme Court of Appeal’s judgment in *LexisNexis South Africa (Pty) Ltd v Minister of Justice and Constitutional Development* (2026) (3) SA 71 (SCA) confirms that these websites are rushing the goalie. LexisNexis, having developed a web-based platform for virtual commissioning, asked the High Court for a declaratory order that “in the presence of” includes virtual presence. The issue is Regulation 3(1), which requires a deponent to “sign the declaration in the presence of the commissioner of oaths”. The High Court said no. LexisNexis appealed.

The SCA dismissed the appeal as the regulatory power vests in the Minister of Justice under section 10(1)(b) of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, and it would be “wholly inappropriate for a court to usurp the Minister’s powers” by deciding that the regulations should include live electronic communication. Compliance with Regulation 3 acts as a “guarantee to a court that the oath was understood and accepted by the deponent”, a guarantee an unregulated video platform cannot reliably replicate.

The doctrine of substantial compliance creates a narrow exception where physical presence is genuinely impossible, not just inconvenient. In *Knuttel NO v Bhana* [2022] 2 All SA 201 (GJ), the deponent had COVID-19; in *ED Foods SRL v Africa’s Best* [2024] ZAGP JHC 311, the deponents were in Italy and the affidavits in those specific circumstances were accepted. But the court in *FirstRand Bank Ltd v Briedenhann* 2022 (5) SA 215 (ECGq), when deciding that “in the presence of” means physical presence, cautioned that “it is not open to a person to elect to follow a different mode of oath administration to that which is statutorily regulated”.



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LexisNexis argued unsuccessfully for a broader reading given section 39(2) of the Constitution, which requires courts to “*promote the spirit, purport and objects of the Bill of Rights*” when interpreting legislation. An insistence on physical presence may impact access to justice, but section 39(2) does not empower a court to rewrite clear statutory language. Separation of powers requires respect for the Minister’s regulatory bailiwick.

The practical risk in ignoring the regulations is real. Consider how the convenience of a virtual commissioner stacks up against starting urgent proceedings entirely afresh when a court refuses to accept a virtually commissioned affidavit. Signatories might be prepared to accept that risk, but commissioners perform a solemn public function. When a commissioner states in the jurat (the commissioner’s certificate) that the affidavit was “*sworn to before me at Johannesburg*”, but the deponent was elsewhere, the commissioner lies to the court. Section 9 of the Act criminalises false statements, extending to commissioners who knowingly certify improperly administered oaths. A legal practitioner or chartered accountant commissioning documents virtually without compelling justification could face disciplinary proceedings, adverse costs orders and reputational harm. The same applies to certification of true copies. When a commissioner certifies a document as a “*true copy of the original*”, they represent that they have physically examined the original. This cannot meaningfully be done over video.

Ontario, Canada, has shown what is possible in Regulation 431/20, which expressly permits remote commissioning, subject to mandatory safeguards:

- real-time audiovisual communication throughout;
- identity confirmation;
- a modified *jurat* disclosing remote administration and recording both parties’ locations;
- reasonable precautions, including ensuring the deponent understands what is being signed; and
- retention of a record.

South Africa’s Minister could adopt a comparable model under section 10(1)(b) of the Act without amending the primary legislation. The structure is there; the Minister just needs to grasp the nettle.

Again, the law lags behind society. We bank online, sign contracts electronically, run trials over audiovisual platforms. But the solution is not in judges manipulating clear statutory language, nor in online services misrepresenting non-compliance as innovation. The solution is in the Minister changing the Regulations. Until then, Commissioners of Oaths must discharge their solemn duty as the law requires: in person, and with the full weight of the responsibility that the office demands.

**Tim Fletcher**



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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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