



CHAMBERS OF THE JUDGE PRESIDENT: NORTHERN CAPE HIGH COURT

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VIA EMAIL TO:

1. Judges – Northern Cape Division of the High Court, Kimberley
2. Registrars – Northern Cape Division of the High Court, Kimberley
3. Legal Practice Council – Northern Cape Province
4. Northern Cape Society of Advocates
5. Attorneys' Circle Diamond Fields
6. National Forum of Advocates
7. Black Lawyers' Association
8. Office of the Director Public Prosecutions – Northern Cape
9. Legal Aid South Africa – Kimberley
10. The Regional Court President – Kimberley
11. The Chief Magistrate – Kimberley
12. Master of the High Court – Kimberley
13. State Attorney – Kimberley
14. Road Accident Fund – Kimberley
15. Regional Head: Department of Justice and Correctional Services – Northern Cape
16. Regional Head: Department of Health – Northern Cape
17. Regional Head: Department of Public Works – Northern Cape
18. Area Commissioner: Department of Correctional Services – Northern Cape
19. Legal Services: South African Police Services

DIRECTIVE 2 OF 2020: ISSUED BY THE JUDGE PRESIDENT

Attached please find Directive 2 of 2020 effective immediately.

Kindly distribute to members of your organization.

L.P. TLALETSI

JUDGE PRESIDENT

NORTHERN CAPE DIVISION



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DIRECTIVE 2 OF 2020: ISSUED BY THE JUDGE PRESIDENT

This Directive is issued in terms of section 173 of the Constitution Act 108 of 1995 (the Constitution) read with section 8(4)(b) of the Superior Courts Act 10 of 2013 (the Act).

PART A

NATIONAL STATE OF DISASTER DECLARED IN TERMS OF THE DISASTER MANAGEMENT ACT, 2002

1. Notice is hereby given that Directive 1 of 2020 providing for the operations and Judicial functions of the Northern Cape Division during the Nation-wide Lockdown for the period of twenty one (21) days with effect from midnight of Thursday 26 March 2020 declared in terms of the Disaster Management Act, 2002, in order to, *inter alia*, prevent and curb the spread of the COVID-19 throughout the Republic, and that applied during any extended Lockdown period that had been declared in terms of the said Act issued on 25 March 2020 by myself, is hereby recalled.
2. The proceedings and processes in this Division shall be conducted in accordance with the Act, Rules for the Conduct of Proceedings in the High Courts of South Africa (Uniform Rules), Rules regulating the proceedings of the Northern Cape Division (the Northern Cape Rules) and the applicable Practice Directives previously issued in this Division.
3. It shall be in the discretion of the Judge presiding in a matter to direct, where possible, after obtaining the views of the parties involved, that the matter be conducted through electronic

means or be determined in any other manner other than the physical appearance of the parties in court.

4. The discretion in (3) above shall *inter alia* be exercised within the context of sections 34 and 36 of the Bill of Rights in the Constitution; sections 165, 166 and 171 of the Constitution providing for the Courts and Administration of Justice and sections 8, 16 and 32 of the Act.
5. Measures adopted by the Heads of Court to curb the spread of Covid-19 on 17 March 2020 published by Directives issued by the Chief Justice in terms of section 8(3)(b) of the Act shall at all times be strictly adhere to.

PART B

RULE 6 OF THE UNIFORM RULES AND NORTHERN CAPE RULE 3(4)

1. It has been the practice in this Division that once motion proceedings become opposed, the Registrar is required to provide a date on the opposed Roll to which the matter is postponed. This practice is not provided for in Rule 6 of the Rules for the Conduct of Proceedings in the High Courts (Uniform Rules). The practice has led to dates being booked for matters which are not yet ready for hearing without a guarantee that these matters will ultimately be ready on the allocated date. Our court rolls have been clogged by these matters which in most cases have to be postponed or removed from the Roll.
2. The purpose of this Directive is to do away with the said practice and that only opposed motion matters that are ripe for hearing are allocated dates of hearing. It is also intended to provide recourse to a party who is prejudiced by non-compliance by the other party with the Rules or court orders.

This Directive is further intended to require a party setting a matter down for hearing/trial to specify in such Notice the order that will be sought, to avoid confusion.

3. Dates on the opposed roll

- 3.1 If notice of intention to oppose is given in terms of Uniform Rule 6, such an application shall on the first date of hearing be postponed (the "*first postponement*") to a date not more than 2 months (the "*postponed date*"), for the parties to exercise their rights in terms of sub-rules (d), (e) and (f) of Uniform Rule 6(5) and in terms of paragraphs 4 and 5 below, and on such postponed date the application will then be postponed to the opposed roll for the date

allocated by the Registrar in accordance with the provisions of Uniform Rule 6(5)(f) and in terms of paragraphs 4 and 5 below (“the opposed date”).

3.1.1 In the case of a notice of intention to oppose an application on notice of motion in terms of Form 2(a), the applicant must in any event set the matter down for the date of hearing indicated in such notice of motion, and must in such notice of set down indicate that it is set down for purposes of a first postponement in terms of paragraph 3.1 above.

3.1.2 In the event that an opposed date has not yet been applied for or obtained by the postponed date, any party who seeks a further postponement on the unopposed roll must file, by no later than 12:00 on the Wednesday preceding the postponed date, a written explanation for this.

4. A party who files, together with an application for a date in terms of Rule 6(5)(f), heads of argument and a practice note as envisaged in respectively sub-rules (5) and (6) of Rule 3 of the Rules Regulating the Proceedings of the Northern Cape Division (the Northern Cape Rules), shall be allocated a preferred date of hearing.

5. In the event that a party should not file answering or replying papers within the periods agreed upon and determined in an order of court, any other party who has complied therewith and/or does not intend filing further papers will be entitled to apply for a date in terms of Rule 6(5)(f), in which case the provisions of paragraph 4 will also apply.

6. **The proviso to Northern Cape Rule 3(4)**

6.1 Without derogating from the responsibility of practitioners to properly consider and, where applicable, comply with the proviso to Northern Cape Rule 3(4) regarding long or complicated applications:

6.1.1 Applications in which the number of pages (including annexures to affidavits) exceed 100 pages will be regarded as long applications.

6.1.2 Applications in which senior counsel is briefed will be regarded as complicated applications.

7. **Notice of Setdown/Enrolment**

A party setting any application or action down for hearing or trial shall serve and file a Notice of Setdown/Enrolment stating the order to be sought from the Court.

8. Application of this Practice Directive

In so far as it is necessary all previous Practice Directives/Notes that are in conflict with this Practice Directive are hereby withdrawn.

Issued on 9 June 2020.

A handwritten signature in black ink, appearing to read 'L.P. Tlaletsi', written in a cursive style.

L.P. TLALETSI

JUDGE PRESIDENT

NORTHERN CAPE DIVISION