

SUPREME COURT OF APPEAL OF SOUTH AFRICA

Practice Directive 1/2024

Whereas the Superior Courts Act 10 of 2013 provides that the management of the judicial functions of each court is the responsibility of the head of that court;

And whereas the Rules Regulating the Conduct of Proceedings of the Supreme Court of Appeal¹ (Rules of the SCA) allow the President of the Supreme Court of Appeal to truncate the timelines for the prosecution of appeals by issuing directives;

And whereas the Constitutional Court² has held that proceedings related to the Hague Convention on Civil Aspects of International Child Abduction (the Hague Convention) ought to be handled with the urgency which the Hague Convention demands, and has observed that a step towards expeditious hearings of all matters related to the Hague Convention can be achieved by Practice Directives;

Now therefore, the President of the Supreme Court of Appeal hereby issues the following Practice Directive³ in respect of all applications and appeals related to the Hague Convention:

1. The main objective of this Practice Directive is to expedite the handling of all **appeals and applications related to the Hague Convention.**

1.1. The provisions of Rule 6 of the Rules of the SCA shall apply to all applications related to the Hague Convention subject to the following:

1.1.1 Once an application for leave to appeal or any other application related to the Hague Convention has duly been lodged, alternatively where a

¹ Published under GoN R1523, G. 19507 (c.i.o 28 December 1998), GoN R979, G. 33689 (c.i.o 24 December 2010), GoN R191, G. 34073 (c.i.o 15 April 2011), GoN R113, G. 36157 (c.i.o 22 March 2013), GoN R1055, G. 41142 (c.i.o 1 November 2017), GoN R1318, G. 42064 (c.i.o 10 January 2019), GoN R842, G. 42497 (c.i.o 1 July 2019), GoN R858, G. 43592 (c.i.o 11 September 2020), GoN R1158, G. 43856 (c.i.o 1 December 2020), GoN R1602, G. 45645 (c.i.o 1 February 2022), GoN R2135, G. 46475 (c.i.o 8 July 2022), GoN R3059, G. 48067 (c.i.o. 24 March 2023), GoN R3398, G. 48571 (c.i.o 19 June 2023)

² *Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another* [2023] ZACC 37; 2024 (2) BCLR 147 (CC); 2024 (3) SA 249).

³ In *Ramadhani [National Director of Public Prosecutions]* [2018] ZASCA 86; 2018 (2) SACR 176 (SCA) para 31, the court stated as follows regarding how a practice directive stands in relation to a statute, the Uniform Rules and the common law:

‘The practice directive is subordinate to any relevant statute, the common law and the Uniform Rules and it cannot be applied to restrict or undermine any piece of legislation, the Uniform Rules of Court or the common law. Practice directives deal essentially with the daily functioning of the courts and, their purpose is to supplement the rules of court.’

Notice of Appeal has been lodged within the period prescribed in the Rules of the SCA, a file must be opened by the Registry Clerk. The front cover of the court file must be clearly marked by the Registrar as a Hague Convention matter and be endorsed as 'urgent', and the Registrar must draw the attention of the applicant or the applicant's representative to the provisions of this Practice Directive.

- 1.1.2 The Registrar must then register the matter in the Hague Convention Matters Chamber Register and create a duplicate file for the President of the Supreme Court of Appeal (the President). The duplicate file is to be taken to the President together with the Hague Convention Matters Chamber Register.
- 1.1.3 In the case of applications for leave to appeal, after expiry of the period allowed for the filing of the affidavits, the President shall immediately designate a panel for the consideration of the application for leave to appeal by the designated Judges in chambers.
- 1.1.4 Should an application for reconsideration of the decision of the panel that decided the application for leave to appeal subsequently be lodged as envisaged in s 17(2)(f) of the Superior Courts Act 10 of 2013, the procedures set out in Practice Directive 1/2018 dated 6 December 2018 shall be followed.
- 1.1.5 Where the application for leave to appeal has been granted by the designated panel, alternatively where the application envisaged in s 17(2)(f) is granted by the President and the matter is referred to court for reconsideration and, if necessary variation and/or referred for oral argument, the applicant must comply with the requirements set out in that order.
- 1.1.6 The applicant shall, within three weeks of the granting of the order, mentioned in para 1.1.5 above, lodge six copies of the record of the proceedings in the court a quo with the Registrar and deliver to each respondent such number of copies as may be considered necessary or as may reasonably be requested by the respondent. The provisions of Rule 8(4) - 8(9) of the Rules of the SCA shall be applicable in respect of the filing of the record.

- 1.1.7 In the case of appeals, the appellant shall, within three weeks of the lodging of the Notice of Appeal, file six copies of the record of the proceedings in the court a quo with the Registrar and deliver to each respondent such number of copies as may be considered necessary or as may reasonably be requested by the respondent. The provisions of Rule 8(4) - 8(9) of the Rules of the SCA shall be applicable in respect of the filing of the record.
- 1.1.8 In the event that any party is unable to meet the truncated timelines indicated in this Practice Directive, that party's attorney of record or the unrepresented litigant may, prior to the deadline, request the extension of the indicated time limit for lodging.
- 1.1.9 The parties shall lodge their heads of argument as follows: six copies of the appellant's main heads of argument shall be filed with the Registrar within two weeks of the filing of the record. Six copies of the respondent's main heads of argument shall be filed with the Registrar within two weeks of the filing of the appellant's main heads of argument.
- 1.1.10 The parties' heads of argument must comply with Rule 10(3) of the Rules of the SCA. Furthermore, the parties' attention is drawn to the provisions of Rule 10(2A) of the Rules of the SCA.
- 1.1.11 If the appellant fails to file heads of argument within the period indicated above or within the extended period, the appeal shall lapse.
- 1.1.12 If, after the appellant has filed heads of argument, the respondent fails to lodge heads of argument within the indicated period or within the extended period, the appeal shall be enrolled for hearing and the Court may at the hearing in the absence of the defaulting party, and after hearing argument, make such order as it deems fit.
- 1.1.13 The President shall determine the date and time for hearing of the appeal on an expedited basis and may, as envisaged in Rule 2(2) of the Rules of the SCA, enrol the matter out of term.
- 1.1.14 The Registrar shall, subject to the directions of the President regarding the date of the hearing of oral arguments, notify each party of the date of the hearing as envisaged in Rule 13 of the Rules of the SCA.

2. Other urgent appeals

Should a party be of the view that a matter pending before the Supreme Court of Appeal warrants preferential enrolment whether by reason of urgency or other good cause shown, that party must immediately inform the President by letter addressed to the Registrar for the attention of the President.

3. No interpretation of this Practice Directive should have the effect of denying access to justice to any litigant.
4. In case of uncertainty, the party's attorney of record or the unrepresented party should not hesitate to inform the President by letter addressed to the Registrar for the attention of the President.
5. This Practice Directive will be enforced with immediate effect and shall apply until set aside by another Practice Directive, or until the Rules of the SCA have been amended so as to give priority to the Hague Convention matters and facilitate the expeditious finalisation of urgent appeals.



M B Molemela
President
Supreme Court of Appeal
25 September 2024