SUPREME COURT OF APPEAL PRACTICE DIRECTION

The President of the Supreme Court of Appeal hereby issues the following Practice directions in respect of the Supreme Court of Appeal and replaces all previous practice directions.

PRACTICE DIRECTION - SUPREME COURT OF APPEAL VIDEO OR AUDIO HEARINGS DURING COVID-19 PANDEMIC

This Practice Direction supplements the Practice Direction issued on 24 April 2020. It is made under the powers delegated by the Chief Justice in his directives issued on 17 March and 17 April 2020 and by virtue of the authority vested in the Heads of Court in terms of s 8(4)(*b*) of the Superior Courts Act 10 of 2013. It relates to virtual hearings only and comes into force with immediate effect.

INTRODUCTION

In light of the COVID-19 pandemic it has become necessary to introduce directives to regulate the manner in which hearings are conducted in the Supreme Court of Appeal.

Virtual hearings are the default position until further direction. The primary aim is to ensure ongoing access to justice by all parties to cases before the court and safety from infection whilst facilitating hearings that allow parties to participate as fully as possible.

COURT'S APPROACH

1. The virtual hearings may be conducted by way of telephone or video-web conferencing solutions, if available. There is currently no 'single' technology to be used by the judiciary and the court and parties shall choose from a variety of platforms, including Microsoft Teams installed on judicial laptops, Webex, Zoom or any other appropriate and convenient means of virtual communication as directed by the court.

2. Notwithstanding the default position, the court's permission, requested through the registrar, is still required for all or any part of the proceedings to be dealt with by way of virtual hearing.

3. There may be some cases that will need to be adjourned because a virtual hearing is not possible, and an in-person hearing would not be safe or possible. These should be identified promptly and notice thereof given to the registrar.

4. A telephone or video conference involving only litigants in person is permissible as is a conference with only legal representatives or any combination.

5. Where the court directs that one of the parties is to host or arrange the hearing that party shall be treated as being authorised to, and entitled to, host the relevant hearing.

6. The particular platform must be agreed at the outset of each case. Upon request, parties are to provide the registrar with the individual email addresses and WhatsApp contact details for each of the participants including attorneys and client representatives. Whichever platform is identified for the virtual hearing, some basic rules will apply. Set out here are guidelines; the list is not closed and many of these issues will need to be navigated on a case by case basis in accordance with the directions of the presiding judge:

(a) Virtual hearings are court hearings and the solemnity of the occasion should be observed as closely as it is in a courtroom, with the judges present, notwithstanding the domestic location of some or all of the participants. The manner of address during virtual hearings will be similar to the manner of address during in-person hearings. Judges and legal representatives will be required to robe. The Court may, however, elect to dispense with any of the usual formalities, and the parties are expected to act accordingly.

(b) Participants are required to be considerate to the other participants and the judges when setting up their physical environment from which to conduct a virtual hearing. Background noises should be reduced to a minimum and avoided where at all possible. Counsel and other participants should be alone, in a secure room, with the doors closed. Computers must be situated facing any light source such as the window and not the light behind the participant. Wherever possible the participant should be seated in front of a blank wall or similar backdrop to avoid distractions.

(c) Any firewall and security restrictions must be identified and resolved before the virtual hearing commences. Testing of the video and audio feed of each party and counsel should take place before the allotted hearing time and before the judges join the hearing. If required counsel must be available for a video or telephone conference with the presiding judge shortly before the commencement of the hearing, in order to discuss arrangements for the hearing.

(d) Hearings will start promptly at the scheduled time and the judges will aim to be present from that time. The matter will be called and the presiding judge will ask for appearances. More detailed information than is normally provided may be required or provided and the framework and the practicalities of the hearing will be determined so that the court is satisfied that the hearing can properly proceed and that all participants understand what will occur and what they are required to do as well as the limitations of the technology and the adjustments to be made to cater for these.

(e) The presiding judge will set out the court's preference for dealing with interruptions. It may be required that all video cameras are switched off and turned on to indicate that one wishes to interject or contribute a point. It may also be required that all video cameras remain on throughout and interruptions may be allowed through turning off the mute button. When counsel or a participant is not speaking their microphone should be set to mute and unset when they speak.

(f) If time is required one legal representative should be responsible for maintaining email communication with the presiding judge or the registrar so that requests for more time may be addressed quickly.

(g) All video and audio enabled virtual hearings must be recorded. Subject to court direction, responsibility for recording and management of the audio recording will fall on the party or court that has organised the virtual hearing. Where the host of the hearing is a legal representative, she or he must, immediately following the hearing, provide to the court a link to the record which shall be posted on the court's website.

(h) No party may record the hearing without the permission of the court.

(i) Where one party is unable to attend a remote hearing by way of an electronic communication platform (for example, where they do not have access to the relevant technology or have a very poor Internet connection) but can attend by telephone, the virtual hearing may be held by telephone conference call, to be arranged by the applicant or by the court where no party is represented.

(j) The attendance of the media shall be accommodated as far as possible in a virtual hearing when requested in order that the public interest may be served. Representatives of the media wishing to attend a hearing shall contact the Registrar, to indicate their wish to do so and arrangements will be made accordingly through the presiding judge's secretary.

(k) In the event of unforeseen or unavoidable technological glitches, the hearing will be stopped to address those glitches. If the hearing cannot be resumed a fresh hearing shall be arranged and the participants advised accordingly.

M.M. MAYA

PRESIDENT OF THE SUPREME COURT OF APPEAL

BLOEMFONTEIN

Dated at Bloemfontein on 29 April 2020

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