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22 April 2025

## Media Statement

**Note:** Please attribute this statement solely to the Office of the Chief Justice (OCJ) as a Government Department and not the Chief Justice of the Republic of South Africa or the Judiciary.

## DIRECTIVE ON THE IMPLEMENTATION OF MANDATORY MEDIATION IN THE GAUTENG DIVISION OF THE HIGH COURT

The Judge President of the Gauteng Division of the High Court, Judge President Dunstan Mlambo, has issued a Directive on the implementation of mandatory mediation in the Division for all civil trial matters. The Directive is implemented with effect from 22 April 2025. The Directive is attached for ease of reference and may also be accessed on the Judiciary website on the following link: <https://www.judiciary.org.za/index.php/courts/high-courts/gauteng-division-of-the-high-court/directives>.

The Directive has been issued following a wide consultative process by the Division with law bodies, practitioners, mediation organisations, mediators and litigants in general. It is aimed at alleviating the backlogs and constraints that currently plague the Division's Civil Trial roll. A draft Directive was circulated by Judge President Mlambo for inputs and comments with a deadline of 3 April 2025, which was extended to 8 April 2025. The final Directive takes into account all inputs and comments received from stakeholders.

### Comments on the draft Directive: a summary

Generally, comments on the draft Directive were received predominantly from legal practitioners, especially those specialising in personal injury claims. Comments were also received from legal professional bodies, medico legal experts, mediation organisations and mediators. Feedback was also received from the Rules Board for Courts of Law. Several articles were also flighted in the media. The comments were mixed, including both objections



to and support for the draft Directive, as well as input that sought to add technical variations to the proposed Directive.

Legal practitioners, who predominantly act for plaintiffs, objected to the Directive, especially to losing trial dates as prescribed in the draft Directive. Of note, however, was the apparent lack of understanding of mandatory mediation by some practitioners who referred to the requirement as an imposition of a 'hurdle' in the dispute resolution process. There were also suggestions by some practitioners that case management by way of mandatory mediation exceeded the powers afforded to the Judiciary by section 8 of the Superior Courts Act (Act No.10 of 2013) which deals with judicial management of judicial functions. Some practitioners also argued that the implementation of mandatory mediation interfered with the right to access to justice as guaranteed in section 34 of the Constitution of the Republic.

### **Rationale for the Directive**

The overarching rationale for the Directive is to provide an effective and expeditious litigation platform that guarantees access to justice service, within the contemplation of the Constitution. As of February 2025, the Division's Civil Trial roll has trial dates issued as far ahead as 2031. This situation is clearly untenable and infringes on the right to access to Courts as guaranteed by section 34 of the Constitution.

The Leadership of the Gauteng Division has decided to adopt drastic measures to address this situation, and the Directive is such a measure.

The Directive is borne out of the overwhelming insistence for trial dates by plaintiffs' legal representatives for matters that have no triable issues and as a result have no need for adjudication by a Judge. An overwhelming majority of matters on the trial roll of the Gauteng Division are settled on the trial day. The Division also introduced a roll dedicated for matters that have been settled between the parties. On any given day, matters are removed from the trial roll to be enrolled in the settlement roll.

The Division also has a dedicated Default Judgement roll. Matters on this roll are those in which the defendant, particularly the Road Accident Fund, has not filed opposition papers or where such opposing papers were filed but the defence has been struck out.



Overall, less than 10% of matters on the trial roll of the Division require a Judge to resolve them through adjudication.

This reality is disputed in a majority of the objections received. To answer these denials, the Division has undertaken a sample of matters enrolled in both Courts in the period 10 – 28 March 2025. As the attached statistical reports show – in Johannesburg 59 matters and in Pretoria 339 were on the trial roll over that period. In Johannesburg out of the 59 matters on the trial roll only 2 matters presented a triable issue requiring a Judge. In 32 matters, draft orders were granted in 21 and 11 were settled. These matters had no triable issues hence these outcomes. In Pretoria over the same period, 11 matters presented with triable issues requiring Judicial attention. In 174 matters, draft orders were granted and 9 (8 and 1) were settled. These matters presented no triable issues requiring judicial attention. The rest were either struck off, removed or postponed. The statistical outcomes from these weeks illustrate in no uncertain terms that the Civil Trial roll is inundated with matters that have no triable issues and, as such, do not require a judge to resolve them. The effect of the presence of these matters on the trial roll prejudices matters that genuinely deserve judicial attention by means of a trial. The ineluctable conclusion is that these matters should not be given space in the Civil Trial roll.

The Judge President has also pointed out that in terms 3 and 4 of 2025, for example in Pretoria, a total of 1255 and 1374 trial matters are on the roll in that Division. Taking account of the statistics referred to above, more or less 15% of the matters on those rolls present triable issues requiring attention by a Judge. The remaining overwhelming majority of matters do not require judicial attention, hence this Directive that those matters be subjected to mediation for expedited resolution. This will expedite their resolution instead of waiting for years to be resolved by settlement on the date of trial. Expedited resolution is in the best interest of the litigants involved. Their early resolution will also relieve pressure on the Civil Trial roll to enable the early enrolment of deserving matters. As such, mandatory mediation has been selected as the option to fulfil this objective.

It is correct that a contributory reason for the backlog in the Division can also be ascribed to an inadequate number of Judges. The last occasion the Judicial establishment of the Gauteng Division of the High Court was increased was in 2008, yet the caseload of the Division continued to rise and has now reached unmanageable levels. However,



increasing the judicial capacity of the Division on its own will not resolve the problem caused by the enrolment of matters that present no triable issues.

It is worthwhile to mention that following its 2023 Judges' Conference, where matters impacting access to justice were extensively discussed, amongst others, the Judiciary has steadfastly called on all role players and stakeholders, including the Law Reform Commission, to expeditiously take all reasonable steps to implement mediation as a form of alternative dispute resolution. The Directive on the implementation of mandatory mediation in the Gauteng Division of the High Court is a contribution to these efforts and aims to open up the Division's Civil Court for matters that earnestly require judicial attention.

"This Directive will ensure that only matters that require judicial intervention are placed on the Court roll for consideration by a Judge. As things stand, our Civil Court roll is inundated with matters that can be resolved without the intervention of a Judge. The proof of this can be found in the fact that more than 85% of trial matters that have waited years to be on the trial roll always settle upon the arrival of the trial date without judicial intervention," notes Judge President Mlambo explaining the unnecessary delays caused to litigants with matters requiring consideration by a Judge.

Section 173 of the Constitution gives authority to the Judge President to exercise policy oversight over the manner in which matters are brought before the Division for hearing. This empowers the Judge President to put in place measures that will promote the efficient administration of justice in the Division.

This Directive is implemented within the provisions of the Uniform Rules of Court (Supreme Court Act 59 of 1959). Section 41A of the Uniform Rules of Court provides for mediation as a dispute resolution mechanism and sets out the necessary processes to be followed by parties to a dispute who, by agreement, voluntarily enter the mediation process. As such, the right to access to courts is not taken away. Instead, parties are urged to meaningfully explore the stated alternative dispute resolution mechanism before seeking judicial intervention. A mediation process neither forces nor compels parties to agree to a result they do not want. Should they not voluntarily and by agreement reach a mediated settlement, their rights to approach a court remain intact. Judge President Mlambo has emphasised that matters that lose trial dates as a result of the implementation of this Directive, are



guaranteed dates earlier than the dates taken away, in the event that those matters have not settled after a genuine mediation process.

However, it should also be noted that the right to access to the Courts, as enshrined in section 34 of the Constitution, is not absolute and can be limited in certain circumstances. While it guarantees everyone the opportunity to have their disputes resolved by an independent and impartial tribunal, this right is not limitless and can be restricted when a litigant's conduct misuses the judicial process.

Finally, the introduction of mandatory mediation is a progressive policy choice which draws support from several sources:

- Mandatory mediation has already been part of our law for three decades in the labour law field pursuant to the Labour Relations Act 66 of 1995. Further, the Land Court Act 6 of 2023, provides for mandatory mediation;
- Chapter 7 of the Report of the Law Reform Commission and its Draft Mediation Bill provides for mandatory mediation; and
- The application of mandatory mediation in other jurisdictions has demonstrated a global policy shift in favour of mediation as an effective option to guarantee effective access to justice and Courts. These developments are calculated to safeguard the effectiveness of the Courts' capacity to adjudicate cases that truly require adjudication.

## **Implementation**

With effect from the 22<sup>nd</sup> of April in term 2 of 2025, the Registrar of the Civil Trial roll shall not issue a trial date unless the request for a trial date is accompanied by a mediator's report as contemplated in the Protocol.

New procedures for civil trials are introduced for two periods:

- the period commencing 1 January 2026;
- The period commencing 1 January 2027 and
- for a transitional period from the issue of this Directive until 31 December 2026.



All efforts have been made to ensure that the Directive does not detract or impede any established Rules of Court.

**-Ends-**

***Issued by the Office of the Chief Justice***

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