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TRACEY LOMAX

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MY REF : **MS LOMAX/**

YOUR REF :

DATE : **2 APRIL 2020**

To : The Honourable Minister of Justice

Mr Ronald Lamola

Per email : Ministry@justice.gov.za

Per email : jjeffery@justice.gov.za

To: The Office of the Chief Justice

Per email : enquiries@judiciary.org.za

Dear Sirs,

OPERATION OF THE COURTS DURING THE COVID-19 LOCKDOWN

This correspondence is addressed to you on behalf of the legal practitioners appended here below and my own.

We preface our request and offer of assistance by acknowledging that these are unusual and pressing times and we are all under extreme pressure. We further acknowledge the sterling work which our government is doing to ensure the safety of our people and we are appreciative of the steps that have been taken to protect the public and practitioners during the current lockdown.

However, we note and convey to you our concern about the confusion that has arisen from a failure to provide consistent directives from the offices of the Chief Justice and the Department of Justice, concerning the application of the following: -

1. prescription;
2. *dies non*;
3. the operation of the Courts during this time.

We understand that the Office of the Chief Justice has delegated the authority for directives to the various Heads of Court. However, instead of providing much-needed certainty, these directives have been varied and inconsistent and in some cases impractical, especially in relation to Magistrates' Court matters, for example, some courts require attendance while others do not, and we find ourselves, as legal practitioners, unable to advise our clients with meaningful accuracy.

The communication from the Ministry of Justice is equally perplexing, because the regulations issued on 26 March stipulated that *dies non* applies, but the amended regulations (31 March 2020) are silent on the issue of *dies non*.

Consequently, much is – and will be – left up to the courts to determine. Not only is this impractical, because different courts may apply different solutions to similar facts, but condonation applications may then dominate the courts post-lockdown. This will serve to increase the burden on an already over-burdened court roll. In addition, costs will increase at a time when clients will have already faced financial stress due to the lockdown.

Legal practitioners operate on certainty, on which our advice to clients must be based. We are currently left with no option but to advise our clients that prescription still runs and so does *dies non*, despite the anomaly that we may not file documents at court.

This is a time of crisis. Decisiveness is essential. Certainty from the Justice Department and from the Office of the Chief Justice is an imperative.

Any failure to address the concerns raised herein will inevitably force an application for a Declaratory Order to give clarity on the issues raised above.

May we respectfully request that your respective offices act promptly to address the issues raised to avoid such an eventuality.

In the present circumstances we propose an amended directive which addresses that:

- *dies non* applies for as long as the national lockdown is in place;
- prescription be deemed interrupted for as long as the lockdown, or any subsequent lockdown is in place;
- no process, notice or further step may be pursued by any party, in any matter, for the duration of lockdown, unless by agreement between the parties.

May we assure you of our very best intentions and objectives and further offer our collective services to assist with the drafting of the required amended directives/regulations, and additionally, to assist where we can in communicate with all members of the legal fraternity in the hope that we may ease the current burden on your offices.

Yours faithfully,

Tracey Lomax

For and on behalf of:

MViP Attorneys (Mohammed Vally)

Andrew Meldrum

Leandra Perel

Dennis Warren-Tagney

Shela Teffo

Claudia Privato

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