

Practice Directions

The Acting Judge President of the Land Claims Court replaced all previous practice directions with the following consolidated practice directions on 8 June 2012:

	Page
Practice Direction No 1: General.....	3
Practice Direction No 2: Allocation and dates.....	4
Practice Direction No 3: Urgent Applications.....	6
Practice Direction No 4: Heads of argument.....	7
Practice Direction No 5: Practice direction in relation to cases in magistrates' courts in terms of the Extension of Security of Tenure Act, 62 of 1997 ("the Act").....	9
Practice Direction No 6: Probation Officer Reports in terms of section 9 (3) of the Extension of Security of Tenure Act 62 of 197.....	12
Practice Direction No 7: Pre-trial conferences.....	14
Practice Direction No 8: Requests for trial dates.....	15
Practice Direction No 9: Motion Court.....	16

Practice Direction No 10: Collating, indexing and paginating of court files.....	18
Practice Direction No 11: Preparation of statement of agreed facts and facts in dispute.....	20
Practice Direction No 12: Witnesses.....	21
Practice Direction No 13: Striking off the roll.....	22
Practice Direction No 14: Allocation of a case to a Judge for hearing.....	23
Practice Direction No 15: Referrals to the Land Claims Court by the Land Claims Commission in terms of Section 14 of the Restitution of Land Rights Act No 22 of 1994.....	24

PRACTICE DIRECTION NO 1

- 1 All judges of the Court, including the President, should be addressed as 'Judge X' or 'Judge Y' and referred to as 'Judge X' or 'Judge Y'. The President may also be referred to as 'the President'.
- 2 The expression 'Your Lordship', 'Your Ladyship', 'Justice', 'Your Honour', 'Your Worship' similar expressions should not be used.
- 3 Other than the President (or a judge acting as president in his or her absence), the judges of the Land Claims Court enjoy equal seniority and, after the President, there is no order of precedence.
- 4 Legal practitioners appearing before the Court in open court are required to robe, wherever the court is sitting. This does not include pre-trial conferences chaired by a judge.
- 5 Arrangements for the interpretation of evidence or argument should be made with the Registrar in terms of the rules of the Court well before the hearing of any matter.
- 6 Legal practitioners appearing in the Court are required to introduce themselves to the Presiding Judge. This should be arranged with the Presiding Judge's registrar.

PRACTICE DIRECTION NO 2

Allocation of dates

1. The allocation of dates for conferences and hearings is dealt with in Rule 30(2) and Rule 55 of the Land Claims Court Rules.
2. Any party applying for the allocation of a date for a conference or a hearing must do so in accordance with Practice Directions No 7 and 8 by notice addressed to the Registrar of the Land Claims Court and served on all other parties who have delivered a notice of appearance.
3. The attention of the parties is drawn to rule 55 (5) regarding the postponement of a hearing date.

4. Additional sets of documents

Parties are reminded that all documents issued out of or filed with the Land Claims Court must be:

- a. in triplicate in the case of a matter referred to in rule 19(4); and
- b. in duplicate in any other matter.

5. Handing up of documents to the bench during a hearing

If documents have to be handed up to the bench during a hearing, parties have to ensure that sufficient copies are provided. The original document must be handed to the registrar. A copy must be made available to each of the judges and assessors on the bench.

6. Notify registrar of settlements and postponements

As soon as parties are aware that a matter will not, or is unlikely to, be heard on the day on which it has been set down for hearing, they must inform the presiding judge's secretary. The reason why the case will not, or is unlikely to, be heard must be given.

PRACTICE DIRECTION NO 3

1. Urgent applications

- 1.1 Any person wishing to bring an urgent application must make use of rule 34(3). Failure to do so may result in a judge not being available to hear an application and the matter having to be postponed.
- 1.2 The Land Claims Court's telephone number is (011) 781 2291.
- 1.3 If problems are experienced with this line and the matter is urgent, you may try 078 069 4867 (Acting Registrar, Mr P Mudau).
- 1.4 If it is after hours and the matter is urgent, you may contact Mr P Mudau on 078 069 4867.
- 1.5 Please note that this contact number may change in future, in which event, a further practice direction will be issued.

PRACTICE DIRECTION NO 4

Heads of argument

1. Not later than 10 days before any appeal or opposed application is heard the applicant/appellant shall deliver a concise and succinct statement of the main points which he/she intends to argue, with references to the authorities relied upon, together with a list of such authorities.
2. Not later than 5 days before the appeal/opposed application is heard the respondent shall similarly deliver heads of argument.
3. The original and 2 copies of such heads of argument will be filed with the registrar and copies shall be delivered to the other parties.
4. The heads of argument shall contain references to the record as well as the authorities relied upon.
5. Appellant/Applicant or his or her legal representative shall, when delivering the heads of argument, include a statement at the commencement of the heads setting out which portions of the record, if any, he/she regards as irrelevant to the appeal and to which they do not intend to refer. The respondent must similarly so indicate by way of a statement at the commencement of his/her heads.
6. In all trials written heads of argument shall be furnished at least a day

before argument commences or as directed by the Presiding Judge.

7. If heads of argument are not filed timeously parties run the risk of a matter being struck from the roll.

PRACTICE DIRECTION NO 5

Cases in Magistrates' Courts in terms of the Extension of Security of Tenure Act, 62 of 1997 ("the Act").

- 1 Magistrates are reminded, when a case is brought in terms of the Act, that the rules of procedure applicable in civil actions and applications in a High Court apply. See section 17(4) of the Act.
- 2 Section 19(3) of the Act provides that all eviction orders granted by magistrates under the Act are subject to automatic review by the Land Claims Court. In this regard, Magistrates' attention is drawn to the following:
 - 2.1 Section 12(1) provides that a court, when ordering the eviction of an occupier, is required to determine a just and equitable date on which the occupier shall vacate the land and to determine the date on which an eviction order may be carried out if the occupier has not vacated the land as instructed. In determining these dates, magistrates are reminded to have regard to the automatic review process.
 - 2.2 Rule 35A of Land Claims Court Rules deals with automatic reviews. Rule 35A was inserted by Government Notice No 594 in Government Gazette No 20049 of 7 May 1999. It reads as follows:

"35A AUTOMATIC REVIEW

- (1) A magistrate making an order for eviction under the Extension of Security of Tenure Act must -
 - (a) allow not less than 15 days for the review process in determining the date for vacation of the land and the date on which the eviction order may be carried out, unless the urgency of the matter justifies a shorter period;
 - (b) forthwith transmit to the Court the record of the proceedings and his or her reasons for the order; and
 - (c) inform the parties to the proceedings who were present when the order was applied for or when the order was made that the

record of the proceedings will be transmitted to the Court for automatic review.

- (2) Before deciding a matter coming before it on automatic review, the Court may -
 - (a) seek further information from the magistrate;
 - (b) afford any party an opportunity to deliver submissions or further submissions on specific issues; or
 - (c) set the matter down for oral argument before the Court.
- (3) After a review has been decided, the Registrar must return the record of the proceedings to the magistrate."

2.3 Cases subject to automatic review should be dispatched to the Land Claims Court promptly. A copy of the file should be retained by the Magistrate. Magistrates may use the Land Claims Court's courier services in this regard. The account is with Sun Couriers at telephone number (012) 673 2222 and the account number is 910154. Magistrates are, however, requested to always contact the Court's registrar prior to making use of the service.

2.4 The contact details of the Court are as follows:

Private Bag X10060
Randburg, 2125

Randburg Mall
(Opposite Randburg Post Office)
Corner of Hill Street and Kent Avenue
Randburg, 2194

Tel: (011) 781 2291
Fax: (011) 781 2217

E-mail: registrar@landclaims.org.za

3 All judgments by the Land Claims Court are available online at www.mylexisnexis.co.za (under law reports) and on www.saflii.org.

They are also available on the Department of Justice website
<http://www.justice.gov.za/lcc/index.html>.

PRACTICE DIRECTION NO 6

Probation Officer's Report

In terms of section 9(3) of the Extension of Security of Tenure Act, 62 of 1997, as amended, a court hearing in a case for the eviction of an occupier must request a probation officer to submit a report within a reasonable time on certain matters affecting the eviction as set out in the section.

In order to ensure that such a report has been requested timeously, the plaintiff/applicant in the case must, as soon as possible after the commencement of the action/application, file a request with the Court to request the report from the relevant probation officer. In such request, the particulars of the parties and/or their representatives, if any, must be furnished to enable the probation officer to contact them.

The request from the plaintiff/applicant to the Court must be by notice based on form 15, attached hereto.

FORM 15

IN THE LAND CLAIMS COURT

Case No :

In the case of :

..... First* Plaintiff/Applicant (*give name of first applicant only*) and others*

and

..... First* Defendant/Respondent (*give name of first respondent only*) and others*

NOTICE OF REQUEST FOR PROBATION OFFICER'S REPORT

To : Registrar

and to : (other parties)

Take notice that the plaintiff/applicant hereby requests the Court to request a report from the Director of the Provincial Office of the Department of Land Affairs in *(insert name of Province)* in terms of section 9(3) of the Extension of Security of Tenure Act, 62 of 1997, as amended.

Take notice further that the particulars of the parties are as follows :

1 Plaintiff/Applicant : *(give full names and address, telephone and fax numbers, e-mail address)*

Plaintiff/Applicant's attorney : *(give names, address, telephone and fax numbers, e-mail address)*

2 Defendant/Respondent : *(give full names, address, telephone and fax numbers, e-mail address)*

Defendant/Respondent's attorney : *(give names, address, telephone and fax numbers, e-mail address)*

Take notice further that the land which may be affected by the order asked for is

..... *(give description and numbers, if available, of all properties affected and the magisterial district in which the land is situated)*

Dated at this the day of

Plaintiff/Applicant or Plaintiff/Applicant's attorney

*** DELETE WHERE INAPPLICABLE**

PRACTICE DIRECTION NO 7

Conferences in terms of Rule 30

Conferences for pre-trial purposes in terms of Rule 30 shall be requested only where necessary. Pre-trial conferences shall not be used to enforce compliance with the Land Claims Court Rules or to ask for directions on matters in respect of which the Act and Rules are clear. In instances of non-compliance with the Act or Rules, applications must be brought in Motion Court for the necessary relief.

Whenever a pre-trial conference is requested, the party requesting the conference shall file a short note setting out:

1. the name and number of the matter;
2. the names and telephone numbers of the legal representatives and who they represent;
3. In brief:
 - 3.1 the nature of the matter;
 - 3.2 the issues to be determined;
 - 3.3 what pleadings have been filed and how far the matter has generally progressed;
 - 3.4 succinctly state the reason why the conference is requested and any directives which will be sought paying particular attention to Rule 30(6);
 - 3.5 the proposed agenda.
4. The party requesting the conference is required to collate all the pleadings that are in the court file before a conference is held.
5. The presiding Judge may at his/her discretion request a party to arrange a conference.

PRACTICE DIRECTION NO 8

Requests for trial dates

1. Upon the close of pleadings the plaintiff's or applicant's attorney shall collate, index and paginate the court file as directed in practice direction no. 10. Thereafter he/she may apply for a date of hearing.
2. Should the plaintiff/applicant not apply for a date of hearing within 21 days after pleadings have closed, the defendant/respondent may so apply.
3. The application for a trial date shall be in writing to the Registrar. It shall be accompanied by a short practice note which will be affixed to the file. The note shall state in brief:
 - 3.1 the nature of the matter, the issues to be determined as well as the names and telephone numbers of the legal representatives;
 - 3.2 the estimated duration of the hearing;
 - 3.3 the estimated number of witnesses to be called.

PRACTICE DIRECTION NO 9

Motion Court:

1. There will be a Motion Court convened once a month on the last Thursday of each month during Court terms at the Land Claims court in Randburg.
2. The following matters may be enrolled for hearing at a motion court sitting:
 - 2.1 Interlocutory applications under Rule 37; and
 - 2.2 Applications under Rule 58 for judgments or orders against a party in default:
 - 2.2.1 Who failed to file a notice of appearance in terms of Rule 25; or
 - 2.2.2 Who failed to deliver an answering affidavit or plea within the time limits prescribed by the Rules, and remained in default for a period of 5 (five) days after service of a notice of bar upon him or her as envisaged in Rule 32(1),

Provided that Para 2.2 shall not apply to any matter in which a restitution order under Sec 35 (1) (a), (b) or (c) of the Restitution of Land Rights Act, 1944, is sought.
3. All applications to the Motion Court must be delivered at least 7 (seven) days before the date of hearing notwithstanding the provisions of Rule 37(6).
4. The Motion Court Judge may direct the applicant to serve the application on parties in default, notwithstanding that they might otherwise not be entitled to service.
5. The Motion Court Judge may, before or at the date of hearing of any application, refer the application to the Judge to whom the main matter has been allocated for adjudication.

6. Motion Court hearings will commence at 10:00. All application must be enrolled for 10:00 or as soon thereafter as the matter can be heard.

PRACTICE DIRECTION NO 10

Collating, indexing and paginating of court files

1. As soon as pleadings are closed and before a trial date is requested the applicants' or plaintiffs' attorney shall:
 - 1.1 collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;
 - 1.2 collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file;
 - 1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof;
 - 1.4 collate, number consecutively and suitably bind all the pre-trial minute/s and all documents relating thereto;
 - 1.5 prepare and attach an index to the pleadings bundle, the notices bundle, the pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading, notice or document as a separate item.
2. In binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open.
3. The pleadings, notices and documents should not be found in volumes

of more than 100 pages.

4. The pleadings bundle must only contain the original pleadings (as amended, if applicable). Filing notes must not be included in any of the bundles.

5. If a document or documents attached to the pleadings, or contained in the bundles as referred to in paragraph 1, is or are –

5.1 in manuscript, or

5.2 not readily legible,

the party filing such document shall ensure that legible typed copies of the documents are provided.

6. Interlocutory applications must be bound separately. Interlocutory applications must be indexed by the party bringing such application. If for the hearing of the interlocutory application the Court is required to have regard to the main proceedings, the plaintiff/applicant must index such pleadings.

7. Discovery affidavits and discovered documents must be collated in a separate bundle.

PRACTICE DIRECTION NO 11

Preparation of statement of agreed facts and facts in dispute

At least 15 days before the hearing of any trial matter and opposed motion, if directed to do so by the Presiding Judge, the plaintiff's or applicant's attorney shall, after consulting with the defendant's/respondent's attorney and attorneys of all other parties, file a statement indicating what facts have been agreed upon and what facts continue to be in dispute.

PRACTICE DIRECTION NO 12

Witnesses

Any party requiring an interpreter for the testimony of a witness shall indicate what arrangements such party has made for an interpreter.

Parties are reminded that they must strictly comply with the provisions of Rule 49 if they wish to lead expert testimony.

PRACTICE DIRECTION NO 13

Striking from the roll

1. A matter may be struck from the roll if:
 - 1.1 heads of argument are not filed timcously as per practice direction 4;
 - 1.2 the file has not been indexed and paginated as per practice direction 9;
 - 1.3 any other directive specified in a relevant practice has not been complied with.

A suitable Court order may be made against a party in default of compliance which could include an order for costs de bonis propriis.

PRACTICE DIRECTION NO 14

Allocation of a case to a Judge for hearing

The President will allocate a case to a Judge for hearing once all relevant practice directives have been complied with, but may do so at any other time if he or she considers it advisable.

PRACTICE DIRECTION NO 15

Referrals to the Land Claims Court by the Land Claims Commission in terms of Section 14 of the Restitution of Land Rights Act No 22 of 1994.

Competing Claims

1. The Land Claims Commission shall, when filing and serving a referral report, simultaneously file at Court and serve on all interested parties a certificate stating either that there is no competing claim/s or that there is a competing claim/s.
2. Should there be competing claims the certificate issued by the Land Claims Commission shall disclose the identity of the competing claimant and if possible indicate if the claim is for restoration or equitable redress.

Legal representation for Claimants

3. The Land Claims Commission shall, when filing and serving a referral report simultaneously file at Court and serve on all interested parties a certificate stating whether legal representation in terms of Section 29(4) of the Restitution of Land Rights Act No 22 of 1994 has been requested by any party, and if so, by whom. The certificate shall also indicate if legal representation has been provided.
4. The Land Claims Commission shall be responsible for the indexing and paginating the pleadings in referral cases.



YASMIN SHEHNAZ MEER

Acting Judge President: Land Claims Court

2012-06-11