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# **MINUTE**

**FROM : THE HONOURABLE CHIEF JUSTICE**

**TO : HONOURABLE JUDGES OF THE SUPREME  
COURT**

**HONOURABLE JUDGES OF THE HIGH  
COURT**

**HONOURABLE JUDGES OF THE  
INDUSTRIAL COURT OF APPEAL**

**HONOURABLE JUDGES OF THE  
INDUSTRIAL COURT**

**HONOURABLE MINISTER OF JUSTICE &  
CONSTITUTIONAL AFFAIRS**

**ATTORNEY GENERAL**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**NATIONAL COMMISSIONER OF POLICE**

**COMMISSIONER GENERAL OF HIS  
MAJESTY'S CORRECTIONAL SERVICES**

**REGISTRAR OF THE SUPREME COURT**

**REGISTRAR OF THE HIGH COURT**

**REGISTRAR OF THE INDUSTRIAL COURT  
OF APPEAL**

**REGISTRAR OF THE INDUSTRIAL COURT**

**THE LAW SOCIETY OF ESWATINI**

**THEIR WORSHIP THE MAGISTRATES**

**LEGAL PRACTITIONERS**

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## **PRACTICE DIRECTIVE 1/2021**

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- 1. Pursuant to the establishment of the Commercial Court, the Chief Justice acting in terms of sections 139(5) and 142 of the Constitution hereby issues the following**

**Practice Directive which shall become operational with immediate effect:**

- 1.1 The Commercial Court shall be a division of the High Court of Eswatini and vested with jurisdiction to hear and determine commercial disputes as reflected in the Schedule to this Practice Directive.**
- 1.2 The Commercial Court shall utilize and be guided by the High Court Rules in so far as the Rules are not inconsistent with the Practice Directive.**
- 1.3 The mandate of the Commercial Court is to promote the expeditious and efficient resolution of commercial disputes.**
- 1.4 The Registrar of the High Court shall allocate commercial cases to Judges of the Commercial Court after due consultation with the Chief Justice.**
- 1.5 Judges of the Commercial Court shall be appointed by the King on the advice of the Judicial Service Commission in accordance with section 153 of the Constitution.**
- 1.6 The qualification for the appointment of the Judges of the Commercial**

**Court shall be similar to those of the Judges of the High Court and in accordance with section 154 of the Constitution.**

**1.7 The procedure applicable to the Commercial Court shall be the same as the procedure applicable to the High Court, and the proceedings of the Court shall be conducted in public subject to the provisions of the Constitution.**

**1.8 The Commercial Court shall be a Court of record and the record of proceedings shall be kept by the Assistant Registrar of the Court as designated by the Registrar.**

**1.9 Appeals from the Commercial Court shall lie to the Supreme Court of Eswatini and the Rules of Court applicable to appeals in the Supreme Court will be applied.**

## **2. ACTION PROCEEDINGS BEFORE THE COMMERCIAL COURT**

**2.1 Subsequent to the issuance of summons at the High Court, any party to the suit may apply to the Registrar of the High Court to have the matter designated as a commercial dispute**

**for the determination of the Commercial Court. Notice of the application should be given to the other party to the proceedings.**

**2.2 An application for the matter to be designated as a commercial dispute, shall be made by delivering a letter to the Registrar. The letter must set out a broad description of the case as well as the legal basis for the designation of the matter as a commercial dispute.**

### **3. APPLICATION PROCEEDINGS BEFORE THE COMMERCIAL COURT**

**3.1 A litigant is entitled to institute motion proceedings before the Court. A party may seek the designation of an application as a commercial dispute in the following circumstances:**

**a) If a party has brought an application to the High Court which contains commercial issues, the party may apply to the Registrar for the matter to be removed from the High Court roll and enrolled before the Commercial Court.**

**3.2 The Registrar shall consider the application and make a ruling within two days after hearing oral submissions from both parties. The decision of the Registrar shall be reviewable by a single Judge of the High Court upon receipt of an application on motion proceedings.**

**3.3 The Registrar in consultation with the Chief Justice shall allocate a matter which has been designated as a commercial dispute to a Judge of the Commercial Court for determination of the following issues:**

- a) A timeline for the filing of affidavits or further affidavits;**
- b) A date for filing of Heads of Argument and a list of Authorities;**
- c) A date for the hearing; and**
- d) The length of the hearing**

#### **4. PRE-TRIAL CONFERENCE**

**4.1 Within a period of five days after the matter is allocated to a Judge, the Pre-Trial Conference shall be held in respect of Action Proceedings as determined by the Judge.**

**4.2 At the Pre-Trial Conference, the following general issues shall be determined:**

**a) The legal issues for the determination of the Court;**

**b) The number of witnesses likely to be called, including expert witnesses; and**

**c) The probable length of the trial;**

**d) Legal issues not dispute**

**4.3 At the conclusion of the Pre-Trial Conference, the parties shall prepare and sign the Pre-Trial Conference Minute which will form part of the Record of Proceedings.**

**5. EXPERT EVIDENCE**

**5.1 The Presiding Judge shall convene a meeting of the Experts where Expert Reports shall be filed into Court.**

**5.2 The Experts shall produce a joint minute setting out the issues of agreement and disagreement as between them and the legal basis for the disagreement.**

**6. APPLICATIONS BROUGHT ON AN URGENT BASIS**

**6.1 A litigant is entitled to lodge an urgent application and set out in detail the legal basis for the urgency. The application shall be accompanied by a letter**



**addressed to the Registrar to have the application designated as a commercial dispute.**

**6.2 The Registrar will determine if the application constitute a commercial dispute and make a ruling forthwith.**

**6.3 Where the application is designated as a commercial dispute, the Registrar in consultation with the Chief Justice will allocate the application to the Judge for hearing and determination.**

## **7. SCHEDULE TO THE PRACTICE DIRECTIVE OF THE COMMERCIAL COURT**

**7.1 A commercial dispute arises from a commercial transaction and it includes any claim relating to:**

- a) the export or import of goods;**
- b) the carriage of goods by land, sea, air or pipeline;**
- c) the exploitation of oil and gas reserves or other natural resources that do not involve Administrative Law;**

- d) insurance and reinsurance;**
- e) banking and financial services;**
- f) the operation of markets and exchange;**
- g) the purchase and sale of commodities;**
- h) medical scheme services;**
- i) commercial matters arising out of  
business rescue and insolvency cases;**
- j) all commercial matters affecting  
companies arising out of the Companies  
Act and its interpretation;**
- k) arbitration;**
- l) unlawful competition;**
- m) interpretation and enforcement of  
mercantile documents and commercial  
contracts;**
- n) intellectual property including  
trademarks and copyright;**

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**M. C. B. MAPHALALA  
HONOURABLE CHIEF JUSTICE OF THE KINGDOM  
OF ESWATINI**

06<sup>TH</sup> OCTOBER, 2021