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LEGAL NOTICE NO. 87 OF 2021

**Superior Courts Practice Direction
(Practice Notes in Matrimonial Causes) No. 3, 2021**

In the exercise of powers conferred on me by section 131(a) of the Constitution of Lesotho, 1993¹ read together with section 16 of the High Court Act, 1978², I,

SAKOANE PETER SAKOANE

Chief Justice of Lesotho, make the following practice direction -

Citation and commencement

1. This Direction shall be cited as the Superior Courts Practice Direction (Practice Notes in Matrimonial Causes) No. 3, 2021 and shall come into operation on the date of publication in the Gazette.

Format

2. (1) The Practice Note that parties are required to exchange and file in terms of paragraph 6(2) of Practice Direction No. 2 of 2021³ and shall be as set out in Form A attached to this Practice Direction.

(2) Where the value of an item of property, any exemption claimed or any debt or liability to be allocated is not agreed to, the parties shall attach to Schedule I, under separate tabs, the source from which the indicated value is derived including copies of any statements and any valuation reports which support the values indicated.

DATED:

**SAKOANE PETER SAKOANE
CHIEF JUSTICE**

NOTE

1. Constitution of Lesotho, 1993
2. Act No. 5 of 1978
3. L.N. No. 31 of 2021

FORM A

Case Number

Plaintiff

Defendant

PRACTICE NOTE OF

Plaintiff/Defendant

PART 1 - SUMMARY OF FACTS

- . Date Summons issued:
- . Plaintiff's Date of Birth:
- . Defendant's Date of Birth:
- . Children's Names and Dates of Birth:
 - (name)* *(date of birth)*
 - (name)* *(date of birth)*
- . Date of Marriage (if any):
- . Date of Cohabitation commenced (if not married):
- . Date of Separation:
- . History of Agreements and Court Orders (in chronological order)
 - (date)* *(summarize agreement or court order)*
- . Plaintiff's Current Income: Annual Monthly:
- . Defendant's Current Income: Annual Monthly:

FORM A

Case Number

Plaintiff

Defendant

PRACTICE NOTE OF

Plaintiff/Defendant

PART 1 - SUMMARY OF FACTS

Date Summons issued:

Plaintiff's Date of Birth:

Defendant's Date of Birth:

Children's Names and Dates of Birth:

(name)

(date of birth)

(name)

(date of birth)

Date of Marriage (if any):

Date of Cohabitation commenced (if not married):

Date of Separation:

History of Agreements and Court Orders (in chronological order)

(date)

(summarize agreement or court order)

Plaintiff's Current Income: Annual

Monthly:

Defendant's Current Income: Annual

Monthly:

-
- . Amount of child maintenance
 - . Spousal maintenance
 - . Anticipated Changes (in the means, needs or circumstances of the parties and children)
 - . Settlement (offers and counter-offers)

PART 2 - SUMMARY OF ISSUES

The following are the outstanding issues for which relief is being requested:
(select the applicable issues)

- . Divorce
- . Spousal Support
- . Custody and Access
- . Child Maintenance
- . Division of Family Property
- . Provision of Home for Children
- . Other: (briefly describe)

PART 3 - ARGUMENT

(Provide a detailed discussion of the relevant facts and points of law to be argued in support of the relief being requested from the Court. Where any statute, rule of court, case authority or other jurisprudence is cited or relied upon, only the relevant portions of the statute, rule of court, case authority or other jurisprudence shall be included in the pre-trial brief as may be necessary to support the party's argument.)

PART 4- CONCLUSION (Set out a concise summary of the relief requested.)

PART 5 - INDEX TO TABS (List sequentially the documents attached to the

summons and declaration and the tab under which they may be found.)

Tab A: Schedule 1

Tab B:
(continue as needed)

DATED at , (District), this day of
20

(Signature of Party or Lawyer)

SCHEDULE 1

(complete where division of family property is in issue)

A. PROPERTIES

Property	Plaintiff	Defendant	Tab/Note See note below
----------	-----------	-----------	----------------------------

Real Property
*(List by civic address/land
location and title deed)*

House Goods
*(List general household goods, appliances,
furniture and electronics)*

Livestock
(List nature and number)

Vehicles and Recreational
Vehicles
*(List cars, trucks, boats, trailers
motorcycles, ATVs,
snowmobiles, and other vehicles
by make, model, year and
registration number)*

Other Personal Property
*(List jewellery, works of art,
collections, tools, sports, hobby
equipment, books ect.)*

Bank Accounts, Saving and
Investments
*(List by name of financial institution
and account number.)*

Pensions and Retirement

Savings Plans

(List by name of pension, plan and account number)

Securities

(List shares, bonds, mutual funds, warrants, options, debentures, notes and any other securities.)

Insurance Policies

(List by name of insurer, type of policy and set out cash surrender value, if any.)

Business Interests

(List any interest either spouse holds in any privately held corporation and any unincorporated business, including proprietorships, trusts, and joint ventures.)

Accounts Receivable

(List money owned to either spouse whether from business or personal dealings, court judgements, amounts loaned to family members, or estate money owned.)

Other Property

(List any other property owned by a spouse not identified above.)

B. VALUE OF ALL PROPERTY

C. DEBTS AND OTHER LIABILITIES

**F. VALUE OF ALL DEBTS AND
OTHER LIABILITIES**

G. EXEMPTIONS

(List any exemption claimed.)

H. VALUE OF EXEMPTION CLAIMED

I. TOTAL NET PROPERTY (B-(D+F) = G)

J. PROPOSED DISTRIBUTION:

Property	Plaintiff's proposal	Defendant's proposal
----------	-------------------------	-------------------------

Based on the above, identify your proposal for the division of family property or its value and allocation of debts and liabilities.

Proposals to be in point form showing all calculations.

Proposals to be in point in points form showing all calculation.

Tab Notes: (Use tab notes to describe exemptions claimed, relevant changes in value of property, positions on the appropriate valuation date and where parties do not agree the basis of valuation/and any income tax consequences or anticipated disposition costs.)

LEGAL NOTICE NO. 88 OF 2021

Superior Courts Practice Direction (Withdrawal by Legal Practitioners Appearing for Litigants) No. 4, 2021

In the exercise of powers conferred on me by section 131(a) of the Constitution of Lesotho, 1993¹ read together with section 16 of the High Court Act, 1978² and section 76 of the Land Act, 2010³, I,

SAKOANE PETER SAKOANE

Chief Justice of Lesotho, make the following practice direction -

Citation and commencement

1. This Direction may be cited as the Superior Courts Practice Direction (Withdrawal by Legal Practitioners Appearing for Litigants) No. 4, 2021 and shall come into operation on the date of publication in the Gazette.

Preamble

2. The withdrawal by legal practitioners representing accused persons and litigants shortly before dates of commencement of proceedings creates problems for the schedules of the Court.

3. Traditionally, withdrawal at the late stage of the proceedings is only allowed where -

- (a) there is enough time for the client to acquire the services of another legal practitioner prior to the date of trial or proceedings;
- (b) in a case of legally aided trial or proceedings, it is clear that legal aid had been wrongly obtained by false or inaccurate information and the client has not remedied the situation.

Notice for withdrawal

4. Because of sudden and repeated withdrawals by legal practitioners in

pending and continuing criminal and civil proceedings, it has become necessary to regulate withdrawals by providing a minimum period within which such withdrawals may be made as follows -

- (a) a legal practitioner shall not be allowed to withdraw fourteen (14) days prior to the date of trial or proceedings except with leave of the court upon good cause being shown;
- (b) a legal practitioner seeking to withdraw shall apply, by notice of motion supported by an affidavit, and state the reasons for withdrawal which shall not include non-payment of fees by client;
- (c) an application for withdrawal due to non-payment of fees shall not be granted and the legal practitioner shall proceed on a *pro deo* basis if the Registrar grants the *pro deo* facility.

DATED:

**SAKOANE PETER SAKOANE
CHIEF JUSTICE**

NOTE

1. Constitution of Lesotho, 1993
2. Act No. 5 of 1978
3. Act No. 8 of 2010

LEGAL NOTICE NO. 89 OF 2021

Subordinate Courts Practice Direction (Streamlining the Processing of Cases on Pre-Trial Remand Pending Further Investigations) No. 1, 2021

In the exercise of powers conferred on me by section 81 of the Subordinate Courts Order, 1988¹, I,

SAKOANE PETER SAKOANE

Chief Justice of Lesotho, make the following practice direction -

Citation and commencement

1. This Direction may be cited as the Subordinate Courts Practice Direction (Streamlining the Processing of Cases on Pre-Trial Remand Pending Further Investigations) No. 1, 2021 and shall come into operation on the date of publication in the Gazette.

Purpose

2. The purpose of this practice direction is to streamline the procedure and practice of remanding cases in all pre-trial remands pending finalisation of investigations by the police.

Application for further remands

3. (1) When making an application for a further remand at the end of 60 days from the date of first remand of the accused in court, the Prosecutor shall submit to the remanding Court -

- (a) the relevant material on whose basis a further remand is sought, including affidavits by the investigating officer on the time frame for concluding the investigations; and
- (b) citations of the statutory provision and precedents on further remand pending finalisation of investigation versus the accused's right to trial within a reasonable time.

(2) The Prosecutor shall only apply for further remand if satisfied, on the information and material supplied by the investigating officer that further remand will not unjustifiably cause delay in bringing the accused to trial within a reasonable time.

Powers of the Court

4. (1) When reviewing an application for further remand, the remanding Court shall consider whether -

- (a) it is made in good faith and with the exercise of due diligence in concluding the investigations;
- (b) it will advance the cause of justice and not thwart or stifle the process of law; and
- (c) it is within the time limits for filing of a charge sheet as prescribed by the Speedy Court Trials Act, 2002².

(2) If the Court is of the opinion that there is no just cause for further remand and the Prosecutor fails to prosecute the matter on the scheduled trial date, the Court shall dismiss the matter for want of prosecution.

DATED:

**SAKOANE PETER SAKOANE
CHIEF JUSTICE**

NOTE

- 1. Order No. 9 of 1988
- 2. Act No. 9 of 2002

LEGAL NOTICE NO. 90 OF 2021

General Courts Practice Direction (Obtaining Subpoena for Criminal Trials under sections 199-202 of the Criminal Procedure and Evidence Act No. 7, 1981) No. 1, 2021

In exercise of powers conferred on me by section 131(a) of the Constitution of Lesotho, 1993¹ read together with section 16 of the High Court Act, 1978² and section 81 of the Subordinate Courts Order, 1988³, I,

SAKOANE PETER SAKOANE

Chief Justice of Lesotho, make the following practice direction -

Citation and commencement

1. This Direction shall be cited as the General Courts Practice Direction (Obtaining Subpoena for Criminal Trials under sections 199-202 of the Criminal Procedure and Evidence Act, 1981) No. 1, 2021 and shall come into operation the date of publication in the Gazette.

Purpose

2. The purpose of this practice direction is to ensure that subpoenas are issued only to witnesses who can provide material evidence at trial and that a person who is issued a subpoena is informed in advance of their choice of oath.

Request for subpoena

3. (1) Upon request for a subpoena, the crown or defence counsel shall file with the clerk of court or assistant registrar the following completed documents -

- (a) subpoena; and
- (b) a Form A certificate by the Crown and a Form B certificate by the defence.

(2) The clerk of court or assistant registrar shall -

-
- (a) question the person requesting the subpoena to establish that the witness will provide material evidence at trial; and
 - (b) not issue a blank subpoena.

(3) If the clerk of court or assistant registrar is not satisfied that the witness named in the subpoena will provide material evidence or testimony at trial, he shall not issue the subpoena.

(4) Where the subpoena has been declined under paragraph 3(3), the person seeking the subpoena may submit a written summary of the evidence to be provided by the witness to the clerk of court or assistant registrar, who shall refer the request to the trial Judge or Magistrate.

Witness material to be kept confidential

4. (1) In the case of subpoena requests by the defence, the written summary of the evidence referred to in paragraph 3(4), the Form B certificate, and any other documents containing the names of the defence witnesses to whom subpoenas are issued must be sealed and not opened except on the order of a Judge or Magistrate.

(2) Discussions with a clerk of court or assistant registrar on the evidence a defence witness must be kept confidential.

(3) No copy of any subpoena issued shall be kept on the Court file except the filed certificates in Forms A and B.

Notice on choice of oath

5. The party seeking the subpoena must print the following notice in a legible font at the bottom of the subpoena to be issued by the Court -

Notice on Choice of Oath or Affirmation

When you come to Court you will be offered the choice of swearing an oath or making an affirmation. An affirmation is a non-religious promise to tell the truth but has the same force and effect like an oath. An oath can be taken in any way that is consistent with your religious beliefs, so long as you take an oath which

as your conscience to tell the truth. If you wish to give your evidence by
swearing an oath upon a holy text, other than the Christian Bible, such as Jewish
Torah or Koran (which are not readily available in courts) you may bring with
you any religious symbol or holy text and advise the clerk of court or assistant
clerk prior to commencement of court proceedings whether you wish to take
an oath or affirm.

NOTED:

**SAKOANE PETER SAKOANE
CHIEF JUSTICE**

NOTE

Constitution of Lesotho, 1993
Act No. 5 of 1978
Order No. 9 of 1988

PRACTICE DIRECTION

Form A

Court Case Number

High Court/Magistrate Court
(Delete whichever is inapplicable)

In the matter of: Rex v.

CROWN CERTIFICATE TO OBTAIN SUBPOENA

THE UNDERSIGNED HEREBY CERTIFIES -

1. That I am the Crown Counsel or prosecutor. (Delete whoever is inapplicable)

2. That I have determined upon information and believes that the following witnesses are likely to give material evidence in the proceedings -

.....
.....
.....
.....

(print full names of witness and city/town of residence or chief and village)

3. That I provide this certificate in support of my request that a subpoena be issued to each of the above-named persons to testify in the case under reference.

DATED at this day.....
of..... 202

.....
(signature of Crown Counsel or prosecutor)

.....
(print name of Crown Counsel or prosecutor)

PRACTICE DIRECTION

Form B

Court Case Number

High Court/Magistrate Court
(Delete whichever is inapplicable)

In the matter of: Rex v.

ACCUSED'S CERTIFICATE TO OBTAIN SUBPOENA

THE UNDERSIGNED HEREBY CERTIFIES -

1. That I am the (accused/lawyer for accused)

2. That I believe that the following witness(es) are likely to give material evidence in the case under reference -

.....
.....
.....

.....
(print full names of witness and city/town of residence or chief and village)

3. That I provide this certificate in support of my request that a subpoena be issued to each of the above-named persons to testify in the matter.

DATED at this day.....
of..... 202

.....
(signature of accused or lawyer)

.....
(print name of accused or lawyer)