

SOUTH AFRICA / JUDGMENT

Ferguson v Road Accident Fund (1073/2012) [2014] ZANWHC 16 (7 July 2014)

[2014] ZANWHC 16

COURT

North West High Court, Mafikeng

BEFORE

M M Leeuw

CASE / FILE NUMBER

1073/2012

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAFIKENG

CASE NO: 1073/2012

In the matter between:

ADVOCATE R FERGUSON obo NCEBAKAZI NTEYI.....PLAINTIFF

and

ROAD ACCIDENT FUND..... DEFENDANT

J U D G M E N T

LEEUEW JP:

Introduction

- [1] The plaintiff (Ms Nteyi) was a passenger in a motor vehicle with registration number F[...] driven by J. Mbuyane on the 29th August 2007 when the vehicle overturned. As a result of the collision, Ms Nteyi suffered “a severe head injury, extensive multiple facial bone fractures, soft tissue injuries to the neck and back, soft tissue injuries to the arms, multiple bruises and lacerations, extensive scarring and emotional shock and trauma”.

- [2] Ms Nteyi, through her attorneys of record, Adams & Adams Attorneys, instituted an action against the defendant, (the RAF) on the 18th July 2012 for the loss and damages she suffered as a result of the motor vehicle collision and claimed an amount of R1, 160 000-00 and 15.5% interest per annum on the aforesaid amount, as well as an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996 (The Act). After the close of pleadings the Ms Nteyi was taken to various experts for medico-legal examinations by her attorneys between the 29th July 2013 and 1st April 2014 a curator ad litem was appointed by this Court on the 14th November 2014.

Grounds for the appointment of a curator ad litem for Ms Nteyi

- [3] I have perused the papers in this application and noted that the founding affidavit was deposed to by Jean Paul Rudd (Mr Rudd), who is a duly admitted attorney, practicing as an associate at Adams and Adams Attorneys. In the said affidavit, Mr Rudd states that:

3.1 He is the attorney of record and an officer of this Court and submits that as such “he has a duty to protect the interests of the patient” and that “In the circumstances (he) has the necessary locus standi to bring this application to Court”.

3.2 He then refers to the injuries sustained by Ms Nteyi and proceeded to state that after the close of pleadings and after the matter was set down on the 21st August 2013 for trial on the 21st to 22nd April 2014, he instructed several medico-legal experts to assist in quantifying Ms Nteyi’s damages. Ms Nteyi was examined by eleven experts.

3.3 He then referred to the medico-legal reports of two experts namely Dr M. Mazabow, a Clinical Psychologist, and Prof M. Vorster who is a Psychiatrist and an expert appointed by the RAF.

3.4 Mr Rudd further states in his affidavit that “. . . due to the severity of her brain injury, the patient is not able to follow litigation process. [I] further submit that a Curatrix ad Litem be appointed so that the necessary instructions can be furnished to Adams and Adams during the litigation process”.

3.5 He further states that he has explained the need to appoint a curatrix ad litem, and that Ms Nteyi has accepted the advice. That he approached Advocate Ronellé Ferguson (Advocate Ferguson) for the purpose of establishing her willingness to act in that regard and that she has accepted the appointment.

- [4] Dr M. Mazabow’s report states amongst others the following, with regard to Ms Nteyi neuropsychological status:

“2.3 It is noted further that these neuropsychological difficulties would not be attributed to psychological disturbances (depression/anxiety),

given that Ms Nteyi’s anxiety symptoms are mild and her depressive symptoms are also within the mild range (on the depression inventory, as reviewed above).

In that light, her flattened affect, noted throughout the evaluation, would be attributed to the direct effects of the frontal brain

injury, impacting on affective regulatory centres of her brain, and thus representing a neuroaffective sequel of the trauma brain injury.

This would be in keeping with Prof Vorster's diagnosis, from a psychiatric perspective, of a post-traumatic organic brain syndrome.

3. The above neurocognitive and neuroaffective disturbances identified on formal psychometric evaluation (at both evaluations) are in keeping with the nature and severity of the traumatic brain injury sustained in the accident in question (a diffuse concussive brain injury compounded by focal left frontal damage) in a woman of average/low-average intellectual-cognitive potential.

At nearly 6 years post-accident, Ms Nteyi's neuropsychological (neurocognitive and neuroaffective) status would be regarded as permanent.

4. With regard to the implications of the above neuropsychological disturbances, the opinions of Mr MacFarlane and of Prof Vorster would be supported that Ms Nteyi is not likely to complete her Grade 12 or other tertiary education, and that she would also have difficulty successfully undergoing skills-training.

Consequently, the likelihood is that Ms Nteyi will remain unemployed in the future, as a result of the neuropsychological (neurocognitive and neuro-affective) impairments sustained in the accident in question."

In the recommendation he states that: "any award made must be protected, and Ms Nteyi will also require the appointment of a curator ad litem".

- [5] Prof. Vorster, who is a Psychiatrist, states in his report that "Mrs Nteyi sustained a very serious head injury . . . and she had a prolonged period of post-traumatic amnesia and her CT brain scan was abnormal". She notes that "Mrs Nteyi is a vulnerable individual and she will require assistance with her financial affairs".
- [6] After the appointment of Advocate Ferguson as curatrix ad litem, on the 14 November 2013, Mr Rudd filed a notice in terms of Rule 15(3) substituting Ms Nteyi with Advocate Ferguson as the plaintiff. This notice was filed with the Registrar on the 5th March 2014 and the amended Particulars of Claim filed on the 8th April 2014. It is important to note that Ms Nteyi deposed to a confirmatory affidavit wherein she consented to the appointment of a curatrix ad litem with the powers to amongst others, "further assist in this action until the final determination thereof".

Rule 57 of the Uniform Rules of Court

- [7] Rule 57(1) provides that:

“Any person desirous of making application to the court for an order declaring another person (hereinafter referred to as “the

patient”) to be of unsound mind and as such incapable of managing his affairs, and appointing a curator to the person or

property of such patient shall in the first instance apply to the court for the appointment of a curator ad litem to such patient.”

[8] Rule 57(2) provides that:

“Such application shall be brought ex parte and shall set forth fully –

- (a) the grounds upon which the applicant claims locus standi to make such application;
- (b) the grounds upon which the court is alleged to have jurisdiction;
- (c) the patient’s age and sex, full particulars of his means, and information as to his general state of physical health;
- (d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);
- (e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his affairs;
- (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator ad litem, and subsequently as curator to the patient’s person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.”

[9] Furthermore, Rule 57(2) provides that:

“The application shall, as far as possible, be supported by –

- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent’s own knowledge concerning the patient’s mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall set forth in his affidavit; and
- (b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be an alienist, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon his mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinion found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the

patient, and without personal interest in the terms of the order sought.”

- [10] It is important to note that Rule 57(2) which is peremptory, requires that there should be an affidavit of at least one person who is well-known to the patient who has “knowledge concerning the patient’s mental condition” and that there should be an affidavit by at least two medical practitioner one of whom should be an alienist. Furthermore Rule 57(3)(a) provides that the person who claims to have locus standi to bring the application for an appointment of a curator ad litem should state “the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any). This application is usually brought by a patient’s next of kin.
- [11] In *Ex parte Fulter: In re Walter v Road Accident Fund and Another* unreported case no 2422/2008 Eastern Cape Division, Port Elizabeth the Court dismissed an application for an appointment of a curator ad litem who was an attorney of record for the patient, on the basis that he did not have the necessary locus standi because the attorney was not a close relative of the patient and the Court further held the view in paragraph [11] that this kind of application is “usually brought by one of the patient’s next of kin, not simply because they may personally be adversely affected by the inability of the patient to manage his own affairs, but also because they are sufficiently close to him so as to have a real concern for his welfare, thereby creating a legally recognised interest in the ability to manage his own affairs.” The Court went further to state in paragraph [12] “. . . . If the applicant in proceedings under Rule 57 is not the spouse or next of kin of the patient, then the reason why the spouse or next of kin does not bring the application should be stated, and if they are not available to make the application, what steps had been taken to establish their whereabouts before the application is made. . . .” [13] An attorney-client relationship cannot, per se create a sufficiently close relationship to counter locus standi on the attorney concerned”.
- [12] In the present case, the application was brought by Mr Rudd who is Ms Nteyi’s attorney. Mr Rudd approached Advocate Ferguson to act as curatrix ad litem. There is nothing on record to suggest that Ms Nteyi did not have a relative who could launch the application. She has a husband who is employed at the Platinum Mine in Rustenburg. The only founding affidavit relied upon was that of Mr Rudd who simply attached the Medico-Legal Reports of Dr Mazabow and Prof Meryll Vorster as annexures to his affidavit.
- [13] Rule 57(5) provides that:
- “Upon his appointment the curator ad litem (who shall if practicable be an advocate, or failing such, an attorney), shall without delay interview the patient, and shall also inform him of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph*
- (b) of subrule (3) he is satisfied that this would be detrimental to the patient’s health. He shall further make such inquiries as the case appears to require and thereafter prepare and file with the registrar his report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In his report the curator ad litem shall set forth such further

facts (if any) as he has ascertained in regard to the patient's mental condition, means and circumstances and he shall draw attention to any consideration which in his view might influence the court in regard to the terms of any order sought." (emphasis added)

Furthermore, Rule 57(6) provides that:

"Upon receipt of the said report the applicant shall submit the same, together with copies of the documents referred to in subrules

(2) and

(3) to the Master of the Supreme Court having jurisdiction for consideration and report to the court."

[14] At the hearing of this matter on the 21st April 2014, Advocate Ferguson had not filed a report as envisaged in Rule 57(5). When directed by the Court to file the report in accordance with the Rule, she requested that the matter should stand down in order for her to prepare the report. She later on the same day handed up a report wherein she simply states, amongst others, that the injuries of Ms Nteyi "are described in detail in the reports filed to date". She further states that the "parties settled the matter on R1.1 million comprising of both general damages and future loss of earnings" and that "considering that Ms Nteyi was never employed, a nominal amount for her future loss of earning capacity is included in the aforesaid amount". Thereafter, she refers to a number of cases as authority for justifying the acceptance of the quantum offered by the RAF.

[15] At this stage I wish to pause and restate the terms of the order granted by the Court on the 14 November 2013 pertaining to the power of the curatrix ad litem as stated in the Notice of Motion. The order reads as follows:

"THAT: Advocate Ronelle Ferguson be and is hereby appointed as Curatrix ad litem for and on behalf of NCEBAKAZI NTEYI ("the patient") with the following powers:-

- (a) to further conduct the third party action against the Respondent and the patient instituted in her personal capacity under High Court Case Number;- 1073/2012, for the recovery of damages that she suffered resulting from injuries she sustained in a motor vehicle collision which occurred on 29 August 2007 and to conduct such litigation to its final determination;
- (b) to negotiate and finalise any settlement proceedings relating thereto, subject to the approval of the above Honourable Court or a Judge in Chambers;
- (c) to receive payment of any awards which may be made therein, to effect payment of the patient's attorneys of record's attorney and own client fees and disbursements in respect of the professional services rendered and expenses incurred in the action together with interest on such unpaid disbursements and to pay over to the Curator Bonis to be appointed, or any other person as may be ordered by the court, the balance of any monies received in respect of the claim/action; (emphasis added)

- (d) to approach the Honourable Court for the appointment of a Curator Bonis and Curator ad Personam if she deems it necessary;
- (e) to take all and any steps as she may deem necessary and in the interest of the patient for the purpose of continuing and finalizing the personal injury action including the capacity to appoint attorneys to exercise any or all of the capacities of the Curator ad Litem;

THAT: The taxed or agreed costs of this application on the party and party High Court scale will be costs in the main action.”

[16] From the inception of the action Ms Ntyei remained as plaintiff in the pleadings and was in a position to give the necessary

instructions to her attorneys of record for the purpose of making discoveries, appointing experts, as well as conducting a pre-trial

conference in terms of Rule 37. Throughout the proceedings and prior to the appointment of a curator ad litem, there was nothing on record to suggest that she was of unsound mind and as such incapable of managing her own affairs, save for the opinion from the medical experts that she was vulnerable and that it was imperative to protect the award paid by the RAF. Even though the experts relied upon for purposes of the application for the appointment of a curator ad litem, were of the view that it was necessary to protect Ms Nteyi's finances, and consequently recommended that a curator ad litem should be appointed, their opinion ought to have been critically evaluated by the Court in order to establish whether such an appointment would be necessary.

[17] The appointment of a curator ad litem, which in my view was not necessary in the present circumstances, had the effect of seriously encroaching upon the liberty, dignity and the right of an adult to his or her own affairs, which right should not be lightly encroached upon or taken away from an individual. See *Ex parte Kotze* 1955 (1) SA 665 (C); *Delius v Delius* 1960 (1) (A) 270 (W); *Martison v Brown*; *Gray NO v Armstrong* 1961 (4) SA 107 (C); *Ex Parte Hill* 1970 (3) SA 411 (C). See also *Ex Parte Jacob Mantjitji Modiba obo Sibusisiwe Ruca in re Sibusisiwe Ruca* and *RAF Case No.12810/2013* and *Case No.73012/13 North Gauteng Division, Pretoria* par. 37 where Bethelsman J stated the following:

“It is clear that the curator fulfils a very important function. A curator is usually appointed when the patient's circumstances

indicate that the appointment of a curator bonis or a curator bonis et personae may be found to be necessary. The appointment of a curator to a patient represents a very serious invasion of the patient's liberty, dignity and control of his destiny. It is therefore essential that the conditions set out in sub-rules (1), (2) and (3) of the Rule are met before a curator may be appointed: see *Ex parte Futter*, supra. As Galgut J said in *Ex parte Kloppe* 1961 (3) SA 803 (T) at 805 E to H:

‘... a Court will not appoint a curator bonis until it is absolutely satisfied that the patient has to be protected against loss which would be caused because the patient is unable to manage his affairs. ... in Ex parte Kotze, 1955 (1) SA 665 (C) ... (t)he learned Judge came to the conclusion that before the Court could interfere with the right of an adult to control his own affairs the Court had to be satisfied after a proper enquiry into the mental condition of the alleged patient that interference by the Court was justified.’

The curator’s report must deal with all relevant facts that may impact upon the question whether the patient is of unsound mind or not and is therefore of great importance to the court faced with the question whether the patient should be declared to be incapable of managing all or part of his affairs and be placed under curatorship, see *Niekus v Niekus* 1947 (1) SA 309 (C) – in which the court emphasized that a curator ad litem would be appointed in circumstances where the failure to do so might cause an injustice to the patient –; *Mitchell v Mitchell & Others* 1930 AD 217 at 224; *Ex parte Campher* 1951 (3) SA 248 (C). If the patient is unable to participate rationally in the management of his or her litigation against the RAF and is incapable of giving appropriate instructions to his or her legal representatives, the patient lacks locus standi in iudicio and the appointment of both a curator ad litem and a curator bonis is indicated: *Jonathan v General Accident Insurance Company of South Africa Ltd* 1992 (4) SA 618 (C). In circumstances such as the present the curator must include a recommendation in his report whether the steps taken by the patient’s legal representatives prior to the curator’s appointment should be ratified, if he has come to the conclusion that the patient was at all relevant times incapable of giving instructions due to his or her mental impairment.”

[18] Rule 57(13) provides that:

“Save to such an extent as the court may on application otherwise direct, the provisions of subrules (1) to (11) shall, mutatis mutandis, apply to every application for the appointment of a curator bonis to any person on the ground that he is by reason of some disability, mental or physical, incapable of managing his own affairs.”

It is evident from this Rule that, even where a curator ad litem proposes that a curatrix bonis be appointed to any person on the grounds that the person has some disability and thus incapable of managing his or her own affairs, the procedure prescribed in Rule 57 subrules (1) to (11) should apply. In other words, it behoves the applicant or in the present case, the curatrix ad litem, to amongst others, prepare and submit a report to the Master, in compliance with the procedure prescribed in Rule 57(10) even though it is not necessary for the Court to declare the “patient” as being of unsound mind. See *Van den Berg v Van den Berg* 1939 WLD 228.

Rationale for the Establishment of a Trust and the Appointment of Constant Wilsnach as the first trustee

[19] Having decided that it was not necessary for a curator bonis or ad personam to be appointed for Ms Nteyi, Advocate Ferguson orally submitted that a Trust should be established on behalf of Ms Nteyi, between Jean-Paul Rudd as the “Donor” to the Trust, and Constant Wilsnach as the “trustee”. Mr Rudd is the donor, probably because in the draft order it is

stated that the “Defendant shall pay the sum of R1,100,000-00 (One Million One Hundred Thousand Rand) to Ms Nteyi’s attorneys, Adams & Adams trust account. Ms Nteyi consented to the creation of a Trust, despite the alleged allegation in the founding affidavit supporting the application for a curator ad litem that, “due to the severity of her brain injury, the patient is not able to follow the litigation process”. I have already alluded to the fact that there is nothing on record to suggest that she was not able to follow the litigation process.

- [20] Advocate Ferguson has not submitted a report in accordance with Rule 57(6). She could not advance any valid reason for recommending the establishment of a Trust and the appointment of Constant Wilsnach as the trustee save for stating that he is one of the best trustees in the country. When I raised the concern about the accessibility of Mr Wilsnach who is in Pretoria which is far from Ms Nteyi’s residence in the Eastern Cape, Advocate Ferguson’s explanation was that in this day and age technology is at an advanced stage, and that it will not be a problem to transfer funds to Ms Nteyi, and that alternatively, Ms Nteyi would visit her husband at the mines in Rustenburg and that the correspondent attorney who is in Rustenburg, would facilitate a meeting between Ms Nteyi and Mr Wilsnach for purpose of withdrawing the necessary funds in accordance with the terms of the Trust. Advocate Ferguson did not even consider an establishment of a Trust in a Banking institution nearer to Ms Nteyi’s place of residence where she can easily access her Trustee for funds.
- [21] I wish to pause and remark that in a matter that I dealt with, *Cardoso Chelene Matsovele v RAF*, an unreported Case No.1075/2012, of this Division, wherein Adams and Adams Attorneys also represented Ms Nteyi, and where a curator ad litem was appointed at a late stage of the proceedings, the decision to appoint a curator ad litem was informed by medico-legal reports of two medical experts who had expressed an opinion that the patient was vulnerable and could easily and unduly be manipulated and influenced by outside sources and consequently, that the award from the RAF would require some level of protection and supervision. Incidentally, in that matter, the application for the appointment of a curator ad litem was brought by the attorneys of record and the trustee recommended in the Deed of Trust was Mr Constant Wilsnash and the Donor to the Trust was Mr Jean-Paul Rudd as in the present case. The terms of the Deed of Trust are identical in all respects to the Deed of Trust in the present matter, save for a change of names of the parties (that is the name of the Trust and the beneficiary) and the dates.
- [22] This kind of an arrangement may impact upon the independence of the curator ad litem. I share the sentiments expressed by Bertelsmann J in *Ex Parte Jacob Mantjitji Modiba obo Sibusisiwe Ruca supra*, paragraph 35 to 36 and authorities therein referred to, that “36. The need for an independent approach to the litigation is especially significant in cases such as the present, in which the attorney acting for the claimant accepted instructions from an individual whose capacity to understand the process of litigation and the implications of the mandate given to the attorney may subsequently be found to have been compromised”.

Mental Health Care Act No. 17 of 2002 (Mental Health Act)

[23] In the draft Deed of Trust, under clause 4, Ms Nteyi as the beneficiary is described as:

“a person suffering from a mental illness as described in section 1 of the Mental Health Care Act, 17 of 2002 (Mental Health Care Act) or a serious bodily impairment which prevents such person from generating sufficient income for her own maintenance or managing her own affairs, with regards to the income derived from the Trust assets and the capital shall also be used to the benefit of NCEBAKAZI NTEYI in such a way as the TRUSTEE may deem appropriate. Should NCEBAKAZI NTEYI pass away, the Trust’s assets will be transferred to the heirs of NCEBAKAZI NTEYI as set out in the Will of NCEBAKAZI NTEYI or should NCEBAKAZI NTEYI not leave behind any Will the assets will be transferred to the intestate heirs of NCEBAKAZI NTEYI in accordance with the provisions of the Intestate Succession Act as amended from time to time. Section 1 of the Mental Health Care Act No. 17 of 2002 (the Mental Health Care Act), defines “mental illness” as meaning “a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorised to make such diagnosis”.

[24] Section 59 of the Mental Health Act provides that:

“Appointment of administrator for care and administration of property of mentally ill person or person with severe or profound intellectual

disability.–(1) A Master of a High Court may appoint an administrator to care for and administer the property of a mentally ill person or person with severe or profound intellectual disability on consideration of processing of–

- (a) an application submitted in terms of section 60; or
 - (b) an order made by a High Court after an appeal or an enquiry referred to in section 60 or 61, respectively, stating that such a person is incapable of managing his or her property and that an administrator be appointed.
- (2) An administrator may only be appointed in respect of the property of a mentally ill person with severe or profound intellectual disability if the procedures set out in sections 60 or 61 have been complied with.”

[25] Furthermore, the beneficiary or Ms Nteyi is described in the draft Trust Deed as a person with “a serious bodily impairment which prevents such person from generating sufficient income for her own maintenance or managing her own affairs, with regards to the income derived from the Trust assets”

[26] Section 1 of the Mental Health Act defines “severe or profound intellectual disability” as a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self-care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care”.

[27] Ms Nteyi was never declared by the Court as a person suffering from a mental illness as described in the Mental Health Care Act. It can also not be said that she is of “unsound mind and as such incapable of managing her affairs” as envisaged by Rule 57 or the Mental Health Care Act. This explains why the curatrix ad litem was constrained to bring an application for an order declaring Ms Nteyi to be of unsound mind and as such incapable of managing her affairs. See *Ex Parte Wilson: In re Morrison* 1991 (4) SA 774 (T).

Furthermore, there is nothing on record to suggest that Ms Nteyi has a serious bodily impairment which has the effect of preventing her from generating sufficient income or managing her own affairs, and no such declaration was made by the Court in terms of the Mental Health Care Act.

[29] Section 60 to 61 of the Mental Health Care Act deal with the application to the Master of the High Court for appointment of an administrator and the recommendation to appoint an administrator by a High Court during an enquiry or in the course of legal proceedings respectively. The curator ad litem did not consider the possibility of an appointment of an administrator vis-à-vis a Trust despite the fact that reliance is place on the Mental Health Care Act for the purpose of creating. The fact that the Trust has to be established on the basis that Ms Nteyi is either having a mental illness as defined in the Mental Health Care Act, or because of a serious bodily impairment it is in the circumstances imperative that the procedure prescribed in section 60 or 61 of the Mental Health Care Act be followed.

[30] In considering how Ms Nteyi’s money should be secured, Advocate Ferguson did not consider other alternatives other than an establishment of a Trust. I therefore already alluded to Section 59 to 65 of the Mental Health Care Act which provides for “care and administration of property of mentally ill person or person with severe or profound intellectual disability”.

The degree of Ms Nteyi’s intellectual disability has not been properly investigated in view of the paucity or even lack of

information provided by Advocate Ferguson in her purported report as a curatrix ad litem. In the circumstances, it will not be prudent for the Court to grant the order sought in paragraph 4 of the Draft Order.

[31] Consequently the following order is made:

1. The Defendant shall pay the sum of R1 100 000.00 (ONE MILLION ONE HUNDRED THOUSAND RAND) to Ncebekazi Nteyi’s attorneys, Adams & Adams, in settlement of the Ncebekazi Nteyi, which amount shall be payable by direct transfer into their trust account, details of which are as follows:

Nedbank

Account number : 1[...]

Branch number : 198765

Pretoria

Ref: [...]

2. The Defendant is ordered to forthwith furnish Ncebekazi Nteyi with an undertaking in terms of Section 17(4)(a) in respect of her costs of the future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 29 August 2007.

3. The curatrix ad litem is directed to compile a report in accordance with Rule 57(5) of the Uniform Rules of Court. The report should, amongst others

compare the options of either:

3.1 appointing a curator bonis or personae;

3.2 creating a Trust or

3.3 appointment of an administrator in terms of Section 61 of the Mental Health Care Act 2002, (Act 17 of 2002) and the payment of the funds into the Guardians Fund in terms of Section 90 of the Administration of Estate Act, 1965 (Act 66 of 1965).

4. The Defendant must make payment of the Plaintiff's taxed or agreed party and party costs, which costs shall include the

following:-

4.1 The fees of Senior – Junior Counsel inclusive of his full reasonable day fee;

4.2 The reasonable taxable costs of obtaining all medico-legal, RAF4 Serious Injury Assessment and actuarial reports from the Plaintiff's

experts which were furnished to the Defendant;

4.3 The reasonable taxable preparation, qualification and reservation fees, if any, of the following experts of whom notice have been given, being:-

4.4.1 Dr D A Birrel;

4.4.2 Dr P B White;

4.4.3 Dr D de Klerk;

4.4.4 Dr H W Kluge;

4.4.5 Dr K Theron;

4.4.6 Ms L Toerien;

4.4.7 Dr D A Shevel;

4.4.8 Dr M Mazabow;

4.4.9 Dr K Truter

4.4.10 Ms E Noble;

4.4.11 Mr G A Whittaker.

4.5 The costs of a consultation between the Plaintiff and her attorney to discuss the terms of this order;

4.6 The reasonable taxable preparation fees of the Plaintiff's Heads of Argument;

4.7 The reasonable taxable transportation costs (including Toll and E-Toll charges) incurred by the Plaintiff in attending medico-legal

consultations with the parties experts, inclusive of the reasonable travelling and accommodation costs (The Protea Hotel and R & R Guesthouse), of the Plaintiff, the Plaintiff's legal representatives and curatrix ad litem (Ms Booysen, Mr Weiss, Advocate Klopper and Advocate Ferguson) in attending the trial proceedings, subject to the discretion of the Taxing Master. The travelling costs shall be calculated on the applicable AA tariffs. Travelling time for the Plaintiff's

attorneys, counsel and Curatrix ad litem shall further be calculated on their full reasonable hourly rates;

4.8 The Plaintiff's attorney of record's (Adams & Adams) full reasonable fees for attending the trial proceedings on 22 April 2014 from 08h00 to 16h30 on the party and party High Court scale;

4.9 It is recorded that the Plaintiff's attorneys of record (Adams & Adams) and correspondent attorneys (Smit & Stanton Inc) do not act in terms of a contingency fee agreement.

5. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

5.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

5.2 The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation

thereof;

5.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at rate of 15.5% on taxed or agreed

costs from date of allocator to date of final payment.

6. The applicant, curatrix ad litem is granted leave to supplement the papers herein as it may be.

M M LEEUW

JUDGE PRESIDENT

NORTH WEST DIVISION

APPEARANCES:

date of hearing : 22 April 2014

date of judgment : 7 July 2014

counsel for Ms Nteyi : advocate klopper

attorneys for Ms Nteyi: Smit & Stanton

attorneys for defendant: minchin & kelly

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