

SOUTH AFRICA / JUDGMENT

M.S.N (8637/2023P), Ex parte [2025] ZAKZPHC 38 (27 March 2025)

[2025] ZAKZPHC 38**COURT**

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Mathenjwa

CASE / FILE NUMBER

8637/2023P

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Source record**SAFLII****Note: Certain**

**personal/private details of parties or witnesses have been
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Policy**FLYNOTES:****FAMILY**

– Divorce – Curator

ad litem –

Wife

in prison after having murdered young child – Was found fit

to stand trial and convicted – Has substantial

estate with

funds and properties – Hospitalised 12 times for depressive

disorders – Attempted suicide five times

– Major

depressive disorder with psychomotor retardation – Declared

that patient is incapable of managing her

own affairs –

Advocate appointed as curatrix ad litem – Patient's

sister appointed curatrix bonis to the

estate and as curatrix

personae to person of patient.

IN THE HIGH COURT OF

SOUTH AFRICA

KWAZULU-NATAL DIVISION

, PIETERMARITZBURG

CASE

NO: 8637/2023P

In
the ex parte application of
M[...]
S[...] N[...]
APPLICANT

and
A[...]
A[...]
INTERVENING
PARTY

In the matter of an
application for the
appointment of a curator
ad litem

to
M[...] A[...] (born
M[...])
(ID NO: 7[...])

ORDER
In

the premises the
following order is made:

1.
It is declared that the patient, M[...] A[...] (born M[...]) (ID
NO: 7[...]) is declared to be incapable of managing her own
affairs.

2.
The oral evidence of the medical and other witnesses may be dispensed
with.

3.
TWANNETTE HOLTZHAUSEN, an advocate of the High Court of South
Africa, be appointed as curatrix ad litem to the patient,
M[...] A[...] (born M[...]) (ID NO: 7[...]) and is substituted
for the patient in the aforesaid actions under case numbers

D4684/2023 and
7608/2023P with the
powers to:

3.1
take all further steps to finalise and/or defend such claims;

3.2
launch such further claims on behalf of the patient in relation to
the above legal proceedings,
as she may be advised;

3.3
settle and compromise the aforesaid claims; and

3.4
ratify any action taken on behalf of the patient in the course of the
aforesaid proceedings.

4.1 M[...]
S[...] N[...], is hereby appointed curatrix bonis to the
estate of the said M[...] A[...] (born M[...]) (ID NO: 7[...]),

with the following powers:

4.1.1

to receive, take care of, control and administer
all the property constituting the estate of the said M[...]
A[...];

4.1.2

to carry on or discontinue, subject to any law
which may be applicable, any business or undertaking of the said
M[...] A[...];

4.1.3

to acquire, whether by purchase or otherwise, any
property, whether movable or immovable, for the benefit of the said
M[...] A[...];

4.1.4

to let, exchange, partition, alienate and for any
lawful purpose to mortgage or pledge any property, movable or
immovable, whether
in whole or in part, belonging to the said M[...]
A[...];

4.1.5

to perform any contract relating to the property
of the said M[...] A[...]
entered into by her or on her behalf before she
was declared incapable of managing her own affairs;

4.1.6

to exercise any power or give any consent required
for the exercise of any power, where such power is vested in the said
M[...] A[...] for
her own benefit or is in the nature of a beneficial interest in her;

4.1.7

to raise money by way of mortgage or pledge of any
of the movable or immovable property of the said M[...]
A[...] for the payment of her debts or
the payment of any debt or expenditure incurred or to be incurred for
her maintenance or otherwise
for her benefit or the improvement or
maintenance of any of her property;

4.1.8

to apply
any money for the maintenance, support or
towards the benefit of the said M[...]
A[...];

4.1.9

to incur expenditure in respect of the improvement of any property of
the said M[...] A[...] by
means of building or otherwise;

4.1.10

to expend any moneys belonging of
the said M[...] A[...] on the
maintenance, education or advancement of any relative of the patient,
or any other person, wholly or partially dependent
on the patient. To

continue such other acts of bounty or charity exercised by the patient as the Master having regard to the circumstances and the value of the estate of the patient considers proper and reasonable;

4.1.11

to invest and reinvest moneys which may be available from time to time and which are not immediately required for the purposes referred to in s 82(c)

of the Administration of Estates Act 66 of 1965; and

4.1.12

to institute proceedings which may be necessary in the interest of the said M[...] A[...], or for the due and proper administration of her property;

4.2

The powers conferred upon the said curatrix bonis, in paragraph 4.1 above shall be exercised subject to the approval of the Master.

4.3

The curatrix bonis is exempted from providing security to the satisfaction of the Master of the High Court.

5.

M[...] S[...] N[...] be and is hereby appointed as curatrix personae to the person of the said M[...] A[...], with the

following powers:

5.1

to give consent to the medical examination of the said M[...] A[...];

5.2

to admit the said M[...] A[...] to any hospital or medical facility;

5.3

to give consent for any medical or surgical procedure to be conducted on the person of the said M[...] A[...];

5.4

to arrange for accommodation and care for the person of the said M[...] A[...];

5.5

to admit the said M[...] A[...] to a nursing, rehabilitation or high-care centre; and

5.6

to determine the appropriate investigation, treatment and management of any medical or other condition of M[...]

A[...].

6.

The costs of this application, as between attorney and client, including the costs of the application for the appointment and the fees of the curatrix ad litem appointed to represent the patient, shall be paid out of the patient's estate.

7.

All costs incurred, as a consequence of the intervening party's opposition of this application, shall be paid by the intervening party on a scale B.

JUDGMENT

Mathenjwa J

Factual

background

[1] This application arises from an emotional case wherein Mrs M[...] A[...] ('the patient') who is married to Mr A[...] A[...] ('the intervening party') murdered their own daughter, a four-year-old by drowning her in a bucket of water on 26 April 2022. The patient was convicted of murder and sentenced to 18 years' imprisonment. Subsequently, the intervening party instituted divorce proceedings against her, which prompted the patient's sister ('the applicant') to launch this application for the appointment of a curator ad litem to assist the patient in the divorce action. The application is opposed by the intervening party.

[2] The patient had appeared in the KwaDukuza Reginal Court where the Regional Magistrate referred her to Fort Napier Psychiatric Hospital for psychiatric evaluation in terms of ss 77 and 78 of the Criminal Procedure Act (the Act).[1] Reports of two psychiatrists diagnosed the patient as suffering from major depressive disorder, in partial remission. However, both

psychiatrists found that the patient was fit to stand trial in the criminal proceedings and that at the time she committed the offence she was able to appreciate the wrongfulness of her actions. The patient pleaded guilty to the charge of premeditated murder in terms of s 112(2) of the Act and she was found guilty as charged.

[3] On 6 June 2023 the applicant, Ms M[...] S[...] N[...] approached this court as a matter of urgency seeking an order for the appointment of a curator ad litem to her sister (the patient), to investigate whether the patient is capable of managing her own affairs and report on the prospects of success or any further steps to be taken in the legal proceedings brought against the patient in respect of the divorce action under case number D4684/2023 and application for the termination of her parental rights and responsibilities in respect of her minor child under case number 7608/2023P.

- [4] The matter came before Wallis AJ on 13 June 2023 where the learned acting judge issued an order appointing Advocate Twannette Holtzhausen as curatrix ad litem to the patient. Additionally, to the appointment of the curatrix ad litem, the order directed the curatrix to investigate whether a curator bonis ought to be appointed to the estate of the patient and a curator ad personae ought to be appointed for the patient and to report back to the court on these questions. On 14 April 2024 the intervening party launched an application to intervene in the proceedings and the order for intervention was

granted by consent.

The parties contention

- [5] The applicant claims that the patient has acute anxiety and serious depression. Because of her condition, the patient has been admitted to several hospitals. She was admitted to Optima Psychiatric Hospital in Bloemfontein from 17 May to 1 June 2012, from 4 to 9 March 2013, and from 8 to 10 July 2015. She was also admitted to Aga Khan Hospital in Kenya on 17 August 2021; Optima Psychiatric Hospital in Stellenbosch from 20 to 30 March 2022; and Alberlito Hospital in Ballito on 15 April 2022. Furthermore, the patient had attempted suicide on at least five occasions: 17 August 2021, 6 January 2022, 15 April 2022, 18 April 2022 and 26 April 2022 being the date on which she murdered her child.
- [6] The patient has a substantial estate, which includes a retirement village property worth approximately R1 million and R600 000.00 in her investment bank account. Also, she owns an immovable property valued between R3,5 to R4,2 million in Islgton and other property valued between R3,8 to R4,2 million at Mount Augusta, Midstream. Additionally, she jointly with the intervening party, has assets of significant value.
- [7] The patient signed a settlement agreement regarding the patrimonial ramifications of the divorce while she was still awaiting her psychiatric evaluation report related to the criminal trial, which agreement was sent by the intervening party. Because the patient is so fragile, depressed, and incapable of understanding the repercussions of her actions during the divorce processes, the applicant requested the appointment of a curator ad litem to assist her in the divorce action.
- [8] Ms Kisooson Singh for the applicant submits that when the court granted the order known as the “first order prayed” on 13 June 2023, any flaws in the application with regard to the conditions stipulated in Uniform rules 57(2) and (3) was condoned. Ms Kisooson Singh submits that subrules (1)-(3) address the process and prerequisites for the court to issue an order under rule 57(4); thus, Ms Holtzhausen’s appointment as curatrix ad litem completed that process. It was submitted on behalf of the applicant that the curators ad litem, bonis, and ad personae should be appointed to the patient since it is clear from the medical reports presented in court and the curatrix ad litem’s report that the patient is incapable of managing her own affairs.

- [9] The intervening party contends that the reports relied upon by Ms Holtzhausen includes two reports by psychiatrists who at the patient's criminal trial recently expressed the opinion that she was fit to stand trial in criminal proceedings. According to the intervening party the diagnosis of the patient and findings by Dr Meyer and Ms Styles do not support the relief sought by the applicant that a curator ad litem be appointed to litigate on behalf of the patient in the divorce action. The intervening party contends that in cases where the patient has, at best, full cognitive capacity and, at worst, some diminished cognitive capacity as a result of a major depressive disorder, Ms Holtzhausen's recommendation to appoint a curator ad litem is legally incorrect. Furthermore, he disputes that he manipulated the patient when they negotiated the settlement agreement in their divorce action.
- [10] Mr Humphrey for the intervening party, argued that the applicant's request for the appointment of a curator ad litem does not comply with rule 57 since the court does not currently have enough information to determine whether the patient is incapable of handling her own affairs. It was argued that the applicant's reliance on Dr Meyer's report in instances where he has not attested to an affidavit introducing his evidence in court is faulty. On behalf of the intervening party, it was argued that the patient is not in any way cognitively or intellectually handicapped because Dr Meyer's report, which states that the patient last saw him in 2022, is hearsay and does not demonstrate that the patient has lower cognitive ability. The argument was made that the patient's severe depression and related symptoms do not qualify her for the appointment of a curator ad litem.

The curatrix ad litem's report

- [11] In addition to providing her original and supplemental reports, the curatrix ad litem personally attended the hearing of the case as an amicus curiae. She consulted with the patient during her appearance at KwaDukuza Regional Court and at frequent intervals when she was incarcerated at Westville Prison. Ms Holtzhausen claims that the patient began experiencing depression soon after the birth of her first child in 2012. She married Mr A[...] on 5 May 2015, and the deceased child was born in 2018. The patient's anxiety and despair persisted after she married Mr A[...]. She had made multiple attempts to end her life. The patient attempted to take her life on 26 April 2022, by consuming benzene and sleeping pills. Because she did not want to abandon her child without anybody to care for her, she chose to drown her child to death. She then fell asleep. When she woke up later that afternoon she phoned the landlord and her husband and disclosed to them that she had killed her child.
- [12] During her consultation with the patient, Ms Holtzhausen noticed that the patient appeared weak and had struggled to concentrate. She was housed in the hospital section of the prison. The patient disclosed suicidal thoughts and self-hatred during their follow-up visit. She also said that she hated herself for what she had done. At one point, she was crying, calling herself a monster, and saying that she missed her children. She was aware that she had signed a settlement agreement and that a summons had been issued in the divorce proceedings. She felt compelled to sign the settlement agreement in order for her husband to move away from her since she felt very bad about the death of their child. In addition to

taking a sleeping pill at night and depression medicine in the morning and afternoon, she does not receive therapy or any other kind of treatment. In order to guarantee that the patient receives proper medical and psychological care, which the State does not currently provide, Ms Holtzhausen suggests that a curator ad persona be appointed.

- [13] Additionally, Ms Holtzhausen provided reports from Dr Meyer, a psychiatrist who has been seeing the patient since 27 May 2012. Major depressive disorder and severe anxiety disorder were the patient's diagnoses. Dr Meyer claims that anxiety, ambivalence, indecisiveness, lack of enthusiasm, diminished problem-solving skills, and difficulty focussing are some of the symptoms of severe depressive disorder. When he last saw the patient in March 2022 the patient did not exhibit any cognitive decline. According to Dr Meyer's additional report, the patient's persistent acute depression and suicidality would probably hinder her conative function even while she is capable of acting on a cognitive level. As a result, he is in favour of appointing a curator to help the patient make rational decisions.
- [14] Also, Ms Holtzhausen appointed Ms Philippa Styles, a professional psychologist, to evaluate the patient. Ms Styles concluded that the patient had major depressive disorder. According to the clinical evaluation, the patient had psychomotor retardation, and this condition got worse over time. Psychomotor retardation is the slowing down or impeding of one's mental or physical activities. Slow speech, reduced mobility, and cognitive impairment are all signs of psychomotor retardation. Her sluggish conative flexibility suggests that the patient may have some mental illness-related executive functioning issues. In support of her conclusions, Ms Styles deposed to an affidavit. She suggests a curator be appointed to the patient. Furthermore Ms Holtzhausen supplied reports of the two psychiatrists who assessed the patient when she was referred to Fort Napier Hospital by KwaDukuza Regional Magistrate in conformity with s 79(1) of the Act. The patient was

diagnosed with major depressive disorder by both psychiatrists. In terms of criminal proceedings, they concluded that the patient could follow court proceedings and give instructions to her attorneys; she could stand trial and was able to appreciate the wrongfulness of her actions at the time of commission of the offence.

- [15] Therefore, the question I have to decide is whether the patient requires, as a matter of law, a curator ad litem to assist her with the ongoing divorce action and application to terminate her parental rights and responsibilities in respect of her minor child, as well as whether a curator bonis and ad personae should be appointed to the patient.

Applicable legal principles

- [16] Uniform rule 57 provides:

‘(1) Any person desirous of making an application to the court for an order declaring another person (hereinafter referred to as “the patient”) to be of unsound mind and consequently incapable of managing his or her own 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.

...

(3) The application shall, as far as possible, be supported by-

(a) ...

(b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be a psychiatrist or other medical practitioner with appropriate expertise, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon the patient’s mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions 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 or her affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without a personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in subrule (1), the court may appoint the person suggested or any other suitable person as curator ad litem, or may dismiss the application or make such further or other order thereon as it deems fit and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

(10) Upon consideration of the application, the reports of the curator ad litem and the Master and such further information or evidence (if any) as has been orally adduced, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his or her own affairs and may appoint a suitable person as curator to the patient’s person or property or both, on such terms as it deems fit, or it may dismiss the application or generally make such order (including an order that the costs of the proceedings be defrayed from the assets of the patient) as it deems fit.

...’

[17] The initial procedure for the appointment of a curator ad litem is set out in rule 57(1)-(3). The application must, as far as possible, be accompanied by an affidavit from at least two medical

professionals who have recently examined the patient.[2] Except for subrule (4), which gives the court the authority to dispense with any of the rule's requirements in cases where a good cause is shown or other special circumstances exist, the provisions of the rule is peremptory. It is the applicant's responsibility to prove that the individual requires a curator because he is unable to handle his own affairs.[3]

[18] It is trite that 'the appointment of a curator ad litem constitutes an interference with the right of an adult person to control his affairs, and that before such an appointment is made, the Court 'must be satisfied, on proper enquiry; that the mental condition of that person is such as to justify interference of this kind'.[4] However, the appointment of a curator ad litem does not deprive the patient of administering his property to the extent that he is able to do so with assistance of the curator. This view was expressed in *Pienaar v Pienaar's Curator*[5] where the court held that that:

'The mere fact that such a person has been declared insane or incapable of managing his affairs, and that a curator is appointed to such person, does not deprive him of the right of administering his own property and entering into contracts and other legal dispositions to the extent to which he may de facto be capable, mentally and physically, of so doing.'

[19] Once appointed the curator ad litem has a duty to make inquiries, investigate the patient's mental illness and report back to court. Elaborating on the duty of the curator ad litem in *Ex parte: Futter, Van Zyl J* stated as follows:[6]

'This is in my view the correct approach. The person appointed as curator ad litem as envisaged in Rule 57, is not appointed to simply act as *amicus curiae* to assist the Court in determining whether the patient is capable or incapable of managing his own affairs, and whether the

proposed curator bonis is a fit and proper person to administer the estate of the patient. He is appointed as curator ad litem to the patient, to act on his behalf and to represent his interests in the litigation pertaining to the appointment of a curator bonis to manage his estate...'

Analysis

[20] The case comes before me at the second stage of the application process in order to evaluate the curator ad litem's reports and other pertinent information and decide whether to declare the patient mentally ill and appoint curators ad litem, bonis, and ad personae to her. The affidavit of at least two medical professionals confirming the application, as required by rule 57(3), was not submitted to the court when it issued the order appointing the curatrix ad litem. On the basis of the principle that compliance with the rule is peremptory and that "a failure to observe the Rule renders an application defective to the extent that such application cannot and should not be entertained at all",[7] counsel for the intervening party argues that the application should be dismissed for non-compliance with the rules.

[21] It is appropriate to note that there are two steps involved in an application to declare someone mentally ill and appoint a curator

for them. Rules 57(2) and (3) must be followed during the first phase, which concludes when the court appoints a curator or dismisses

the application in accordance with subrule (4). Following the appointment of the curator ad litem by the court, the second stage commences with the curator interviewing the patient, investigating his mental health, gather further pertinent information, put together his report and arrange for it to be delivered to court, in accordance with subrule (5).

[22] There is no question that medical reports of a patient's mental state are required to help the court make a decision regarding

that person's mental state, given the impact that the appointment of a curator has on the individual's dignity and

his or her right to manage his or her affairs as an adult. Subrule

(4) gives the court the authority to dispense with the requirements

of the rule in certain situations. The court (per Wallis AJ) that initially heard the application had the authority to decide

whether to dispense with the rule's requirements based on the facts presented to it. Neither the court order nor the evidence

provided to this court reflects the circumstances that the court took into consideration when it dispensed with the requirements of the rule and appointed the curatrix ad litem. Therefore, the application is not invalid merely because the court dispensed with the requirement of medical reports at the initial stage.

[23] I have to assess whether the patient is mentally ill and unable to manage her own affairs at this second stage of the application by considering the curatrix ad litem's report as well as other relevant information presented in court. When investigating a patient's mental state, the curator ad litem has broader powers. For example, if the court that appointed the curator ad litem had dispensed with the patient's medical report, as in this instance, the curator ad litem may refer the patient for a medical examination. Ms Holtzhausen has used her authority to obtain and submit medical reports that were put together by Ms Styles and Dr Meyer. Dr Meyer failed to provide an affidavit attesting to the accuracy of his report. In an affidavit deposed to by Ms Holtzhausen she included Dr Meyer's reports on the patient's diagnosis and course of therapy. During her consultation with Ms Holtzhausen, the patient verified the diagnosis and therapy given by Dr Meyer. Additionally, the patient's sister provided an affidavit in which she stated the dates and treatment given by Dr Meyer to the patient. Dr Meyer's supervision of the patient over a 12-year period is undeniable, and the intervening party is not disputing the factual or medical conclusions in Dr Meyer's medical report. Thus, under the facts of this case, Dr Meyer's report substantially complies with the rules and is pertinent in helping the court ascertain the patient's mental state.

[24] Examining the criteria for mental incapacity is appropriate given the disagreement between the applicant and the intervening party on whether the patient may be legally declared to be of unsound mind and have a curator appointed to her. An accused individual cannot stand trial in a criminal trial if due to a mental illness or intellectual handicap he or she is not capable of understanding the proceedings so as to make a proper defense.[8] A person who suffers from a mental illness or intellectual disability which makes him or her incapable

‘(a) of appreciating the wrongfulness of his or her act or omission; or

(b) of acting in accordance with an appreciation of the wrongfulness of his or her act or omission,

shall not be criminally responsible for such act or omission.’ [9]

The cognitive function is the ability to recognise the wrongness of one’s actions, and the conative function is the ability to act in a way that reflects an understanding of the wrongness of one’s actions. While the conative component refers to the capacity for self-control and the exercise of free will, cognitive function is related to an individual’s ability to think, comprehend, and reason. [10] Therefore, a person will be considered mentally ill and incapable of managing his or her own affairs if he or she is cognitively functional but conatively impaired

[25] According to Dr Meyer, the patient’s conative function is probably going to be hampered by her persistent depression and Ms Styles says that it is already impaired. It is undeniable that the patient has been hospitalised in mental hospitals 12 times for depressive disorders; she has also attempted suicide five times, the most recent of which occurred on the day she killed her child. It is clear from Dr Meyer and Ms Styles’ conclusions

that the patient’s conative function is compromised, even though the psychiatrists had concluded that the patient was able to give instruction to her legal representative, follow the court proceedings and stand trial in the criminal trial. It is hard to say that someone who struggles with self-management, has attempted suicide multiple times, and still feels the need to end her life because of depression, is capable of managing her own affairs. Taking into account the patient’s physical state and behaviour, the medical

evidence demonstrating that the patient’s conative function is compromised leads to the conclusion that the patient is mentally ill and unable to manage her own affairs.

[26] This then brings me to the necessity of curators being appointed. When the court asked the intervening party’s counsel about the reason for opposing the application, Mr Humphrey responded by stating that the reason he opposed the application was based on a sense of justice, stating that the applicant’s

application was invalid due to non-compliance with the rules. In my view justice will be done to both litigants if the curator ad litem is appointed to help the patient who is currently incarcerated; diagnosed with ongoing depression, has already made irrational decisions when she killed her own child and made multiple suicide attempts, to deal with the patrimonial consequences of her divorce because of the enormous value of her estate.

[27] Based on the report of Ms Holtzhausen, it is clear that the patient is not receiving adequate treatment and counselling in prison; she will need medical treatment for the rest of her life and that the appointment of curator ad personae is necessary to assist her with her medication and other personal needs. The intervening party is not opposing the appointment of a curator bonis and Ms M[...] S[...] N[...] has agreed to be appointed as both the curator bonis and curator ad personae to the patient.

[28] It is trite that a curator bonis must furnish security, unless a court has exempted him from furnishing such security. Ms Holtzhausen has consulted with the patient's other sister, Theresa Nel who confirmed that the applicant has been taking care of the patient's needs and her finances for the last two years and that all members of the family support the appointment of the applicant as curator bonis and ad personae to the patient. Further the applicant has extensive experience of 32 years in the insurance industry where she specifically dealt with asset management. Therefore, considering these extraordinary circumstances I am satisfied that the curator bonis ought to be exempted from furnishing security.

[29] This then brings me to the issue of costs. There is no reason to deviate from the principle that costs follow the results. Given the complexity of the matter and seniority of the counsel involved in the matter the intervening party should pay the applicant's costs on scale B.

Order

[30] In the premises the following order is made:

3.1 take all further steps to finalise and/or defend such claims;

3.2 launch such further claims on behalf of the patient in relation to the above legal proceedings, as she may be advised;

3.3 settle and compromise the aforesaid claims; and

3.4 ratify any action taken on behalf of the patient in the course of the aforesaid proceedings.

4.1 M[...] S[...] N[...], is hereby appointed curatrix bonis to the estate of the said M[...] A[...] (born M[...]) (ID NO: 7[...]) , with the following powers:

4.1.1 to receive, take care of, control and administer all the property constituting the estate of the said M[...] A[...];

4.1.2 to carry on or discontinue, subject to any law which may be applicable, any business or undertaking of the said M[...] A[...];

4.1.3 to acquire, whether by purchase or otherwise, any property, whether movable or immovable, for the benefit of the said M[...] A[...];

4.1.4 to let, exchange, partition, alienate and for any lawful purpose to mortgage or pledge any property, movable or immovable, whether in whole or in part, belonging to the said M[...] A[...];

4.1.5 to perform any contract relating to the property of the said M[...] A[...] entered into by her or on her behalf before she was declared incapable of managing her own affairs;

4.1.6 to exercise any power or give any consent required for the exercise of any power, where such power is vested in the said M[...] A[...] for her own benefit or is in the nature of a beneficial interest in her;

4.1.7 to raise money by way of mortgage or pledge of any of the movable or immovable property of the said M[...] A[...] for the payment of her debts or the payment of any debt or expenditure incurred or to be incurred for her maintenance or otherwise for her benefit or the improvement or maintenance of any of her property;

4.1.8 to apply any money for the maintenance, support or towards the benefit of the said M[...] A[...];

4.1.9 to incur expenditure in respect of the improvement of any property of the said M[...] A[...] by means of building or otherwise;

4.1.10 to expend any moneys belonging to of the said M[...] A[...] on the maintenance, education or advancement of any relative of the patient, or any other person, wholly or partially dependent on the patient. To continue such other acts of bounty or charity exercised by the patient as the Master having regard to the circumstances and the value of the estate of the Patient considers proper and reasonable;

4.1.11 to invest and reinvest moneys which may be available from time to time and which are not immediately required for the purposes referred to in s 82(c) of the Administration of Estates Act 66 of 1965; and

4.1.12 to institute proceedings which may be necessary in the interest of the said M[...] A[...], or for the due and proper administration of her property;

4.2 The powers conferred upon the said curatrix bonis, in paragraph 4.1 above shall be exercised subject to the approval of the Master.

Mathenjwa J

Appearances

Applicant's counsel: P Kissoon-Singh Instructed by: V Chetty Incorporated Durban Intervening party's counsel: S I Humphrey Instructed by: Larratt Law Incorporated Durban Amicus Curiae T Holtzhausen Date of hearing: 23 January 2025 Date of judgment: 27 March 2025

- [1] Criminal Procedure Act 51 of 1977.
- [2] Ex parte Stoffberg; In re: Xaba v Road Accident Fund and two related matters
- [2018] 3 ALL SA 145 (GP) para 13.
- [3] Ibid.
- [4] Ex parte: Futter, In re: Walter v Road Accident Fund and Others [2012] ZAECPEHC 52 para 19.
- [5] Pienaar v Pienaar's Curator 1930 OPD 171 at 174.
- [6] Ex parte: Futter above fn 4.
- [7] Modiba obo Ruca; In Re: Ruca v Road Accident Fund [2014] ZAGPPHC 1071 para 33.
- [8] Section 77(1) of the Act.
- [9] Section 78(1) of the Act.
- [10] J Burchell South African Criminal Law and Procedure Volume I: General Principles of Criminal Law 4 ed (2011) at 255.

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