

SOUTH AFRICA / JUDGMENT

Sayed N.O v Road Accident Fund (34250/2020) [2024] ZAGPPHC 881 (5 September 2024)

[2024] ZAGPPHC 881

COURT

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

34250/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

No: 34250/2020

REPORTABLE: NO

OF INTEREST TO OTHERS

JUDGES: NO

REVISED

Date: 05 September 2024

In

the matter between:

ADVOCATE

SAYED N.O

(Curator

ad litem for and on behalf of FGW F[...])

Plaintiff

and

THE

ROAD ACCIDENT FUND

Defendant

This

judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 05 September 2024.

JUDGMENT

RETIEF J

INTRODUCTION

- [1] This matter came before this Court on the civil trial roll for the determination of future loss of earnings only. The Defendant was duly represented by the State Attorney. The Plaintiff is, by Court order, the duly appointed Curatrix ad litem [Curatrix] representing F[...] G[...] W[...] F[...] [the minor] in the finalisation of his claim against the Defendant.
- [2] The minor is currently 13 (thirteen) years old. It is common cause that on 7 February 2017, when he was only 5 (five) years old he was injured when he fell off the back of a trailer hauled by a tractor, suffering from third degree burns on his back and sustained a mild concussive head injury.
- [3] This is not the first time the matter is on trial. On 21 September 2022, the matter served before Makhoba J in which the merits, future medical expenses and general damages were finalised. The Plaintiff's claim with regard to future loss of earnings was postponed sine die and the order stated:
- "4. The loss of earning is postponed until such time that the injured minor is older and a proper re-assessment can take place."*
- [4] At the time of the hearing, an appeal lay as against the general damages award to the Full court of this Division and as such, prayer 4 remains undisturbed.

- [5] At the time of the order Makhoba J went to great lengths to explain that at the time the matter served before him, he was unable to find evidence supporting the fact that the minor was entitled to any amount in respect of loss of earnings. He expanded the same by reiterating the following reasons at paragraph 17 of the judgment:

“1. At the time the minor sustained injuries he was 5 years and 10 months old.

2. The minor is currently attending school and is progressing very well.
 3. He has never repeated a grade.
 4. There appears to be no indication that he will undergo a major operation in the future.
 5. There were no follow up consultations with the experts who examined him.
 6. He had reached his maximum improvement.”
- [6] Having regard to the above factors, Makhoba J was of the view that an award for loss of earnings was premature, that the minor had to be older and therefore needed to be re-assessed again. As it stands, compliance with prayer 4 is trite. The matter now serves before this Court approximately one and half years since Makhoba J’s findings. Time appears to be the trigger that should favour the minor and his claim for future loss of earning.
- [7] The relevance of time was also echoed by Dr J Seabi, the educational psychologist [EP] who stated in his initial report that: “He (‘the minor’ - own emphasis) is still in the foundation/primary school phase of education and it is therefore likely that many of his cognitive deficits are presently masked by the high levels of structure and guidance provided in the classroom context during this phase. As he progresses through the educational system, it is expected that he would increasingly struggle to cope with the complexity of the curriculum content and the requirements for increased independence in his school work.”
- [8] Presently the minor is still in primary school. Notwithstanding, he has progressed scholastically and is presently in the intermediate phase and in grade 7. He has passed all his grades.
- [9] On the pleadings, causation, the nature and extent of the minor’s injuries and the sequelae giving rise to a claim for loss of earnings are in dispute. However, the Defendant failed to place any of the facts or expert opinions

relied on by the Plaintiff before Makhoba J in dispute, such admissions formed part of the learned Judge’s judgment. Before

this Court, the Defendant filed no reports of their own nor, did it place any facts and opinions of the experts who re-assessed the minor in dispute. The Plaintiff in consequence moved for the expert evidence to be tendered by way of affidavit in terms of uniform rule 38(2). The Plaintiff’s formal application was granted, this, notwithstanding the Defendant’s oral opposition heard from the bar. No opposing papers were filed in opposition, no heads of argument were filed and nor did the Defendant at any stage during the hearing move for a postponement. Defendant’s Counsel

simply argued on the evidence tendered by the Plaintiff.

[10] In consequence, the matter proceeded on this basis. This Court viewing and considering too, the updated evidence of EP, Dr Moja, the neurosurgeon, T Talmud the industrial psychologist [IP], and N September the occupational therapist [OT].

NATURE OF MINOR'S INJURIES

[11] It is common cause that the thrust of the minor's claim for loss of earnings is based on the cognitive sequelae subsequent upon a reactive psychological reaction to the physical injuries he sustained in the accident. His psychological dysfunction

is also associated with chronic post-traumatic stress disorder symptoms [PTSD] and attention deficit and hyperactivity disorder

[ADHD].

[12] On reassessment in 2022 by Ingrid Jonker, the neuropsychologist, she recorded the presence of significant concentration problems and that the minor's overall cognitive profile remained more depressed than one would have expected. This was supported by the EP's initial evidence that the minor's cognitive abilities which range from his narrative memory, his visual mental tracking, his verbal abstract reasoning, and mental inflexibility are impaired and are expected to in time, become more impactful resulting in inconsistent scholastic outcomes.

[13] In short, although the minor's cognitive deficient were well documented in 2022 and common cause, on the evidence the impact, scholastically, had not fully unmasked itself. Of interest then now, is the reassessment evidence and the weight to be applied to it in support of the postulations by the IP of the 'but for' and 'having regard' to scenarios which appear to have remained the same since 2022.

[14] In other words, have the plaintiff's attorneys taken heed and waited, in the interest of the minor, to demonstrate full impact of the minor's cognitive sequelae to support the opinion evidence in support of his future loss of earnings.

FUTURE LOSS OF EARNINGS

Pre-morbid postulation and factors for consideration

[15] On the admitted facts the minor possessed average intelligence, as a result of which, it is postulated by the IP in the latest report of 2024, that:

STAGE 1

15.1. The minor will pass all his schooling years on his first attempt, completing his grade 12 at the end of 2029;

15.2. Thereafter, it would take him 1 (one) to 2 (two) years to secure formal employment. Initially securing work in the informal sector was 50% at the time, earning a national minimum wage;

STAGE 2

15.3. After 3 (three) years he would have then obtained and secured formal employment with the job complexity and remuneration commensurate for a basic salary as provided by Paterson A2 median level. Whilst working in the formal sector he could have passed his NQF 7 (degree) level qualification within a period of

4 (four) to 5 (five) years after securing the formal employment;

STAGE 3

15.4. Upon completion of his qualification (NQF 7) his earnings would have increased to job complexity remuneration commensurate of an annual package of Paterson B3 median level;

15.5. At age 45 (forty-five) he would have reached his career ceiling on Paterson D2 medial level, thereafter, receiving an inflationary increase until retirement age of 65 (sixty-five).

[16] The pre-morbid postulation above was considered by the IP as a conservative approach, inter alia having regard to the minor's perceived average intelligence, that children appear to do better than their parents and having regard to the unemployment possibilities in the future. Consideration too, was given to the minor's family socio-economic demographic information, namely that the minor's mother was unemployed but previously was employed as a domestic worker. She attained a grade 7. His father achieved a grade 10, worked on the farm at the time of the accident and later became a long-distance truck driver. The minor's older brother followed in his father's footsteps, although he obtained a grade 12 he remained and worked on the farm. The minor's uncle has a grade 8 and is a truck driver. The minor's adoptive sister, Leandra, appears to be one of the outliers who, after attaining a grade 12 went to university. Unfortunately, no further information was obtained from Leandra. A clearer picture of her career path and circumstances under which she chose, attentively how she this path remains unclear.

[17] Of some significance is that the IP too, postulated the minor's pre-morbid path without obtaining any pre-morbid information, collateral or otherwise by way of interview or subpoena at trial. No information was obtained from any of the minor's pre-school teachers, classmates, siblings, or other family members other than his mother. This was in circumstances when the minor remained in the same school since grade R. No information about how the minor interacted with others or if he displayed attention deficit tendencies prior to the accident. This lacuna, was recorded by Dr Naidoo when he authored his report in 2020. Dr Naidoo, nonetheless speaking to the minor's hyperactivity he stated, in the absence of any pre-morbid information, that although the pathogenesis of the minor's attention deficit hyperactivity symptoms are debatable, on the facts, a nexus exists between the injuries sustained in the accident and his psychopathology existed, albeit a reactive psychopathology as a result of the trauma.

[18] This evidence must also be seen in the light of the fact that the minor, other than the burn injury in this accident causing a reactive trauma, also endured a previous burn injury trauma when he was 3 (three) years old. No information was provided to any expert of the treatment the minor received at the Red Cross Children's hospital for two weeks he spent there. The only information provided was that his neck was burnt and he underwent skin grafts [first trauma]. No expert therefore ventured to comment on the possibility of the first trauma causing a similar reactive psychopathology and, whether the minor's cognitive deficits pre-morbidly were merely exacerbated, albeit accelerated by the trauma in the accident. Dr Pienaar, the plastic surgeon noted the scarring on the minor's right neck which had occurred 5 (five) years earlier and recorded that no information was provided of the medical history nor treatment. This Court, on the evidence, takes cognisance of the first trauma as an admitted fact but, remains none the wiser of its impact, if any, on the present pre-morbid postulation. Any disturbance and uncertainty created, if any, will be rectified by the applied contingencies to the pre-morbid postulation.

Post-Morbid postulation and factors for consideration

[19] In 2022 when the minor was in grade 5, his school reports indicated 'that he passed' all his previous grades. However, at the same time, the EP confirmed that the minor demonstrated significant difficulties in most of the scholastic tests during the assessment. In addition, he had difficulty concentrating on tasks, with the retrieval of information and displayed delayed performance in his present scholastic assessment which, according to the EP, means that he may have trouble coping with the demands of mainstream education, particularly in senior grades. The difficulties identified included emotional, physical, and social difficulties.

[20] This outcome was not disturbed when the test was repeated in 2024 by the EP, the outcomes demonstrated again an overall cognitive functioning that was in the low average range.

[21] The "may have trouble coping" opined by the EP in 2022 was further explained in the re-assessment. The EP in January 2024 recorded that although the minor had successfully passed grade 5 and grade 6, the stated at paragraph 11.5.4, that there " -is a significant deterioration in his latest scholastic performance. His grade 7 was within the Moderate Achievement throughout all terms". However, no grade 7 reports were made available to the EP nor could they have been as, as the assessment of the minor occurred in January, being the beginning of the minor's grade 7 year and as such, no reports were available.

[22] This was not pointed out to this Court in argument nor was the EP's opinion of 'a significant deterioration in his latest scholastic performance' explained.

[23] This Court then itself scrutinized the minor's reports which were incorporated into the EP's re-assessment report. This Court accepting that the EP was referring to grade 6 rather than 7 took note of the grade 6 report. In doing so, compared the final recorded marks for each subject in grade 5 with that of grade 6 to understand the weight of the EP's observation. A

subject by subject analysis illustrated a decline. A decline was apparent when one simply compared the final marks in which the minor achieved a mark above 50% in grade 5 to those in grade 6. In grade 5, the minor passed the year attaining a mark above 50% in all of his

subjects except 1. However, in grade 6 he only achieved a mark of 50% and above in 3 out of the 8 subjects. That is a significant decline in a short space of time. Unfortunately, no further evidence was available beyond grade 7 this, notwithstanding the fact, that as at the date of the hearing, the first term of grade 7 had been completed.

[24] Dr TP Moja, a specialist neurosurgeon who also, authorised an updated report subsequent to 21 September 2022, confirmed that the overview and conclusions expressed in two previous reports of 19 July 2020 and 31 March 2022, remained valid and unchanged. The importance of the conclusion lies in the possibility of a causal link between the minor's poor concentration and behavioural problems as reactive sequelae subsequent upon the psychological trauma he suffered as a result of the accident. This speaks to Dr Naidoo's evidence.

[25] According to the addenda report authored by the IP, the post-morbid postulation is that the minor would enter the labour market between the ages of 20 (twenty) and 25 (twenty-five), earning in line with the 50% percentile of unskilled, informal. With vocational guidance and training he would be able to complete a higher paying income of reaching his career ceiling at age 45 (forty-five), earning 50% percentile selected demographic data as per the analytical research. Thereafter, earning inflationary increases until retirement age of 65 (sixty-five).

[26] The Court accepts that a claim for future loss of earnings has been established and that other factors which may disturb the postulation as presented, can now be dealt with by examining the calculation in support of the claim and applying contingency deductions in order to bring the calculation as reasonably close to the actual loss which is to be incurred.

CALCULATION AND CONTINGENCY DEDUCTIONS

[27] Having regard to all the factors and the argument presented, the Court reaffirms the sentiments of the Supreme Court of Appeal in *De Jongh v Du Pisanie*,^[1] that contingency factors cannot be determined with the mathematical position and that contingency deductions are discretionary. They are speculative. Furthermore, that in the matter of *Southern Insurance v Bailey*,^[2] the Court noted: "Where the method of actual calculation is adopted, it does not mean that the trial judge is 'tied' down by inexorable actuarial calculations. He has a large discretion to award what he considers right."

[28] 'What is right?' of course depends on a number of factors all of which can be applied to adjust the amount calculated to reflect a figure which is reasonable and possibly the figure of what the actual loss would be.

[29] Moving from that premise, and in the absence of any evidence presented by the Defendant to the contrary, this Court attempts to make a final adjustment. In so doing it turns to the actuarial calculations by GW Jacobsen and instructed by the Plaintiff's attorney. Calculated

on the only premise before Court, that of IP a 20% pre-morbid contingency was applied by instruction. This having regard to the minor's age - age an important factor to consider. A higher post-morbid contingency of 35% was applied based on the fact that although the minor has a residual working capacity, having regard to his untreated conditions, he is vulnerable in the open labour market. The calculation which the Plaintiff moved for in respect of the future net loss of R8 224 049.00.

- [30] The Defendant's Counsel argued that the Court should consider a higher pre-morbid contingency by applying a 35% deduction. The Counsel argued that because the minor's father and uncle were truck drivers and that the minor had expressed wanting to be a truck driver himself on the papers, that the pre-morbid postulation was too generous.
- [31] I agree that the pre-morbid calculation is on the generous side having regard to all the facts, including what is not considered, as detailed earlier in the judgment. This included the answer to the enquiry of whether on the evidence, it is reasonable to accept that the minor living on the farm with his family, in a remote area of the Western Cape would have followed in the footsteps of his father and brother after attaining a grade 12 and, if not, whether he would have been committed enough to achieve a degree over a long period whilst already being active in the open labour market. Having regard to the minor's socio demographics this is an important enquiry considering the facts before this Court. This uncertainty can be dealt with by making an adjustment.
- [32] Unfortunately, this Court notes that the Curatrix did not deem it prudent to interview the minor herself, the very person she is representing to enable this Court to possess, at least, some semblance of his 'voice' to distil or bolster any speculation and consequential adjustment.
- [33] As for the post-morbid calculation it appears the most likely scenario. The minor does not suffer from any major physical disabilities and his psychological shortcomings treatable, albeit for life. A section 17(4)(a) undertaking has been awarded for future medical treatment. The Plaintiff's Counsel confirmed that the minor has not received any foreseeable treatment to date and no past medical accounts were presented to support the notion that the minor was being treated at all post-accident.
- [34] To ensure an appropriate award this Court requested the Plaintiff's actuary to provide it with separate calculations for all three stages as postulated pre-morbidly. The first stage the most probable and as such the normal contingency deduction of 20% remains undisturbed. However, the same cannot be said for him attaining an NQF7 qualification and the projection that followed. This is not to say that he would not have attained it and followed a similar path. This Court deems a 50% deduction in respect of the calculation in respect of stage 2 and 3 is to be applied. A 15% post-morbid deduction was applied accepting that the minor will receive the treatment he requires and be able to function in a semi-skilled working environment in the Western Cape.

[35] The minor's claim to be protected as per recommendation by the Curatrix. In her update report, the Curatrix did not deal specifically with the structure of the remuneration to be charged by the Trustees. The Court noted the same in the Trust instrument attached. The Curatrix did request that the Trust dissolve when the minor consents thereto. A dissatisfactory oral proposition in the absence of a suitable

and/or considered amended provision dealing with the proposal and how it will work. This Court in the premises, considers what will be the best interest of the minor to determine when the trust should terminate.

[36] In so doing, this Court notes that the minor was erroneously referred to as a "patient" in the application for a Curatrix. Such reference creates the impression that the minor is unable to manage his own affairs in circumstances when nothing on the papers

demonstrates that the minor's injuries have rendered him incapable in future of managing his own affairs and no such order is or was sort. In this matter it appears reasonable to take a logical approach but to ensure that any termination of the Trust is triggered by judicial sanction when minority ceases.

[37] As regards costs, this Court did not entertain the plaintiff's interlocutory application brought in terms of uniform rule 69. The plaintiff's Counsel briefly mentioned the existence of such an application at the end of the matter and before judgment. He did not formally move the application nor did he make any submissions in support of such application. As such the relief was not entertained. This Court however notes for clarity, that the application was only sent via email to the defendant on the 22 July 2024, absent proof of a read and receipt confirmation.

[38] This Court will exercise its inherent discretion relating to the scale of costs to be awarded as arising from the facts which were readily placed before it by the plaintiff.

[39] The Court notes that a contingency fee agreement was signed by the minor's mother in her personal capacity only. No valid contingency agreement binding the minor exists and in consequence non to ratify by the Curatrix.

The following order:

1. The Plaintiff's application in terms of Rule 38(2) is granted.
2. The Defendant to pay the Plaintiff in her capacity as the Curatrix ad litem, for and on behalf of F[...] G[...] W[...] F[...] [the minor] the amount of R 4 624 017.45 (four million, six hundred and twenty four thousand, and seventeen rand and forty five cents) [capital amount] in respect of the minor's future loss of earnings, payable into the Plaintiff's attorney of record's trust account with the following details:

Account Holder: Ehlers Attorneys

Bank Name: FNB

Branch Code: 261550

Account Number: 6[...]

3. The capital amount is payable within 180 days from date of this order.
4. The Defendant shall be liable for interest on the capital amount, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, on failure to pay the capital amount as referred to in prayer 3, from and including 15 days after date of order, up to and including date of payment thereof.
5. The undertaking in terms of Section 17(a)(a) of the Road Accident Fund Act, 56 of 1996, which was duly awarded by this Court, by order, shall include the costs of the creation of the trust, which is referred to in prayer 8 below, the costs of annually obtaining a security bond as required and the costs of the trustee in respect of the administration of the trust.
6. The Plaintiff's attorneys of record shall retain the capital amount referred to in prayer 2, net of the attorney's fees and costs, in an interest-bearing account in terms of Section 86 (4) of Legal Practice Act 28 of 2014, for the benefit of the minor, pending the creation of the trust referred to below and the issuing of letters of authority.
7. The trustees are authorized to recover from the Defendant, for the benefit of the trust all costs incurred by them which are payable by the Defendant under its undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, including the costs of the creation of the trust and the costs of furnishing security.
8. The Plaintiff's attorneys, Ehlers Attorneys are ordered to establish a Trust for the benefit of the minor and to deposit the nett proceeds of the action on his behalf, after the deduction of taxed attorney own client costs, to the credit of such Trust.
9. The Plaintiff's attorneys are, however, authorised and ordered until such time as the trustees are able to take control of the capital amount and to deal with same in terms of the trust deed, to pay from the capital amount any reasonable payments to satisfy any of the minors needs that may arise and that are required in order to satisfy any reasonable need for maintenance, treatment, care, aids, or equipment that may arise in the interim.
10. The terms of each such trust are to include:
 - 10.1. The proposed initial Trustees are of Mr Abdul Qadir Osman and RW Robbertse [trustees] are appointed whose written consent to act as Trustee in the Trusts is annexed hereto marked "A" and "B"
 - 10.2. If any of the trustees are unable or unwilling to accept appointment or for any reason becomes unable to continue to act once having been appointed, then the Master of the High Court will in his sole discretion be entitled to appoint another trustee.

10.3. The trustees are required to furnish security for the administration of the assets of the trust. The Trustees fees for the administration of the trust are to be calculated at the rate of 1% per annum of the trust assets under administration.

11. The trustees shall administer the trust subject to the powers and terms, which follow:

11.1. The trustees must in writing accept their appointment as such and the benefits and duties conveyed by the trust deed and acknowledge receipt of the donation in terms of which the trust will be established. A body corporate may be a trustee.

11.2. The trustees may at any time in writing appoint additional trustees, or one or more trustees to succeed any or all of them, or one or more agents with powers of substitution and delegation, to perform any acts on their behalf. If ever there is no trustees, the person who keeps the books of the trust or any beneficiary may call a meeting with the beneficiary, assisted by their guardians if applicable, which meeting shall appoint a trustee or trustees, failing which the Master will appoint a trustee.

11.3. A trustees shall cease to act as such if he/she resigns, or becomes mentally disturbed or ill, or alcoholic, or incompetent or unable to act as trustee, or being a corporate body, it is liquidated. If any trustee ceases to act, the remaining trustee/s shall continue to act and shall have full powers in terms hereof.

11.4. In administering the trust, the trustees shall follow such procedure as they deem fit. Proper books of account shall be kept. The trustee may appoint an auditor for the trust but are not obliged to do so.

11.5. Any trustees or trustees' agent who is a professional person will be entitled to perform professional work for the trust and to charge reasonable professional fees for such services over and above the fees allowable to the Trustee as set out herein and The Master of the High Court is entitled to call for taxation of any fees so charged.

11.6. The trustees has the power to perform in the name of the trust or in their own name on behalf of the trust, any acts and enter into any contracts and undertake any obligations, whether commercial or otherwise, which may be done by a natural person of full legal capacity, which powers include but are not limited to the following:

11.6.1. To purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property;

11.6.2. To manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account of in any way otherwise deal with its undertaking or all or any part of its property and assets;

11.6.3. To apply for, purchase or by any other means acquire, protect, prolong, and renew any patents, patent rights, licenses, trademarks, concessions, or other rights and to deal with and alienate them;

11.6.4. To borrow money;

11.6.5. To secure the payment of moneys borrowed in any manner including the mortgaging ceding and/or pledging of property;

11.6.6. To lend money to any person or company;

11.6.7. To invest money in any manner;

11.6.8. To open and operate banking accounts and to overdraw such accounts;

11.6.9. To make, draw, issue, execute, accept, endorse, and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;

11.6.10. To enter into indemnities, guarantees and suretyship and to secure payment thereunder in any way;

11.6.11. To form and have an interest in any company or companies for the purpose of acquiring the undertaking or all or any of the assets or liabilities of the company or for any other purpose which may seem, directly or indirectly, calculated to benefit the trust, and to transfer to any such trust or companies the undertaking or all or any of the assets or liabilities of the trust;

11.6.12. To take part in the management, supervision and control of the business or operations of any other company or business and to enter into partnerships;

11.6.13. To make donations;

11.6.14. To undertake and execute any trust;

11.6.15. To act as principals, agents, contractors, or trustees;

11.6.16. To pay gratuities and pensions and establish pension schemes, profit-sharing and plans and other incentive schemes; and

11.6.17. To enter into contracts anywhere in the world and to execute any contracts, deeds, and documents in any foreign country.

11.7. The trustees may determine their own procedure.

11.8. The assets of the trust may be held in the name of the trust, or the trustees or any nominee of the trustees, if appropriate.

11.9. The trustees have an absolute and unlimited discretion, in all matters relating to the trust but they may not act contrary to this order and the trust deed to be drafted in accordance herewith.

11.10. The trustee/s and/or the successor or successors shall be required to provide security for the due administration of the trust.

11.11. The trustees shall not be personally liable to the beneficiaries for any trust losses, except caused by gross negligence or deliberate wrong.

11.12. The trustees shall under no circumstances be personally liable to creditors of the trust.

12. The income and capital beneficiary is F[...] G[...] W[...] F[...] [the minor].

13. No asset, capital or income of the trust will vest in the beneficiary until such is actually paid over, handed over or delivered by the trustees to the beneficiary. No capital or income benefit to which any beneficiary is or may become entitled by virtue of this trust deed shall, prior to actual payment or transfer thereof by the trustees to the beneficiary, be capable of being ceded, assigned or pledged, or transferred in any way, or be capable of attachment by any creditor or trustee of a beneficiary upon insolvency, unless the trustees consent thereto in writing.

14. The trustees may in their absolute discretion, at any time prior to termination of the trust, transfer or pay any part of the trust fund to the beneficiary which will become the free and absolute property of such beneficiary.

15. Any asset or money which beneficiary receives pursuant to this trust deed shall not form part of any joint estate and shall not be subject to any marital power.

16. The trust deed can only be amended in writing with the consent of the Master of the High Court and, failing such consent, with the leave of this Court provided however that no amendment which is in conflict with the provisions of the Court Order may be effected without the prior leave of the Court having been granted thereto.

17. The trust shall terminate by Court order, such request to be brought by the trustees at their discretion, alternatively by the minor once he has attained majority. The Court to be satisfied that such dissolution is in the beneficiary's best interest, at that material time.

18. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs, Counsel's fees to taxed on scale

C and the Curatrix ad Litem's fees on scale B.

19. No valid contingency agreement applies.

L.A. RETIEF

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances: For the Plaintiff: Adv J Bam Cell: 082 828 2388 Email: jacobam@gmail.com
Instructed by attorneys: Ehlers Attorneys Tel: 072 219 0306 Email: david@ehlersattorneys.co.za
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attorneys: State Attorney Date of hearing: 26 July 2024 Date of judgment: 05 September 2024

[1] (20/2003)

[2004] ZASCA 430.

[2] 1984(1) SA 98 (A).

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