

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION**

Case No: 657/2016

REPORTABLE/NOT REPORTABLE

In the matter between:

LUXOLO ERIC SOBICI

Applicant

and

ROAD ACCIDENT FUND

Respondent

In re: Application for the appointment of a *Curator ad Litem* and a *Curator Bonis* to LINDELWA SOBICI

JUDGMENT

MAKAULA J:

[1] The applicant (husband to the plaintiff) brought an application seeking the following order.

- “1. That Advocate JOHANNES DIEDERICK LE ROUX be appointed as *Curator ad Litem* to Lindelwa Sobici for purposes of reporting to this Honourable Court on the following issues:-
- 1.1 Whether a *Curator ad Litem* ought to be appointed to assist Lindelwa Sobici in the action instituted by her against the respondent for damages arising out of a motor vehicle collision in which she was involved on 28 October 2013.
- 1.2 Whether a *Curator Bonis* ought to be appointed to the estate of the said Lindelwa Sobici.
2. Postponing the application *sine die* to be re-instated by the applicant for the purposes of receiving the Report of the *Curator ad Litem*”.

[2] The application is opposed by the respondent essentially on the grounds that the application only arose at an advanced stage of the proceedings and after the Health Professions Council of South Africa (HPSCA) ruled that the injuries sustained by the plaintiff did not qualify as serious.

[3] The plaintiff was involved in a car accident on 28 October 2013. She sustained injuries as a consequence thereof. She lodged her claim with the respondent and summons was issued on 7 September 2015. She is suing the respondent for an amount of R2 664 376.18 (Two Million Six Hundred and Sixty Four Thousand Three Hundred and Seventy Six Rand and Eighteen Cents) for various heads of damages. The merits of the claim were conceded by the defendant even before the issue of the summons and as reflected in the Rule 37 minutes¹.

¹(I shall not deal with the type of injuries the plaintiff sustained as reflected in the founding affidavit).

Furthermore, the Past Medical Expenses have been settled and a section 17(4)(a) undertaking was made.

[4] The respondent filed its plea on 13 April 2016. The plaintiff filed its expert reports in August 2016. I shall not enumerate the reports which are not relevant to this application. The plaintiff also filed reports by Mr DJ Stigant, a Clinical Psychologist and Dr Derick van der Merwe, a Psychiatrist. Based on their clinical findings they opined that the plaintiff requires both a *curator ad litem* and *curator bonis*. On 14 August 2018, Advocate JD Le Roux was appointed as a *curator ad litem* for purposes of reporting to this court whether a *curator ad litem* ought to be appointed to assist the plaintiff. Advocate Le Roux has recommended in his report that a *curator ad litem* and a *curator bonis* be appointed.

[5] The opposition by the respondent is on two fronts. Firstly, the respondent's asserts that the application has been left until the proceedings have reached an advanced stage and after the HPCSA had ruled that the injuries sustained by the plaintiff did not qualify as serious. The respondent makes the point that until the ruling of the HPCSA, there was no suggestion that the plaintiff was unable to furnish sufficient instructions to her attorney and counsel for purposes of advancing her claim through litigation. The respondent, correctly in my view, observes that what inexplicably is lacking from the application is a comprehensive explanation as to what circumstances intervened between the period from when the instructions were received and litigation started to date. Secondly, the respondent argues that there is

a conflict between its experts and those of the applicant as to whether *curator ad litem* is required.

[6] Rule 57 of the Uniform Rules of Court deal with the appointment of *curators* in respect of persons under disability and the release patients from *curatorship*. Rule 57(9) thereof provides for the hearing by the court of *vive voce* evidence from the patient and any other persons as it may deem fit for the purpose of appointing a *curator ad litem*. Section 57(10) empowers the court upon consideration of the application, the reports of the *curator ad litem* and of the Master and such further information or evidence that has been advanced *viva voce* or otherwise to declare the patient to be of unsound mind and incapable of managing his own affairs, appoint a suitable person as *curator* to his person or property or both on such terms as it deems meet.

[7] In the instant matter it is correct that the plaintiff had all along been able to give instructions to his legal team and to the medico-legal experts. The applicant makes light the issue of the plaintiff having been able to give instructions on various stages of the matter intimating, for example, that minimal instructions were required by counsel from her to draft the particulars of claim. That cannot be so in the light of the nature of the claim itself. Based on the same reason, the plaintiff's attorneys must have required instructions for purposes of the settlement of the other heads of damages. Dr Keely, a *curator* neurosurgeon, who it later transpires had consulted with the plaintiff on the instructions of her attorney, had opined that there was no reason, based on the sequelae of the injuries, for the appointment of the *curator ad*

litem. Mr Moolman, a clinical phycologist, on the other hand could not make any recommendations in this regard.

[8] Contrary to the opinion expressed by Dr Keely, Mr Stigant, a clinical psychologist appointed by the applicant, concluded that a *curator ad litem* ought to be appointed. Similarly, Dr Van Der Merwe, a psychiatrist, appointed by the applicant, opined that the appointment of a *curator ad litem* a *curator bonis* is required.

[9] These factors inevitably lead to a dispute between the experts as to whether the plaintiff lacks the legal mind to give sound instructions and is capable of litigating on her own unassisted. Such factual dispute is compounded by the fact that the proceedings are at such an advanced stage, for this court to be able to determine that all along the plaintiff was incapable of giving coherent instruction and lacked the legal capacity to do so. I do not lose sight of the opinion that her mental condition is deteriorating.

[9] Consequently, the following order is made.

1. The issue of the appointment of a *curator ad litem* for the plaintiff is referred for the hearing of oral evidence in terms of Rule 57(9) of the Uniform Rules of Court.
2. The costs of this application shall be determined by the court hearing oral evidence.

M MAKAULA
Judge of the High Court

Counsel for the Applicant:

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Date Heard:

20 June 2019

Date Reserved:

20 June 2019

Date Delivered:

17 September 2019