

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 24156/2015

26/2/2018

Not Reportable

Not of interest to other judges

In the matter between:

ADV M VAN ROOYEN N.O.

obo KS TSUNKE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PETERSEN AJ

Introduction

[1] The plaintiff Kokoma Solomon Tsunke initially instituted action against the defendant in his personal capacity in terms of the provisions of the Road Accident Fund Act, Act 56 of 1996 ("the Road Accident Fund Act"). He suffered

damages as a result of injuries sustained in a collision that occurred on 07 December 2013 on Mahogany Road, Klerksdorp as the driver of a motor vehicle with registration number [...] and an unknown motor vehicle driven at the time by the injured driver. Adv M van Rooyen was subsequently appointed as curatrix *ad litem* for the plaintiff and substituted as plaintiff on 28 June 2017.

Issues of common cause and issues in dispute

[2] On 18 September 2017, liability (merits) was conceded 100% in favour of the plaintiff. The defendant further gave a statutory undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for the future medical and related expenses of Mr Tsunke. The issue of past medical expenses of R64 333.77 and the quantification of past and future loss of earnings and general damages remained in dispute. At the commencement of this hearing it was stated that past medical expenses would be accepted by the time arguments were concluded if no further instructions were forthcoming from the defendant. The issue of past medical expenses was consequently accepted at the conclusion of the hearing.

[3] The parties subsequently reached an agreement on past and future loss of earnings and on a 50% contingency deduction as being fair and reasonable. The basis of the calculation is premised on Scenario 1A as set out in the actuarial calculations of the Actuary Algorithm. The agreed amount is R1 822 207.00.

[4] The sole issue for determination by this court is the amount of general damages to be awarded to the plaintiff.

The evidence

[5] The parties relied on the joint minutes of several experts and certain expert reports. The contents of the reports inclusive of the joint minutes are not in dispute and it is agreed that it may be accepted as evidence by the court. The reports handed in by consent include the following:

For the Plaintiff

5.1 Dr JJ du Plessis (Neurosurgeon, inclusive of a RAF4 Serious Injury

Assessment Form)

5.2 Dr L Nel (Psychiatrist)

5.3 Dr H Konig (Ophthalmologist)

5.4 Dr K Carpenter-Kling (Ear, Nose and Throat Surgeon)

5.5 Dr O Guy (Speech and Language Therapist)

5.6 Dr PB White (Plastic and Reconstructive Surgeon inclusive of inclusive of a
RAF4 Serious Injury Assessment Form)

5.7 Dr M Mazabow (Clinical/Neuropsychologist)

5.8 Ms N Heyns (Occupational Therapist)

5.9 Ms E Noble (Industrial Psychologist)

5.10 GW Whittaker (Several actuarial reports: Algorithm)

For the Defendant

5.11 Dr Mukansi (Orthopaedic Surgeon)

5.12 Dr Fisha (Clinical/Neuropsychologist)

5.13 Dr Mazwi (Neurosurgeon)

5.14 Professor Kakaza (Neurologist)

5.15 Ms Hlongwane (Occupational Therapist)

5.16 Dr Nhlapo (Ophthalmologist)

5.17 Ms Sewpersad (Audiologist)

5.18 Ms Cilliers (Industrial Psychologist)

Joint Minutes

5.19 Dr Mazabow and Dr Fisha (Neuropsychologists)

5.20 Dr du Plessis and Dr Mazwi (Neurosurgeons)

5.21 Ms Noble and Ms Celliers (Industrial Psychologists)

The injuries

[6] The parties are further in agreement on the seriousness of the injuries sustained by the plaintiff, insofar as the injuries may fall within the ambit of section 17(1) of the Road Accident Fund Act. It is accepted that the plaintiff is entitled to general damages.

[7] The serious injuries the plaintiff sustained in the motor vehicle collision premised on the reports of their respective expert and in particular as identified by the neurosurgeons and neuropsychologists include:

7.1 A very significant brain injury, indicative of:

7.1.1 a severe diffuse axonal brain injury with expected significant neurocognitive and behavioural deficits;

7.1.2 focal brain injury with signs of previous haemorrhagic contusion of both frontal lobes and the right occipital lobe;

7.1.3 a severe diffuse concussive brain injury;

7.1.2 focal injuries to the brain in the form of bi-frontal and left occipital haemorrhagic contusions;

7.1.3 possible secondary hypoxic brain insult due to cerebral hypoxia as the oxyhaemoglobin saturation level in his blood was 85% when he arrived at the Anncron Clinic;

7.1.4 contusions, abrasions and lacerations to the left frontal area of the scalp, left side of the forehead, left eye and left cheek;

7.1.5 bruising of the right upper eyelid.

7.2 lacerations and abrasions to both elbows and knees;

7.3 abrasions to the abdominal wall, chest and left hand;

7.4 a significant neck injury with symptomatic osteoarthritis of the left C1-C2 facet joint expected to occur in future.

[8] The plaintiff's neurosurgeon maintains that there has been a 42% Whole Person Impairment whilst the defendant's neurosurgeon maintains a 41% Whole Person Impairment. The difference of opinion is negligible but emphasises the

seriousness of the plaintiff's injuries. The most significant injury for consideration in the quantum of damages to be awarded is the very severe brain injury, which is highlighted in the joint minutes of the psychologists and neurosurgeons.

[9] The *sequelae* of the injuries of the plaintiff, extracted from the expert reports are as follows:

- 9.1 Headaches;
- 9.2 Neck pain;
- 9.3 cosmetic disfigurement in the form of scarring;
- 9.4 impaired neck movements;
- 9.5 loss of smell bilaterally;
- 9.6 poor balance;
- 9.7 increased risk (10%) of developing epilepsy in the period of 20 years from the accident, due to the focal brain injury;
- 9.8 serious long term impairment or loss of body function;
- 9.9 permanent serious disfigurement;
- 9.10 severe long term mental or severe long term behavioural disturbance or disorder;
- 9.11 chronic depression;
- 9.12 fatigability;
- 9.13 social withdrawal;
- 9.14 global depletion of cognitive intellectual functions;
- 9.15 virtual global deficits in speech/language function;
- 9.16 personality changes in that Mr Tsunke has become irritable, aggressive, short tempered and has a poor frustration tolerance.

[10] It is clear taking an overall view of the various expert reports that Mr Tsunke will need future medical treatment for his injuries. The neurosurgeons note that he needs symptomatic treatment for his neck pain with medication, physiotherapy and biokenitics. He has a 20% chance of undergoing surgery to

his neck at the C1-C2 level which will restrict his range of flexion of his neck by 50%. He will also require occupational therapy.

[11] Mr Tsunke is currently 33 years old. At the time of the accident he was 29 years old. He was and continues to be employed by the South African Police Service ("SAPS"). The sequelae of the injuries will have an impact on his employment. The Industrial Psychologists in their joint minute refer to collateral information obtained from the SAPS, through his shift commander, Colonel Mokgosi; direct supervisor, Captain Baloyi and a certain Captain du Plessis and Colonel Sephoti. They note that Mr Tsunke is not capable of functioning on standard without the help/support/assistance of his colleagues and that their intervention probably masks his problems/difficulties he is in reality experiencing in his work, and is expected to experience in future as a result of his significant brain injury and the sequelae thereof. Captain Baloyi maintains that Mr Tsunke copes with his work in the charge office without problem. Colonel Mokgosi appears to be the epitome of a sympathetic employer, whilst acknowledging that Mr Tsunke has problems performing his work he nonetheless regards it as acceptable to the extent that Mr Tsunke may even qualify for promotion. Mr Tsunke with his significant brain injury and short temper, aggressiveness and irritability is allowed to perform his normal duties as a police officer, inclusive of being allowed to carry a firearm.

The law

[12] It is commonly accepted that in matters of the present kind no two cases ever present with the same factual matrix. In considering a fair award for general damages in the present matter, it would be appropriate to restate the approach to be adopted by the court. In *De Jongh v Du Pisani* 2004 (2) All SA 565 (SCA); 2005 (5) SA 457 (SCA), Brand JA said the following (loosely translated from Afrikaans to English):

'56 Rabe is entitled to fair compensation for this loss. The amount of such compensation must, however, also be fair towards the defendant. It is particularly so in a matter such as this, that the Court must avoid the human tendency to over compensate. Or, as Innes CJ stated it in *Hu//ey v Cox* 1923 AD 234 op 246, 'we cannot allow our sympathy for

the claimants in this very distressing case to influence our judgment'.

....

58 The problem is of course that compensation can only be paid in money and the Court's dilemma is the award of monetary value for loss that money cannot buy. One of the accepted guidelines utilised by the Courts as a solution to this dilemma is to look at previous awards in comparative cases.

....

60 The tendency of rising awards in general damages in the recent past is clearly noticeable... The following statement of Holmes J in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) op 287E - F is equally applicable to the present matter:

'(T)he Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense'.

Conservatism in the award of general damages has its origin in the need that fairness should also be extended to the defendant and not as result of the miserliness of the community towards the plaintiff.

64 The approach which has always been adopted by the court, is to the contrary (see for example, *Hulley v Cox* (*supra* op 246), *Sigournay v Gil/banks* (*supra* on 556) and *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) on 535). According to this approach the principle is that the determination of non-patrimonial damages lies in the discretion of the Court. In the exercise of the Court's discretion comparisons with awards in previous cases is a valuable aid since it indicates to the Court the broad parameters or pattern within which the Court's award should resort. It is also so that uniformity in awards is a requirement of fairness. Nonetheless it remains a guideline. It does not replace the Court's discretion by being slavishly bound to the letter of adjusted values of previous awards.'

[13] In the unreported decision of *Minister of Police v Dlwathi* (20604/14) [2016] ZASCA 6 (2 March 2016), Majiedt JA said:

"8 It is well established that an assessment of an appropriate award of general damages (sometimes also referred to as non-pecuniary damages) is a discretionary matter (my emphasis) and has as its objective to fairly and adequately compensate an injured party (see *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A and *Road*

Accident Fund v Marunga ZASCA (144/2002) [2003] ZASCA 19; 2003 (5) SA 164 (SCA) para 23)..."

[14] In the more recent matter of *Minister of Safety and Security v Augustine and Others* 2017 (2) SACR 332 (SCA) , Gorven AJA restated the approach:

'28 ...Both counsel pointed to a number of previously decided matters which, they submitted, should guide this exercise. It is worth remembering the part played by previous awards in comparable cases. This was clearly expressed by Potgieter JA (*Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H - 5368):

'It should be emphasised...that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their *sequelae* may have been either more serious or less than those in the case under consideration.'

[23] Having carefully considered the peculiar facts of the present matter and the comparable cases alluded to I am of the view that in exercising my discretion in ensuring fairness to both the plaintiff and the defendant, that an amount of R1 300 000.00 in general damages be awarded to the plaintiff. I further consider the establishment of a Trust to be in the best interests of Mr Tsunke.

[24] The defendant shall therefore pay to the plaintiff an amount of R3 186 540.77 (Three Million, One Hundred and Eighty Six Thousand, Five Hundred and Forty Thousand Rand and Seventy Seven cents) in settlement of the Plaintiff's claim, comprised as follows:

24.1 Past medical and hospital expenses

R64 333.77

24.2	Future hospital, medical and related expenses:	Section17(4)(a) undertaking
24.3	Past and Future Loss of income and earning capacity:	R1 822 207.00
24.4	General damages	<u>R1 300 000.00</u>
24.5	Total:	<u>R3 186 540.77</u>

Order

[25] In the result I make the following order, as set out in the Draft Order marked "X" , which is incorporated as part of this judgment.

AH PETERSEN

**ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA**

IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]

HELD AT PRETORIA ON THIS THE 13TH DAY OF FEBRUARY 2018 AT
COURT 8A SA BEFORE THE HONOURABLE JUSTICE PETERSEN

.CASE NO: 24156/2015

In the matter between:

ADV M VAN ROOYEN NO obo TSUNKE, KS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER OF COURT

HAVING HEARD COUNSEL for the Plaintiff and the Defendant.

THE COURT GRANTS JUDGMENT in favour of the Plaintiff against the
Defendant in the following terms:-

- 1.1 The Defendant shall pay an amount of R3 186 540.77 (**Three Million, One Hundred and Eighty Six Thousand, Five Hundred and Forty Thousand Rand and seventy seven cents**) to the Plaintiff in settlement of the Plaintiff s claim;
- 1.2 1.2. The aforementioned amount of R3 186 540.77 (**Three Million, One Hundred and Eighty Six Thousand, Five Hundred and Forty Thousand Rand and seventy seven cents**) is comprised of as follows:

After hearing counsel:

- | | | |
|-------|--|------------------|
| 1.2.1 | Past medical and hospital expenses | R64 333.77 |
| 1.2.2 | Future hospital, medical and related expenses: | Section 17(4)(a) |

undertaking

1.2.3 Past and Future Loss of income and earning capacity: R1 822 207.00

1.2.4 General damages **R1 300 000.00**

Sub-total: **R3 186 540.77**

TOTAL: R3 186 540.77

1.3 All payments in terms of this order shall be effected into the Plaintiff's Attorneys, Adams & Adams, trust account, the details of which are as follows:

Account holder	:	Adams & Adams Trust Account
Bank	:	Nedbank
Branch	:	· Pretoria
Branch code	:	198765
Account number	:	[....]
Reference	:	NK/AMP/P1515

1.4 The aforesaid capital amount will not bear interest unless the Defendant fails to effect payment thereof within 14 [FOURTEEN] calendar days of the date of this Order, in which event the capital amount will bear interest at the rate of 10.25% per annum, calculated from and including the fifteenth calendar day after the date of this Order to and including the date of payment thereof.

2. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a), in terms of which the Defendant shall be liable for:

2.1 100% [ONE HUNDRED PERCENT] of the costs of the future accommodation of KS Tsunke in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him

after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 7 December 2013.

2.2 100% [ONE HUNDRED PERCENT] of the reasonable costs of the Trustee appointed in terms of paragraph 3 hereof in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including his/her fees in this regard, which costs shall include:

2.2.1 The monthly premium that is payable in respect of the insurance cover which is to be taken out by the Trustee to serve as security in terms of the Trust Deed;

2.2.2 The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed; but which costs shall be subject to the following:

2.2.3 The fees and administration costs shall be determined on the basis of the directives pertaining to curator's remuneration and the furnishing of security in accordance with the provisions of the Administration of Deceased Estate Act, 66 of 1965, as amended from time to time;

2.2.4 All the above mentioned costs shall be limited to payment of the reasonable costs which the Defendant would have had to pay regarding appointment, remuneration and disbursements had the Trustee been appointed as a *Curator Bonis*.

3. The nett proceeds of the payments referred to above as well as the Plaintiffs taxed or agreed party and party costs payable by the Defendant, after deduction of the Plaintiffs attorney and own client legal costs (the "capital amount",) shall be payable to a Trust, subject to the following: -

3.1 such Trust will be based on a trust deed containing the provisions as more fully set out in the draft Trust Deed attached hereto marked as Annexure " A " ;

- 3.2 such Trust shall have, as its main objective, the controlling and administration of the capital amount on behalf of KS Tsunke;
 - 3.3 CONSTANT WILSNACH will be the first Trustee with powers and abilities as set out in the draft Trust Deed attached hereto, marked as Annexure "A";
 - 3.4 the trustee(s) will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all his/her obligations towards the trust.
- 4. The Trustee is authorised to pay the Plaintiff's attorney and own client costs out of the Trust funds in so far as any payments in that regard are still outstanding after the establishment of the Trust.
- 5. Until such time as the Trustee is able to control the capital sum and to deal with same in terms of the trust deed, the Plaintiff's attorneys are:
 - 5.1 authorised to invest the capital amount in an interest bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of KS Tsunke with a registered banking institution pending the finalisation of the directives referred to in paragraph 3 above;
 - 5.2 authorised and ordered to make any reasonable payments to satisfy any of KS Tsunke's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.
 - 5.3 prohibited from dealing with the capital amount in any other manner unless specifically authorised thereto by this court, subject to the provisions contained in paragraphs 3 to 5 hereof.
- 6. The Defendant shall make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include, but not be limited to the following:-
 - 6.1 The fees of Senior Counsel on the High Court Scale, inclusive of but not limited to his full day fee for 13 February 2018, and costs of

preparation of the Heads of Argument if any;

- 6.2 The reasonable taxable costs of obtaining all experts, medico-legal and actuarial Reports from the Plaintiff's experts which were furnished to the Defendant;
- 6.3 The costs of the plaintiff s experts' fees in regard to the preparation and reservation are awarded on a party and party scale against the defendant on the following basis:
 - 631 The costs (fees and disbursements) of all consultations (inclusive of telephonic consultations) with counsel and/or the plaintiffs attorney;
 - 632 The costs (fees and disbursements) of all consultations between the plaintiff and defendant's experts for purposes of compiling joint minutes;
 - 633 The costs (fees and disbursements) of attending all work site and/or accident site inspections;
 - 634 The costs of experts meetings;
 - 635 The costs (fees and disbursements) of preparation fees inclusive of but not limited to the perusal of all plaintiff and defendant's medico- legal reports, joint minutes, clinical notes, hospital records, documentation pertaining to plaintiff's qualifications and employment history, school records and/or any other relevant documentation which may be necessary to qualify the respective experts to testify;
 - 636 The allowances payable to witnesses in civil cases as published in Government Gazette Number 30953 (No R394) dated 11.04.08 and specifically section 4 thereof is not applicable and the Defendant must make payment of the full day fees in respect of the reservation to testify on 13 February 2018, until the finalisation of the trial on 13 February 2018 calculated at 8 hours per day at the applicable hourly rate of each of the following experts:

- 6.3.6.1 Dr JJ Du Plessis (Neurosurgeon;)
- 6.3.6.2 Dr L Nel (Psychiatrist);
- 6.3.6.3 Dr K Carpenter- Kling (Ear Nose and Throat specialist;)
- 6.3.6.4 Dr O Guy (Speech Therapist);
- 6.3.6.5 Dr Bruce White (Plastic Surgeon);
- 6.3.6.6 Mr M Mazabow (Neuropsychologist);
- 6.3.6.7 Ms N Heyns (Occupational Therapist);
- 6.3.6.8 Ms Esme Noble (Industrial Psychologist;)
- 6.3.6.9 Mr G Whittaker (Actuary).

- 6.4 The costs of all consultations between the Plaintiff's attorneys, and/or counsel, and/or experts, and/or witnesses in preparation for the hearing of the action;
 - 6.5 The reasonable taxable transportation costs (including Toll and E-Toll charges) incurred by or on behalf of KS Tsunke in attending all medico- legal consultations with the experts, consultations with the legal representatives and the court proceedings, subject to the discretion of the Taxing Master;
 - 6.6 The reasonable taxable transportation costs (including Toll and E-Toll charges) and accommodation costs incurred by or on behalf of the witnesses for the Plaintiff in attending consultations and the court proceedings, subject to the discretion of the Taxing Master
 - 6.7 The costs of a consultation between the Plaintiff and her attorney to discuss the settlement offer received from the Defendant and the terms of this order;
 - 6.8 The above costs shall also be paid into the aforementioned trust account.
7. The Defendant shall make payment of the fees of duly the appointed curatrix ad litem inclusive but not limited to her reasonable day fee for 13 February 2018.

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

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

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

8.3 Should payment not be effected timeously, Plaintiff will be entitled
to recover interest at 10.25% on the taxed or agreed costs from
date of allocator to date of final payment.

BY ORDER OF THE COURT

Plaintiff's Counsel : Adv Piet du Plessis SC (082578 2424)

Defendant's Counsel : Adv (... ..
.....)

DEED OF TRUST

in pursuance of a Court Order of the High Court of South Africa (PRETORIA HIGH COURT, GAUTENG DIVISION) DATED 13 February 2018 in Case No. 2015/24156 in the matter between TSUNKE, KS and the ROAD ACCIDENT FUND

entered into by and between

NICOLETTE KOCH

attorney representing the Plaintiff in the abovementioned matter (hereinafter referred to as the "Donor")

and

CONSTANT WILSNACH

(hereinafter referred to as the "TRUSTEE")

In terms of which the Donor donates to the TRUSTEE, the sum of R100.00, which amount is to be held by the TRUSTEE in trust and be administrated by him in terms of the conditions and terms of this Deed of Trust as is herein set out :-

1. **DONATION**

The Donor hereby donates to the TRUSTEE the sum of R100.00, which amount will be paid to the TRUSTEE and will be received by him with the registration of this Deed.

2. **NAME OF TRUST**

The Trust will be known as the **KOKOMA SOLOMON TSUNKE TRUST**.

3. **TRUSTEE**

3.1 The first TRUSTEE of this Trust will be the person described as TRUSTEE in the preamble to this Trust Deed. This office will be held by him/her for an indefinite period until his/her resignation or incapacity or the termination of the Trust;

3.2 The TRUSTEE is required to furnish security to the Master of the High Court of South Africa for the assets of the Trust as may be required in terms of the provisions contained in the Trust Property Control Act as amended from time to time.

4. **BENEFICIARY**

The beneficiary of this Trust will be **KOKOMA SOLOMON TSUNKE**, who due to the injuries sustained by his requires assistance with maintaining and managing his own affairs, with regards to the income derived from the Trust asset s, and the capital shall also be used to the benefit **KOKOMA SOLOMON TSUNKE** in such a way as the TRUSTEE may deem appropriate. Should **KOKOMA SOLOMON TSUNKE** pass away, the Trust's assets will be transferred to the heirs of **KOKOMA SOLOMON TSUNKE** as set out in the Will of **KOKOMA SOLOMON TSUNKE** or should **KOKOMA SOLOMON TSUNKE** not leave behind any will the assets will be transferred to the intestate heirs of **KOKOMA SOLOMON TSUNKE** in accordance with the provisions of the Intestate Succession Act as amended from time to time.

5. **OBJECTIVES**

The objectives of this Deed of Trust are the following:-

- 5.1 To maintain and support the said **KOKOMA SOLOMON TSUNKE** physically and mentally;
- 5.2 The TRUSTEE will as far as possible endeavour to utilize the funds of the Trust to comply with the medical needs of the mentioned **KOKOMA SOLOMON TSUNKE**. In this respect the TRUSTEE will in his discretion, and if he/she deems it necessary, be authorised to make use of medical advice in overseas countries and if necessary, send the mentioned **KOKOMA SOLOMON TSUNKE** to the foreign country if the TRUSTEE in his/her discretion deems it to the benefit of **KOKOMA SOLOMON TSUNKE** and if there are sufficient grounds and funds for such advice and medical treatment ;
- 5.3 To provide accommodation to the beneficiary and one other person who will act as the beneficiary' s caretaker/nurse if necessary and affordable . In this respect the TRUSTEE will also be entitled in his/her discretion to employ people and to remunerate them for services rendered to **KOKOMA SOLOMON TSUNKE** where and if necessary and affordable .
- 5.4 To do anything that the TRUSTEE in his/her discretion deems necessary for the general wellbeing of the mentioned **KOKOMA SOLOMON TSUNKE** and the TRUSTEE will be entitled to incur such reasonable costs as he deems necessary in this regard in his/her absolute discretion;
- 5.5 To invest the Trust' s assets and to act therewith in such a manner so as to attempt to increase same and if possible to cause capital growth in order for the funds paid over in trust to be administered for as long as possible, to the benefit of **KOKOMA SOLOMON TSUNKE**.

6. ASSETS

The assets of the Trust will include:-

- 6.1 The assets donated to the Trustee in terms of this Deed as well as any additions and accruals thereto;
- 6.2 All donations and inheritances donated or bequeathed to the Trust in supplementation of the Trust's assets;
- 6.3 All assets that the Trust may purchase with its own funds or borrowed funds or that may be acquired by any other juristic act;
- 6.4 Any assets that may be allocated to the Trust in terms of an Order of Court.

7. **INCOME FROM THE TRUST**

The income of the Trust will be all income earned by means of the Trust's assets.

8. **POWERS OF THE TRUSTEE**

8.1 To enable the TRUSTEE to comply with all obligations in terms of the Deed of Trust, the TRUSTEE will be entitled :-

- 8.1.1 To perform any act in general, whatsoever, that is according to his/her opinion, beneficial for the preservation and growth of the assets of the Trust, or in the interest of the Beneficiary. The powers entrusted to him/her according to the paragraphs hereinafter do not limit the generality of this sub-paragraph;
- 8.1.2 To use any part of the assets or income of the Trust for payment of any costs reasonably incurred by him/her in relation to his/her duties and obligations as TRUSTEE;
- 8.1.3 To invest the assets or income of the Trust or any part

thereof, in such a manner as he/she may deem proper in his/her discretion. Without detracting from the generality of the aforementioned clause, he/she will be entitled to invest in shares in public companies, building societies, loans with security, investments in state and municipal shares, investments in fixed property or any such assets as he/she may deem beneficial to the Trust and its beneficiary which will also include moveable assets of whatsoever nature if deemed reasonable to the benefit of the beneficiary. Such moveable assets may be used or consumed by the TRUSTEE if, in his/her discretion, it is deemed to be reasonably in the interest of the beneficiary. He/she will furthermore be entitled to call up any investments, to make any investments solvent, to convert, amend, realise and to re-invest such investments in any manner reasonably deemed appropriate;

- 8.1.4 If the TRUSTEE practices a profession and in such capacity performs any other act or service on behalf of the Trust, in such capacity, the TRUSTEE will be remunerated for his/her professional services rendered without limiting or reducing his/her right to remuneration as stipulated hereinafter;
- 8.1.5 To institute legal and arbitration proceedings and to oppose same in any competent court with regard to any matter forthcoming from the Trust and to pay the costs incurred in relation thereto from the assets or income of the Trust;
- 8.1.6 To purchase, sell, let, hire or to hire-purchase any assets;
- 8.1.7 To reasonably acquire or renounce, in any manner whatsoever, rights on behalf of the Trust where such

actions are in the best interest of the Trust;

- 8.1.8 To acquire money through a loan or expend money by way of a loan on any conditions and against proper security being furnished where money is expended by way of a loan;
- 8.1.9 To encumber any assets of the Trust by way of a bond , pledge, hypothec or session as security;
- 8.1.10 To perform all acts on behalf of the Trust which may be necessary to effect transfer of any assets of the Trust;
- 8.1.11 To grant extensions for the complying with any duty towards the Trust, to reach compromises and oppose claims against the Trust, to recognise, and settle same and to handle any claims in favour of the Trust in the same manner ;
- 8.1.12 To employ people to perform any act and to remunerate them from the assets or income of the Trust. The possibility that the TRUSTEE would have been able to perform such act himself/herself does not detract from the aforementioned entitlement;
- 8.1.13 To utilize the assets and income of the Trust in such a manner as the TRUSTEE may deem proper for the conservation, maintenance or replacement of any assets of the Trust and to demolish any buildings if deemed appropriate by the TRUSTEE to erect new buildings on the fixed property of the Trust;
- 8.1.1 4 To exercise his/her voting right as deemed appropriate, with regard to any shares which belong to the Trust and are held in any company or society. The exercise of his/her discretion and authority hereunder is not reduced where he/she directly or indirectly has an interest in such

company or society neither will such TRUSTEE due to his/her confidential relationship with the Trust be obliged to give account of any benefit, which accrues to him/her due to such interest either directly or indirectly, nor is any act, agreement or deed of the TRUSTEE void or voidable on the ground that he/she received such benefit . The object of this clause is to avoid that the consequences of voidability or voidness due to the confidential office of the TRUSTEE will supervene and insofar as it may affect agreements and relationships with companies and societies in which the TRUSTEE has a personal interest ;

8.1.15 To lend money to any person or legal entity on such conditions as he/she in his/ her absolute discretion may stipulate on the condition that proper security is provided by the lender;

8.1.16 To enter into insurance contracts and to pay the premiums from the assets of the Trust;

8.1.17 To pay the debts of the Trust;

8.1.18 To accept or refuse donations and inheritances to the Trust;

8.1.19 To open a bank account and to borrow money from a bank on the overdraft facility or otherwise;

8.2 Notwithstanding the stipulations of paragraph 5.1 or any other paragraph in this Deed, the TRUSTEE will not be entitled to dispose of any assets or income of the Trust for his/her own benefit or the benefit of his/her estate. Without detracting from the generality of the aforementioned he/she will specifically not be entitled or authorised to appropriate or to dispose of any of the assets or income of the Trust as his/her own, as he/she deems fit, if he/she by doing so will benefit himself/herself or his/her estate directly or

indirectly. The TRUSTEES will furthermore not be authorised to use or consume any of the assets of the Trust directly or indirectly, for his/her own benefit unless so authorised by the Master of the High Court of South Africa;

- 8.3 If the Trust shows drastic growth and if the administration thereof requires it , the TRUSTEE will be entitled to employ a person or persons, full time or part time, to assist with the administration of the Trust and in this respect he/she will be entitled to pay a reasonable salary or remuneration, which he/she in his discretion deems appropriate, to such a person or persons. Control and care over the Trusts assets will however always be the responsibility of the TRUSTEE including fixed property or a bond with regards to any place in the Republic of South Africa. In this regard the only limitation is that investments may only be made within the borders of the Republic of South Africa.

9. **BOOKKEEPING**

- 9.1 The TRUSTEE must keep a complete set of accounting records with regard to the affairs of the Trust;
- 9.2 The TRUSTEE will ensure that the accounting records of the Trust are audited by a chartered accountant and that such accountant will have free access to the books, documentation and assets of the Trust.

10. **APPLICATION OF INCOME**

The TRUSTEE will use the income of the Trust to pay the administration costs for the administration of the Trust and to realise the objectives of the Trust.

11. **DUTIES OF THE TRUSTEE**

The TRUSTEE will:-

- 11.1 As far as possible endeavour to realise the objectives of the Trust;
- 11.2 To open a current account with a registered commercial bank of his/her choice, which account will be used for the receipt of all cash which is paid to the Trust;
- 11.3 To invest and reinvest the funds of the Trust in such a manner as he/she may deem fit in shares, securities or any assets of whatsoever nature including fixed property or on bond in any place in the Republic of South Africa and in this respect the only limitation is that investments may only be made within the borders of the Republic of South Africa;
- 11.4 To amend, regroup or reinvest the investments in such a manner and on such conditions and for such objectives as the TRUSTEE in his/her sole discretion may deem appropriate;
- 11.5 To see to it that proper minutes of all decisions made by him/ her, are kept in a safe place;
- 11.6 To see to it that the financial statements of the Trust for each year are kept in safe custody for the period of the existence of the Trust;
- 11.7 To see to it that all contracts are fulfilled;
- 11.8 To make all payments that may be payable on the income of the Trust;
- 11.9 If he/she deems it necessary to effect any amendments to the Trust Deed, he/she will be entitled to make the said amendments on condition that such amendments are approved by the Donor during his/her lifetime. After the death of the Donor he/she will be entitled to make such amendments as he/she may deem appropriate on condition that such amendments will not amend the objective of the Trust;
- 11.10 To see to it that the set of books that he/she must open and keep

will immediately become operational and at the same time appoint a firm of auditors for the Trust as soon as the Master of the High Court has registered this Deed;

11.11 To see to it that the firm of auditors that is appointed for the Trust will at all times have free access to the books and accounts and vouchers of the Trust and he further undertakes to obtain such information as the auditors may require and to make same available to the firm of auditors and if explanations are required, to provide same.

12. **APPOINTMENT OF THE TRUSTEES**

The following people will be incompetent to act as TRUSTEE of this Trust:-

- 12.1 Any person who is incompetent to act as a director of a company in terms of the stipulations of the relevant Company Laws of the Republic of South Africa;
- 12.2 Any person who is an unrehabilitated insolvent;
- 12.3 Any person who has previously been removed as a TRUSTEE from a trust due to his misadministration of the said Trust;
- 12.4 Any person who has previously been found guilty, in the Republic of South Africa or elsewhere, of theft, fraud, forgery, perjury, corruption or any misconduct or offence where dishonesty was an element of and resulted in that person being found guilty;
- 12.5 Any person who has been declared mentally ill or incapable of managing his own affairs.

13. **TERMINATION OF THE TRUST**

The Trust will be terminated when the mentioned **KOKOMA SOLOMON TSUNKE** passes away or when the Master of the High Court of South Africa orders it so, whichever event may happen first.

14. **DISSOLUTION OF THE TRUST**

With termination of the Trust as a result of the death of **KOKOMA SOLOMON TSUNKE**, the Trust will be liquidated and the capital will after all the administrative costs and debts as well as claims against the Trust have been paid, be allocated according to the stipulations of the will of the mentioned **KOKOMA SOLOMON TSUNKE** and if the mentioned **KOKOMA SOLOMON TSUNKE** dies int estate, the nett assets of the Trust will be divided equally between her intestate heirs in accordance with the relevant Intestate Succession Act that is applicable in the Republic of South Africa. If the Trust is terminated by order of the Master of the High Court of South Africa, the funds will be paid out in accordance with the stipulations of such order.

15. **EXEMPTIONS**

With regard to the aforementioned the following exemptions will be applicable:-

15.1 No TRUSTEE will be incapable due to his/her office as TRUSTEE of this Trust, to enter into a contract with the Trust or any company in which the Trust has an interest. Furthermore any contract entered into between the Trust and such company will not be void due to the Trustee' s interest in the company . The only requirement with regard hereto, is that the TRUSTEE must before any negotiations are entered into, disclose his/her interest in the contract or entity, to the Master of the High Court of South Africa before such negotiations take place;

15.2 Any TRUSTEE, who is a member of or a partner in a firm of professional practitioners, may be employed by the Trust or render services for the Trust and in such instance the TRUSTEE will be

entitled to a fee in his professional capacity;

15.3 No TRUSTEE will be requested to make good any damages that the Trust may have suffered, regardless of how such damage was caused, with the exception of such damage that was caused by the dishonesty of a TRUSTEE or as a result of his negligence;

15.4 No TRUSTEE will be liable for any dishonesty or wrongful act committed by any of the other TRUSTEES unless such a TRUSTEE had knowledge thereof and allowed such dishonest acts or acted as an accessory, or could have prevented such act but negligently failed to do so;

15.5 The TRUSTEE shall be indemnified out of the assets of the Trust with regards to any claims that may be instituted against him/her personally and which result from the reasonable acts of the TRUSTEE and the exercise of any of his competencies which he is entitled to exercise in terms of this Deed;

16. **REMUNERATION**

If the TRUSTEE is a professional person, he/she will be entitled to his reasonable professional fees for any professional work done for the Trust. Such fees will include any fees that are reasonably payable to his/her partners and he/she will further be entitled to make use of the services of other similar professional people as also auditors, medical doctors, attorneys and advocates. With regard to services rendered by the TRUSTEE for the general administration of the Trust and arrangements which he/she will make with regard to the care of the **KOKOMA SOLOMON TSUNKE**, the TRUSTEE will be entitled to a yearly fee as stipulated in the relevant legislation of the Republic of South Africa.

17. **MARRIAGE**

All the benefits that **KOKOMA SOLOMON TSUNKE** is entitled to in terms

of this Deed of Trust are for all purposes excluded from any community of property or any community of profit and loss. The accrual system in terms of the Matrimonial Property Act 88 of 1984 is not applicable to any benefit hereunder. It may not be seized for the debts or liabilities of any spouse of **KOKOMA SOLOMON TSUNKE** and may not form part of any insolvent estate of such a spouse or vest in the curator of such insolvent estate.

18. **ACCEPTANCE**

The TRUSTEE hereby accepts the donation made to him/her according to this Deed subject to the conditions of this Deed and further undertakes to realise the objectives of this Trust Deed.

SIGNED at PRETORIA on this the _____ day of _____ 2018.

AS WITNESSES:

1. _____

DONOR

2. _____

SIGNED at PRETORIA on this the _____ day of _____ 2018.

AS WITNESSES:

1. _____

TRUSTEE

2.
