REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

2/7/15.

CASE NO: 72331/2013

(1) REPORTABLE: NO/YES

(2) OF INTEREST TO OTHER JUDGES: NO/YES

(3) REVISED.

(4) Signature Date 2/07/2015

In the matter between:

JOHN RICHARD PARKER DOIDGE N.O.	1st APPLICANT
JAN JACOBUS DE BRUYN N. O.	2nd APPLICANT
PIETER ANDRIES VAN ZYL N.O .	3rd APPLICANT
PHIROSHAW CAMAY N.O.	4th APPLICANT
IPELENG PATIENCE JOOD MOLAOLWE N.O.	5th APPLICANT
ANDREW CONWAY GAOREKWE MOLUSI N.O.	6th APPLICANT
MESHACK THEMBINKOSI SILINDA	7th APPLICANT

and

THE MASTER OF THE GAUTENG HIGH COURT, PRETORIA	1st RESPONDENT
PREMIER OF THE NORTHERN CAPE	2nd RESPONDENT

JUDGMENT

KHUMALO J

INTRODUCTION

[1] The Asbestos Relief Trust ("the Trust"), represented by its duly authorised trustees ("the Applicants") seeks an order for a review and to set aside the decision of the Master of the High Court, Gauteng division, the 1st Respondent, to make public all information in the 1st Respondent's possession relating to the affairs of the Trust submitted by the Applicants pursuant a request by 1st Respondent in terms of s 16 (1) of the Trust Property Control Act 57 of 1988 ("the Act"), in so far as such decision includes revealing information contained in the minutes of the trustees and auditor's report.

[2] On 10 December 2013, the Applicants were granted an interim order in terms of which:

> [2.1] the 1st Respondent was interdicted and restrained from releasing the minutes of meetings of trustees and auditors report of the said trust to the 2nd Respondent or any other party.
>
> [2.2] both Respondents were interdicted from making public or informing third parties, save their legal representatives, of the names and identities of any persons identified in the affidavits of the beneficiaries attached to this application and/or make available any information in the minutes of meetings of trustees of the ART pending the final determination of this Application.

[3] The 1st Respondent has elected not to oppose the Application but abide the decision of the above Honourable Court.

[4] The 2nd Respondent, the Premier of the Northern Cape Province, opposes the Application on behalf of the Northern Cape community that allegedly has an interest in the Trust matters.

HISTORICAL BACKGROUND

[5] The Trust was established by the amalgamation of resources by a group of asbestos mining houses that included Griqualand Exploration and Finance Company ("Gefco"), Gencor Limited ("Gencor") Msauli Asbes Limited ("Msauli") with Hanover Mining Holdings ("Hanova") and African Chrysotile Limited ("ACA") (together referred to as "the Founders"), all of them prior to 2003 involved in litigation with persons ("Claimants") who were seeking compensation, claiming to have been affected by the Founders asbestos mining operations and to have contracted lung diseases from the inhalation of toxic dust and fumes.

[6] In 2003, a settlement to resolve the litigation was negotiated and resulted in an agreement being concluded in terms of which the Founders established the Trust as a compensation scheme for the purpose of providing compensation to the victims of asbestos mine poisoning who are ex-asbestos mineworkers ("Occupational Claimants") and people living close to the mines ("Environmental Claimants") who might have been affected because of the Founders' asbestos mining operations ("Qualifying Operations").

[7] The primary objective of the Trust was for the Applicants, the Trust's board of trustees to administer the funds in an amount of R381 million donated by the Founders to compensate the claimants or beneficiaries who could prove that they have one of the principal diseases associated with exposure to asbestos, therefore diagnosed with an asbestos related disease (ARD) namely, pleural effusion, thickening or plaques, asbestosis, asbestos related lung cancer or mesothelioma or that they are an authorised representative of the estate of a person who died of an ARD ("Qualifying beneficiaries").

[8] The Trust Deed sets out the objective and the criteria for assessing, processing and lodging of the claims, providing the framework for the administration of the Trust. The Deed also provides for the procedure to be followed in the instance there are persons who are not satisfied with the outcome of their claims to have their medical outcome reviewed.

[9] The Applicants, using the Trust's resources, arranged for a medical infrastructure dedicated to the diagnosis of cases of asbestos related diseases and offered free medical screening to occupational claimants, who were employed at qualifying operations. They also, out of the Trust's funds set up scouts to trace all former employees to have them undergo examination to see if they qualify and a panel of claim handlers to ensure that full compensation is paid to the qualifying beneficiaries. The amount paid as compensation varied, depending on the nature of the disease, extent (whether the symptoms are mild or severe) and the actual financial loss and harm suffered by the victim.

[10] A great number of the claimants came mainly from the Northern Cape, Limpopo, Mpumalanga, Lesotho, Botswana and Swaziland and mostly represented by a human rights attorney Richard Spoor from Ntuli, Noble and Spoor Incorporated ("Spoor"). The Claimants that were to be compensated or the beneficiaries identified in the Trust Deed extended only to persons residing in the Northern Cape who exhibited asbestos related illnesses as provided for in the Trust Deed. These beneficiaries or victims were required if not identified by the scout to lodge their claims with the Trust.

[11] The Northern Cape Provincial Authorities, specifically the 2nd Respondent together with a local non-governmental organization referred to as the Kgatelopele Asbestos Community Operative ("Kgatelopele") said to represent the interest of persons residing in or near Kuruman who may have been exposed to environmental pollution ("Environmental Claimants") caused by asbestos mining or the fall- out from asbestos mining carried out in the area, interrogated the subsequent formation and administration of the Trust.

[12] Kgatelopele with the assistance of 2nd Respondent and various other entities not involved in this matter approached the Applicants and raised certain concerns, inter alia, alleging that promises made by Spoor during his representation of some of the claimants in the litigation and settlement negotiations have not materialized post the settlement of the case. They wanted money they referred to as "Phomoladikeledi", for persons who regardless of whether or not they qualify for compensation in terms of the Trust Deed and are not affected by asbestos mining, to be paid, for having lent their names and records of service to Spoor for the litigation that was settled however do not qualify for compensation in terms of the rules of the Trust Deed.

[13] Kgatelopele and the 2nd Respondent also raised a complaint of dissatisfaction with the manner in which claims were handled, how quantum was decided and some persons paid and others not. They set to obtain from the Applicants an ex gratia payment of R30 Million for payment to those whose names appeared in the litigation proceedings but were not paid any compensation, regardless whether they or did not meet the criteria for compensation whether the person has an ARD or not.

[14] The 2nd Respondent subsequently lodged a formal complaint with the 1st Respondent on 31 May 2013 alleging that the Trust has made payments to persons who should not have been paid and failed to make payment to persons who should be paid, alleging also the maladministration of the Fund by the trustees. They also required a community representative in the board of trustees.

[15] Following the complaint the 2nd Respondent sought from the 1st Respondent that the Trust make a full disclosure of the information on the compensation payments made by the Trust. The 1st Respondent as a result invoked the provisions of s 16 of the Act and called for the Applicants to deliver all documents and records of the Trust to its office.

[16] Applicants delivered the trust documents and information sought by the 1st Respondent. In response to 2nd Respondent's complaint, the Applicants requested 1st Respondent to obtain from the 2nd Respondent a list of all the claimants allegedly paid incorrectly and of those whose claims have been wrongly declined, to be able to further fully comply with the 1st Respondent's request and give a full disclosure on the

payments by the Trust in respect of those people. The response that 1st Respondent received from the 2nd Respondent was that they are unable to furnish the names of such claimants.

[17] On 27 July 2013 the 1st Respondent informed the Applicants that it has nevertheless decided to publicly disclose the information, in the interest of transparency and confirmed its position again on 29 October 2013.

APPLICATION

[18] The Applicants are opposed to 1st Respondent's public disclosure of the information as intended and is seeking a review and the setting aside of the decision based on the following grounds: that,

> [18.1] the beneficiaries will be victimised by their respective communities, if the nature of their illnesses as well as the information on the amount of payments made is disclosed;
>
> [18.2] the claims process will be undermined;
>
> [18.3] information discussed at meetings of trustees in confidence and views expressed in such confidence would be made public in contravention of s 14 of the 1996 Constitution;
>
> [18.4] the information concerning the wellbeing of the claimants is private and confidential and making it public is contrary to s 14 of the National Health Act, 2003, (61 of 2003) ("the Health Act") that prohibits the release of medical information concerning an individual unless the person consents, or the court has made an order releasing it or the non- disclosure would represent a serious threat to public health; and

[18.5] the mandatory and material procedure prescribed for the release of the information as in terms of s 18 of the Act was not complied with, namely a written request for the information to be made public.

[18.6] that the 2nd Respondent's call in their letter dated 31 May 2013 is not for the information to be made public but for a full disclosure to the 2nd Respondent, as the 1st Respondent according to the Trust Act, may release information to an interested party pursuant to a written request, but not *mero motu* make it public. Also dispute that the 2nd Respondent is a party with sufficient interest .

[18.7] they object to the disclosure of minutes of the meetings of the trustees and the audit reports which discloses the names of claimants, details of the awards made to the claimants and their health conditions, details and identities of staff employed by the Trust and the discussion between the trustees relating to the affairs of the Trust relying on the provisions of s 6 of Promotion of Administrative Justice Act ("PAJA").

[19] Although the 1st Respondent is not challenging the Application and is to abide the decision of the court, it indicated that it stands by its reason as articulated in its letter dated 27 June 2013 to make the information public in the interest of transparency.

2ND RESPONDENT'S OPPOSITION

[20] The 2nd Respondent's opposition of the Application as per its Answering Affidavit deposed to by its Chief Law Adviser, P N Mafungo, ("Mafungo") outlines the background history of 2nd Respondent's involvement in the matter, supposedly to give perspective to its interest and the dispute. Its alleged it came about as a result of a complaint that was laid with the office of the 2nd Respondent by Kgatelopele, on behalf of the community in Kuruman and nearby surrounding areas against the Trust and Spoor and, specifically that:

[20.1] Spoor following the settlement agreement, formed the 2 Trusts without consulting Kgatelopele and the affected community and none of the community members were represented on the board of trustees of these trusts.

[20.2] There are community members who are seriously ill or deceased due to exposure to asbestos who still to date have not received any compensation from these Trusts, therefore Kgatelopele claimed that there is maladministration in so far as the Trusts are concerned. They, together with Kgatelopele were not happy about the manner in which the compensation for asbestos related diseases is handled by the Trust and alleged that because of that the Trusts are not recognised by the community.

[21] Its alleged by Mafungo that after the complaints, meetings were held during period 2009 -2010 between what the she refers to as Richard Spoor's Trusts, Kgatelopele, representatives of the community and the 2nd Respondent, after which a task team that was set up by the 2nd Respondent made general findings and recommendations that alluded to the existence of sufficient evidence of wrongful activities against poor communities in a report dated 25 May 2010.

[22] On the other hand Mafungo alleges that it was also reported on the same meeting of 29 April 2010, that **the attendees resolved that there is no tangible information that creates a prima facie suspicion of any wrong doing by Mr Spoor or the Trusts.** Also, that the trusts note the request by Kgatelopele for a review on their composition and seek to accommodate the request on the geographical locality.

[23] Its further alleged that Kgatelopele was however dissatisfied with the report on the resolution and of the view that the 2nd Respondent should follow the task team report that was favourable to their cause and laid a complaint with the Public Protector who then took a view that the 2nd Respondent should apply his mind to the 1st report, notwithstanding the resolution.

[24] The Affidavit also referred to a further meeting held on 09 November 2011 at the District Municipality of John Taolo Gaotsewe between yet again Kgatelopele, 2nd Respondent, the mayor and acting municipal manager which **meeting resolved that Kgatelopele should submit the necessary evidence t**hat is relevant to the allegations it has levelled against Spoor, as well as the maladministration of the Trust. 2nd Respondent would then assist Kgatelopele to bring the alleged issue it has against Spoor to court and that of the Trusts to the 1st Respondent's attention so that the alleged maladministration of the trust can be investigated by the 1st Respondent.

[25] The 2nd Respondent alleges to have complied with s 18 of the Act and argue that it does not have to furnish any reasons for its request as long in the opinion of the 1st Respondent, it has sufficient reasons.

[26] Furthermore 2nd Respondent alleges to have furnished the names of the claimants or complainants whose claims were supposedly incorrectly declined and of those wrongfully compensated plus annexures of confirmatory affidavits of leaders or representatives of Kgatelopele and the community it represents, which is not correct as neither the names or the confirmatory affidavits are furnished.

REPLYING AFFIDAVIT

[27] Applicants in their Reply briefly highlighted the following:

[27.1] that the trust or trusts, as indicated in its Founding Affidavit, were not formed by Spoor but by the Funders and that Spoor is not involved in any way in their administration.

[27.2] the 2nd Respondent had failed to furnish the list of names of the parties whom they purportedly represent who have complained about compensations made or not made. The 2nd Respondent has therefore failed to address the nature of its complaints. In the circumstances there cannot be a valid complaint.

[27.3] The 1st Respondent at the instance of the community appointed two trustees who are presently with the Trust. At the time the Trust already had two other trustees who were, in accordance with the provisions of the trust deed, appointed to the board by attorneys representing the claimants in litigation pursuant to which the trust was established.

[28] The Applicant again denied any maladministration.

MAIN ISSUES TO BE DETERMINED

[29] The main issue is whether or not in making the decision to publicly disclose the documents in its possession that were submitted to it pursuant to its request in terms of s 16, the 1st Respondent exercised his discretion properly and judiciously equalling a fair and just administrative action, alternatively, if under the prevailing circumstances the 1st Respondent's decision to publicly disclose information, for the sake of transparency, rationally related to the facts that served before it and the purpose for which the power was given.

[30] The secondary issue is if the decision to release the trust information not only to the 2nd Respondent but to the public followed a written request by a party with sufficient interest in terms of s 18 of the Act.

LEGAL FRAMEWORK

[31] Trusts like the Asbestos Relief Trust that are set up with a special purpose of benefiting a certain category of beneficiaries with a special need (same as those who are incapacitated or disabled persons) are best described as special needs or non-profit trusts and fall under the special class of *inter vivos* trusts. The donors or funders transfer assets or funds by written agreement into the trust to be managed by a board of trustees on behalf of a specific category of beneficiaries.

[32] In governing trusts, the trust deed is supreme. The trustees derive the authority or power they exercise from the trust deed, therefore trustees' actions are only valid if

within the terms and the governing constraints of the trust deed. Their mandate is clearly specified as to exactly what is it that is within the bounds of their duties and responsibilities. As a result, action to be taken are stipulated, if there is no provision for an action in the deed, it cannot be done. Only a court may, on application by a trustee or beneficiary or an interested party, delete, vary a provision in the trust or make in respect thereof any order which such court deem just (see s 13 of the Act). *Vrystaat Mielies v Bpk v Nieuwoudt* 2003 (2) SA 262 (O).

[33] The trust instrument/deed of these special trusts are not public documents and a settlement agreement that gave rise to the formation of the trust is kept as a private matter between the Founders/Donors, Trustees and Trust Beneficiaries, as trust instruments are in terms of the South African Law not of a public nature. However the Trust Property Control Act 57 of 1988 that currently regulates certain aspects of the trust administration requires the lodgement of trusts documents with the master of the high court that holds jurisdiction (s 4 (1)), and the registration of all the trust property with such Master's office (s 11). The trustees as stipulated in the trust deed are to be officially appointed by the Master before they could assume office (s 7). Any changes to the trustees or to the trust deed must be approved by the Master, who also has the authority to place the administration of the trust under scrutiny. The financial statements are to be kept, and, if requested by the Master, lodged with his/her office (see s 16), especially when queries regarding the administration of the trust are received, the Master may invoke the provisions of s 16 to get any information from the trust.

[34] Section 16 (1) of the Act reads:

> 'A trustee shall at the written request of the master account to the master to his satisfaction and in accordance with the master's requirements for his administration and disposal of trust property and shall, at the written request of the master deliver any book, record or account or document relating to his administration or disposal of the trust property and shall to the best of his ability answer honestly and truthfully any question put to him by the master in connection with administration and disposal of the trust property.'

Section 16 (2) thereof reads:

> 'the Master may if he deems it necessary cause an investigation to be carried out by some fit and proper person appointed by him into the administration and disposal of trust property.'

[35] Therefore, upon the Master's receipt of queries or allegations of maladministration against a trust it is its prerogative to call upon the trustees to account. The principles of fairness and justice or simple logic diktat that allegations or queries raised must be genuine and have substance. Therefore it would be prudent for the Master to establish the genuineness and reliability of the allegations or queries made before embarking on any further step in the matter. In that case, although the 1st Respondent could invoke s (16) (1) provisions, it is however expected that he would not do so if from the outset the queries or allegations seem trivial and far-fetched or unsubstantiated. In the circumstances where it seems not to be the case, the Master can through invoking s 16 verify if indeed the query or complaint with substance and requiring any further action. The accounting and delivery of the documents or information in terms of s 16 is to the Master only, who on establishing if complaint or query is of substance, will then make the call if further actions under s 16 necessary.

[36] The public can have access to the documents in possession of the Master by means of a request in terms of s 18 of the Act. The Master is authorised or has the power to release the documents to any person making a request notwithstanding a trust instrument not being a public document (see s 5 (2) of the Administration of the Estates Act, as amended), if in the opinion of the master the person has sufficient interest. Section 18 therefore governs the public's access to the trust documents, and reads:

> "subject to the provisions of s 5 (2) of the Administration of Estates Act, 1965 (Act 66 of 1965), regarding the documents in connection with the estate of the deceased persons, the Master shall upon a written request and payment of the prescribed fee furnish a certified copy of any document under his control relating to trust property to a trustee, his surety or representative or *any other person who*

in the opinion of the master has sufficient interest in such document." (my emphasis)

Regulation 3 of the Regulations under the Trust Property Control Act, 1988 (Act 57 of 1988) as amended 5 November 2009 provides that:

> "The fee payable to the master in terms of s 18 of the Act for a certified copy of any document under his or her control relating to trust property shall be R4.50, which shall be payable in the manner as determined administratively by the Director General: Justice and Constitutional Development and proof of such payment *shall be submitted to the Master together with the written request of, or rendering by, the Master of the service in question." (my emphasis)*

[37] In the instance where the decision is supposedly taken in a response to a request or an application in terms of s 18 of the Act as in *casu*, the 1st Respondent's discretion whether or not to acquiesce to such a request should be exercised judiciously and objectively for the decision to be fair and just, taking into consideration that the information and the documents of the trust, to which access is required, are of a private and confidential nature even though its administration is regulated by the 1st Respondent in fulfilment of a public function. The discretion is exercised more stringently. For the decision of the 1st Respondent to equate to a just administrative action it must be reasonable, procedurally fair and lawful (s 33 of the Constitution, 1996). Therefore how the decision is taken in relation to the process, the reasons and purpose balanced against the rights of the parties involved, establishes the validity of the decision.

[38] Consequently for the 1st Respondent to be able to exercise its discretion properly and objectively, the request cannot be inferred from a bare complaint, query or allegation that is unsubstantiated and not supported by facts before it. The requestor must provide sufficient reasons why the information is needed which is weighed against an input from the Trustees and beneficiaries, after which the Master will exercise his discretion whether or not to provide the information. The question would be whether a rational objective basis justifying the connection the 1st Respondent made between the facts (material)

available and the decision indicative of a just administration action (see *Rustenburg Platinum Mines Ltd v CCMA* 2007 (1) SA 576 (SCA) 578A-B. Section 6 (2) (f) (ii) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) referred to by Applicant and applicable in such administrative actions, empowers a court to review an administrative action if the action itself is 'not rationally connected to' '*(cc)* the information before the administrator; or *(dd)* reasons given for it by the administrator'. In *Pharmaceutical Manufacturers Association of SA and Another: In re Exparte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) (2000 (3) BCLR 241) it was held that decisions in the exercise of public power by the executive and other functionaries must be capable of being shown, objectively, to be rationally related to the purpose for which the power is given.

[39] In *casu* it must be established if the 1st Respondent's decision to make public the information relating to the affairs of the Trust, personal details of the beneficiaries, the nature and extent of their diagnosis, the deliberations by the trustees, the quantum paid if any, is rationally connected to the facts before the 1st Respondent, the reason given for the decision and to the purpose for which the power is given to determine if decision reviewable. The starting point would therefore be to establish the procedurally fairness of the action followed by the interrogation of the facts that where before the 1st Respondent when it considered the matter to establish if on the merits the decision can be considered rational.

[40] Applicant has raised a query with regard to the process, arguing that 2nd Respondent has not filed a written request as stipulated in s 18 to have access to the documents or information that the 1st Respondent has decided to make public and has also not paid the stipulated fees that are to be submitted with the written request. Therefore submits that the decision by the 1st Respondent was made *mero motu*.

[41] The section is mandatory, it is therefore important for a party requesting the information to have complied with the provisions of s 18 prior to the 1st Respondent considering the request. Indeed there is no officially written request by the 2nd Respondent or any of the entity or organisation it purports to represent to the 1st Respondent for the trust information the Applicant is seeking to interdict, even though the

1st Respondent relies upon the section for coming to its decision to publicly disclose the documents. There is also no proof of payment of the fee fixed by regulation 3 and as prescribed by s 18. The decision by the 1st Respondent followed a complaint by the 2nd Respondent lodged on behalf of Kgatelopele and allegedly the affected community. After invoking the provisions of s 16, the 1st Respondent not only decided to give access to the information to the 2nd Respondent without the latter complying with s 18 (the section empowering it to make a decision), but *mero motu* decided to release the information to the public. The 1st Respondent's action were therefore *ultra vires* the enabling section, as the procedural requirements set out by s 18 that would have enabled the 1st Respondent to exercise the discretion were not complied with.

[42] The question which then follows is whether substantively there is a rational connection to the facts as per the complaints that are before the 1st Respondent and the decision to disclose to the 2nd Respondent and to the general public (albeit *mero motu*) the private and confidential information. That enquiry is entwined with an examination of the process and of the relevant facts the 1st Respondent took into consideration to determine or formulate its opinion not only on the sufficiency of the 2nd Respondent's interest but also that of the public with special due regard of the privacy and confidentiality of the information together with the laws applicable in the protection of such private information.

[43] The Applicants disagree that from the facts it can be concluded that the 2nd Respondent has sufficient interest to be entitled to the information it seeks from the trust, arguing that it does not have a valid complaint. Whether or not 2nd Respondent has sufficient interest is to be determined or ascertained from the evidence of the complaints as they form the facts upon which the request was made and 1st respondent decision premised. The main complaint raised was that there is maladministration of the trust funds by the trustees in their dealings with the claims in that they have wrongly declined to compensate certain claimants with legitimate claims and compensated others whose claims were not legitimate. The allegation or complaint is supposedly raised with the 1st Respondent on behalf of the wrongly declined claimants represented by Kgatelopele, yet the 2nd Respondent failed prior to and when lodging the complaint to furnish the 1st Respondent or the Trust with the names of these claimants it and Kgatelopele allegedly

represent. Hence at the time when the 1st Respondent made its decision there was no authenticated information on the identity of these complainants or claimants whose claims were wrongly declined by the trust who are 2nd Respondent's and Kgatelopele source of interest. There were, as well, no names furnished of claimants who have been wrongly or incorrectly paid. The 2nd Respondent could not show how it derives any interest in the information it sought based on the complaint. The 1st Respondent could therefore not have validly ascertained or formulated a valid opinion from the bare and unsubstantiated complaint allegedly made on behalf of unidentified complainants.

[44] The conduct is perpetuated even in this Application. In its Answering Affidavit, the 2nd Respondent alleges to have purportedly furnished the names of these claimants when it has not done so, making its *locus standi* questionable. Furthermore, the 2nd Respondent alleged when it filed the complaints and now in its opposition to this Application, that it is acting on behalf of or in the interest of Kgatelopele and the affected community. Once more it purports to have submitted or annexed to its answering affidavit confirmatory affidavits from the leaders of Kgatelopele and the community when it has not done so. The allegation is clearly made deliberately for the court to infer not only that there is sufficient interest but also that 2nd Respondent is acting with a mandate and therefore has a legal standing in the matter, when truthfully, there are no facts before the 1st Respondent from which a mandate from the community that is supposedly affected could be inferred or a legitimate opinion on the community or 2nd Respondent sufficient interest could be made that supports the 1st Respondent's decision to disclose the provisionally interdicted information. Therefore the 1st Respondent has exercised its discretion not only improperly but also ill-advisedly in deciding to publicly disclose the information when there is no sufficient interest shown (there being no facts before it) by the 2nd Respondent or the community it alleges to represent that warrants the decision. Therefore upon these two issues the action of the 1st Respondent was procedurally unfair and not rationally connected to the facts before it or for the purpose envisaged by the section.

[45] The failure of the decision to measure up on the above issues is dispositive of the matter. However, for the sake of finality I have also dealt with the other complaints raised by the parties upon which the decision of the 1st Respondent had to be made. One

such complaint indicated to be one of Kgatelopele and the community's main complaint, as alleged by 2nd Respondent is that there is mistrust by the community of the 2 trusts they claim to have been formed by Spoor, allegedly because besides the maladministration neither the community or the litigants on whose behalf a settlement agreement was concluded are represented in the trusts' board of trustees. However there is evidence that has not been refuted that on the formation of the ART Trust, two trustees were in accordance with the provision of the trust deed appointed by the litigants' attorneys and have, since then, been involved. Also that 1st Respondent appointed two trustees who are presently with the ART Trust supposedly at the instance of the community. Therefore all parties were obviously aware that the four out of the seven trustees that make out the board represent the community and the litigants. The community's mistrust of the board of trustees is unsustainable. The complaint is as a result not genuine and 2nd Respondent's repeat of it in the Application is disingenuous. It is also not a fairly objective ground upon which the 1st Respondent decision of public disclosure could be justified.

[46] Additionally, according to 2nd Respondent's own documents in respect of the interaction that took place between the parties, there was already a resolution /conclusion reached between the parties and various other entities from the community at the end of meetings and deliberations that took place as long ago as 2009- 2010 that there is no evidence of any maladministration by the Trust. Notwithstanding, the 2nd Respondent relentlessly and without any valid reason, under a disguise that an instruction to do so came from the public protector, continued to pursue the matter. It did, even after Kgatelopele could not comply with the request to first submit evidence to 2nd Respondent before any further steps can be taken. The filing of the complaint with the 1st Respondent supposedly on behalf of Kgatelopele after such failure to produce evidence was unreasonable. Also its action of engaging the trustees on the "Phumuladikeledi" amount allegedly for people who had no ARD's and also trying to influence decisions that are outside the boundaries of the trust instrument and the agreement upon which it was created was irrational.

[47] There is therefore neither a legitimate or truthful query or complaint established from the facts that could be an objective and rational basis upon which the decision to

publicly disclose the information the Applicants seek to interdict could be made and or a procedurally compliant request that empowered the 1st Respondent to make the decision.

[48] The decision is also not rationally connected to the reason that has been given by the 1st Respondent, which is for the sake of transparency. The word transparency must be understood in the context that the trust documents are in general of a private nature. Furthermore the documents sought constitutes information on the beneficiaries' personal details, the nature and extent of their health conditions, the amount of compensation paid to them by the trustees including deliberations in relation thereto and auditor's report. The regulatory statute has set out the conditions upon which and the purpose for which the information notwithstanding its private nature may be released to the public. Therefore without any sufficient interest shown by the 2nd Respondent or by the organisation it purports to represent, the 1st Respondent's reason is not rationality related to the purpose for which the power in s 18 was given and is not connected to the material facts before the 1st Respondent. There are no claimants that will suffer prejudice if the information sought to be interdicted is not disclosed publicly or to the 2nd Respondent. 1st Respondent's reason therefore failed to measure up to the precincts of a fair and just administrative action. Under such circumstances the decision is reviewable.

[49] As a result I therefore make the following order

[49.1] the Applicant's Application for a review succeeds with costs;

[49.2] The decision of 1st Respondent made on the 27 June 2013 and reaffirmed on 29 October 2013 is set aside in so far as such decision included the making public of the minutes of the meetings of Asbestos Trust and the Auditors Reports;

[49.2] That the Respondents are interdicted and restrained from making public or informing any parties who are not party to this litigation of the names and the identities of any person identified in the affidavits of the beneficiaries attached to the application as and/or any information as to such persons identifies in the minutes of the meetings of the trustees or the auditors reports of the Asbestos Relief Trust.

N V KHUMALO
JUDGE OF THE GAUTENG HIGH COURT -PRETORIA

On behalf of Applicants:	M Smit
Instructed by:	Cliffe Dekker & Hofmeyer Attorneys
	C/O Asger Gani Attorneys
	Ref: Gani (012) 323-6460
On behalf of Respondents:	M Mphaga SC & M Thabede.
Instructed by:	The State Attorney, Pretoria.
	Ref: Msiza (012) 309 1561