



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: **5299/2024**

In the matter between:

DARREN JENS TIBSHRAENY

Applicant

and

JENS PETER TIBSHRAENY

Respondent

In Re

In the *ex parte* application of:

DARREN JENS TIBSHRAENY

Applicant

For the appointment of *Curatores ad Litem et Bonis* to

JENS PETER TIBSHRAENY

Coram

:

Da Silva Salie, J

Judgment delivered in respect of postponement application heard on 28 May 2025	:	2 June 2025
Counsel for Applicant	:	Adv. Peter Hodes SC Adv. Paul Tredoux
Instructed by	:	Kili Inc. Attorneys Ref: Mr Lennox Kili
Counsel for Respondent	:	Adv. Fiona Gordon-Turner SC
Instructed by	:	Frank Biccari Attorneys Mr Frank Biccari

JUDGMENT ELECTRONICALLY DELIVERED ON 2 JUNE 2025

DA SILVA SALIE, J

Introduction:

[1] Before this Court is an application by the respondent, Mr Jens Peter Tibshraeny, for a postponement of these proceedings to enable a psychiatric evaluation to determine his capacity to give instructions to his legal representatives. The application is opposed by the applicant, Mr Darren Tibshraeny. The curator ad litem, Adv Diane Davis SC, did not participate in or oppose the application.

[2] On 18 March 2025, this Court granted an order in terms of Rule 57 of the Uniform Rules of Court declaring Mr Tibshraeny incapable of managing his affairs and appointed a curator ad litem to act in his interests. This finding considered in detail, *inter alia*, the opinions by two medical evaluations which confirmed a progressive cognitive decline impairing the respondent's functional and decisional capacities.

[3] It is against this backdrop that the respondent, acting purportedly through his legal representatives, filed a notice of appeal and now seeks a postponement pending further psychiatric assessment. The core of the request is to reassess his competence to instruct his legal team, which he argues is distinguishable from his broader incapacity to manage his affairs.

[4] This contention is without merit. The nature of a declaration under Rule 57 encompasses both patrimonial and legal decision-making capacities. Once a person has been declared incapable of managing their own affairs, this incapacity extends to all consequential faculties which require sound and independent judgment, including the ability to engage in litigation and instruct legal representatives, pending the report of the appointed curator ad litem, whereafter the Court will direct further in this application brought in terms of Rule 57.

[5] Such incapacity necessarily implies the inability to give meaningful instructions for litigation unless and until set aside or varied on proper application supported by medical evidence and in compliance with procedural requirements. See ***Van Rensburg N.O. v Cornelius (A31/2023) [2023] ZAWCHC 190 (7 August 2023)***.

[6] In this instance, the appointment of Adv Diane Davis SC as curator ad litem was not ceremonial but functional. She is authorised and directed by this Court to act in the best interests of the respondent and to represent him in ongoing and future litigation until this Court directs further. The respondent is, by law, required to cooperate with the curator ad litem. Any application or notice filed without her involvement lacks legal standing. The curator ad litem is entitled to obtain a further medical report by a medical

specialist of her choosing and if and as she may consider such action appropriate in order to prepare her report.

[7] Furthermore, the present application for postponement seeks to relitigate an issue already determined by this Court and cloaked now in a veneer of procedural fairness. There is no new or compelling medical evidence to contradict the findings previously made. The proposed assessment does not justify a further delay in proceedings and would prejudice the proper administration of justice and the interests of the patient who is suffering from a declining mental condition.

[8] Wherefore I make the following Order:

“[i] The application for a postponement is accordingly refused.

[ii] The respondent shall cooperate fully with the appointed curator ad litem, who shall continue to act and represent the respondent in all pending proceedings and related matters until further direction from this Court.

[iii] Costs of this application shall be borne by the respondent’s estate on Scale C.

[iv] The Registrar of this Court is directed to serve a copy of this Order on Adv. Davis SC by email.”

DA SILVA SALIE, J
JUDGE OF THE HIGH COURT
WESTERN CAPE