



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Not Reportable
Case No: M431/2023**

In the matter between:

EWAN CARTER SMITH N.O.

(In his capacity as *curator bonis* of

O[...] S[...])

Applicant

and

KOKETSO MARGRET BALIBI

First Respondent

SEGARIA BALIBI

Second Respondent

ADVICE MOLUSI

Third Respondent

LEGAL PRACTICE COUNCIL

Fourth Respondent

Coram: Petersen ADJP

Date enrolled: 29 January 2026

Judgment reserved: 29 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the handing down of the judgment are deemed to be 14h00 on 09 February 2026.

Summary: Application by *curator bonis* – interdictory relief – refusal to disclose whereabouts of patient – obstruction of court-appointed officials – threats of violence – appointment of *curatrix ad personam* – best interests of patient paramount – respondents' opposition based on stayed rescission application – lack of counterapplication for stay fatal – final interdict granted – costs on attorney and client scale.

JUDGMENT

PETERSEN ADJP:

Introduction

[1] This is an application concerning the well-being and administration of the affairs of Mr. O[...] S[...] (“the Patient”). The applicant, Mr. Ewan Carter Smith

N.O., approaches this Court in his official capacity as the appointed *curator bonis* of the Patient.

[2] The applicant seeks interdictory relief against the first, second, and third respondents to compel the disclosure of the Patient's whereabouts, to prevent obstruction of the court-appointed curators' duties, and to interdict the respondents, specifically the third respondent, from committing hostile acts or threats against the legal representatives and medical teams tasked with the Patient's care. Additionally, the applicant seeks the appointment of an interim *curatrix ad personam*.

Factual Background

[3] The Patient, while still a minor aged approximately 5 years, was involved in a motor vehicle collision on 16 July 2010 in Kuruman, Northern Cape. As a result of the accident, he sustained a severe paediatric traumatic brain injury, including cerebral contusions and a skull fracture.

[4] Drs du Plessis (Neurosurgeon) and Mazabow (Clinical Psychologist) have confirmed that the Patient sustained permanent neuropsychological difficulties. Consequently, on 19 December 2017, Baqwa J of the Gauteng Division Pretoria, declared the Patient incapable of managing his own affairs.

[5] The applicant was appointed as *curator bonis* by the Master of the High Court on 17 September 2021, an appointment that the respondents challenge. Since his appointment, the applicant avers that his efforts to locate and consult with the Patient have been systematically frustrated by the first, second, and third respondents.

[6] The applicant enlisted private investigators to trace the Patient, but these efforts were unsuccessful due to the respondents' refusal to cooperate.

The conduct of the Respondents

[7] The first and second respondents are "represented" by the third respondent, Mr. Advice Molusi. The papers before this Court indicate serious concerns regarding the third respondent's standing and conduct. Although he purports to represent the family, investigations reveal his letterhead refers to a "Mulusi Property Trust" and lists qualifications from an institution that does not offer a Bachelor of Laws (LLB) degree. He also admits that he is not an admitted attorney or advocate.

[8] It is with grave concern that this Court notes the evidence of hostility and threats directed at the court-appointed officials. The applicant refers to email correspondence dated 26 February 2024, in which the third respondent communicated the following threat to the legal team:

"...we have been discussing this matter with the local community, and the decision was taken that you are taking the blacks for granted... SOLUTION WAS TAKEN THAT WHOEVER YOU ARE GOING TO SEND NEAR O[...] WILL NOT COME BACK."

[9] This statement constitutes a direct threat to the safety of the applicant, the *curatrix ad litem*, and any medical personnel attempting to assist the Patient.

[10] The first, second, and third respondents filed a Notice of Intention to Oppose and an Answering Affidavit on 01 July 2025. They failed to specifically deny the material averments in the Founding Affidavit or to "confess and

avoid.” In motion proceedings, where a respondent fails to dispute the applicant’s allegations, those allegations are generally taken as established facts.

The conduct of the respondents

[11] A central aspect of this application is the deteriorating behaviour of the Patient and the inability of the current caregivers (the respondents) to manage his condition appropriately. The reports filed by the social worker, Ms. P.T. Koko Mogokonyane, and the occupational therapist, Ms. Anneke Greeff, paint a concerning picture of the Patient’s conduct and living conditions since 2015.

[12] The first, second, and third respondents oppose the application primarily on the basis that the current proceedings should be stayed pending an application for the rescission of the order granted by Acting Justice Dibetso-Bodibe on 31 August 2023. They contend that they have reasonable prospects of success in the rescission application and raise two main grounds of irregularity regarding the appointments of the court-appointed officials.

[13] Firstly, the respondents challenge the re-appointment of Advocate Gianni as *curatrix ad litem*. They submit that Advocate Gianni became *functus officio* on 19 December 2017 when the main action against the Road Accident Fund was concluded. They argue that the application for her re-appointment in 2023 was fatally flawed because it was not served on the first and second respondents and was not supported by an affidavit from a person well-known to the Patient, as required by Rule 57(3)(a) of the Uniform Rules of Court.

[14] Secondly, the respondents challenge the appointment of the current *curator bonis*, Mr. Smith, following the removal of the previous curator, Ms. Spitalieri.

They aver that the Master of the High Court removed Ms. Spitalieri without providing reasons to the Patient's next of kin. Furthermore, they argue that the subsequent appointment of Mr. Smith by the Assistant Master, Mr Neethling, on 17 September 2021 constituted administrative action that failed to comply with the Promotion of Administrative Justice Act 3 of 2000 (PAJA). They specifically contend that the Assistant Master was unable to notify interested parties, including the Patient, before making the decision.

[15] The respondents consequently seek a stay of these proceedings to allow for the rescission application to be adjudicated. They argue that the underlying processes for appointing both the *curatrix ad litem* and the *curator bonis* were irregular.

[16] The submissions advanced on behalf of the respondents are further that the reports on which the appointment of Adv Gianni is based and on which the order of Bodibe-Dibetso AJ was predicated are outdated, in circumstances where the whereabouts of the Patient were known. The submissions of the respondents regarding the social worker receiving collateral information from the Principal of the school; that the Patient, after 2015 was indicative of behaviour contrary to the findings of experts Dr Mazibow and Dr du Plessis, resulting in the order of Baqwa J, must be considered in context with reference to the facts as a whole and not extracted out of context.

[17] As indicated above, the reports filed by the social worker, Ms. P.T. Koko Mogokonyane, and the occupational therapist, Ms. Anneke Greeff, paint a concerning picture of the Patient's conduct and living conditions since 2015. The record reflects a significant escalation in aggressive behaviour in early 2019. In March 2019, the Patient was implicated in an incident at his school where he threatened another learner with a knife. Following this, he was

admitted to Akeso Clinic on 02 April 2019 for observation. On 16 April 2019, Dr. Magagula (Psychiatrist) reported that the Patient had again displayed violent behaviour, attempting to attack other children with a knife before being stopped. Medical professionals recommended his transfer to Weskoppies Psychiatric Hospital as the appropriate institution for his needs. Still, the First and Second Respondents refused to cooperate or provide the necessary consent for this transfer.

[18] Ms. Mogokonyane, the appointed social worker, has compiled three reports dated 02 November 2022, 23 March 2023, and 24 March 2024 detailing her attempts to assess the Patient. The following is evidence from her reports. During a home visit to Morokweng Village on 19 October 2021, the respondents refused to cooperate or allow the social worker access to the Patient. On 03 March 2023, during a visit to Iteko Special School, the social worker was presented with an individual purported to be the Patient. Still, no identification could be produced to verify this identity. Significantly, during a subsequent visit to Iteko Special School on 24 October 2023, Ms. Mogokonyane, alongside the *curator bonis* and *curatrix ad litem*, was unable to see the Patient. It was reported to them that the Patient had been expelled from the school due to “unruly” behaviour.

[19] The social worker’s reports consistently reflect that the respondents’ refusal to cooperate has prevented a proper assessment of the Patient’s social and medical needs. This lack of supervision is particularly alarming given the documented history of armed aggression towards other children.

[20] The conduct of the respondents has moved beyond mere non-cooperation to active obstruction that endangers the Patient and the public. The history of

violent outbursts, specifically the use of weapons against minors, mandates professional supervision, which the respondents have clearly failed to provide.

[21] The expulsion of the Patient from Iteko Special School for unruly behaviour in late 2023, coupled with the earlier refusals to allow psychiatric admission to Weskoppies, demonstrates that the Patient is not receiving the requisite care. The appointment of a *curatrix ad personam* is therefore not merely a procedural step but a necessary intervention to ensure the Patient's physical safety and that of those around him.

Legal Principles and Application

[22] The paramount consideration in this matter is the Patient's best interests. The Patient has sustained a debilitating head injury and requires lifelong medical evaluation and treatment. The expert findings, albeit in 2015, were findings indicative of a permanent nature. The obstructive conduct of the respondents prevents the *curator bonis* and *curatrix ad litem* from assessing the Patient's needs, which is potentially harmful to his health and well-being.

[23] The requisites for a final interdict are well-established: a clear right, an injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy. As to the requirement of a clear right, the applicant, as *curator bonis*, has a statutory and court-ordered duty to manage the Patient's affairs. He has a clear right to access the Patient.

[24] Is there an injury actually committed or reasonably apprehended? The threats of violence and the continued concealment of the Patient constitute a continuing injury to the applicant's ability to function and, more importantly, to the Patient's health.

[25] Is there any other remedy? The applicant has attempted to use private investigators without success. Judicial intervention is the only remaining avenue to ensure the Patient's safety.

[26] The conduct of the third respondent, who appears to be acting as an unregistered legal practitioner while issuing death threats, is unlawful and unacceptable. This Court cannot countenance vigilantism or intimidation tactics that hinder the administration of justice and the protection of vulnerable persons.

[27] The respondents seek an order staying the application pending an application for rescission of the order Dibetso-Bodibe AJ in 2023. Notably, there is no counter-application for a stay of proceedings before this Court. The relief sought by the respondents, in the absence of a counter-application, is accordingly not sustainable or capable of being granted.

Conclusion

[28] I am satisfied that the applicant has made out a case for the relief sought. The respondents' obstruction must cease immediately to allow the necessary medical and legal assessments of the Patient. The appointment of an interim *curatrix ad personam* is also appropriate to oversee the Patient's personal well-being.

Order

[29] As a result, the following order is made:

1. That Ms Anneke Else Greeff is hereby appointed as interim *curatrix ad personam* to O[...] S[...], an adult male with Identity Number: 0[...] (hereinafter referred to as “the Patient”).

2. That the *curatrix ad personam* is given the capacity and authorisation, usually awarded to a *curatrix ad personam*, which shall include, but not be limited to:

2.1 Make the necessary arrangements for the Patient to be relocated to Yonder Centre for Adults with an Intellectual Disability, alternatively a medical facility and/or residence most suitable for the Patient, considering his medical and social wellbeing;

2.2. make the necessary arrangements to ensure that a Social worker assessment, medical and psychological assessment, and evaluation of the Patient is conducted;

2.3 authorise immediate medical treatment for the benefit of the Patient, if necessary; and

2.4 Report to the *curatrix ad litem* and *curator bonis* about the Outcome of the Social worker assessment, medical and psychological assessment, and evaluation of the Patient and to make recommendations accordingly.

3 That the issue of whether a *curatrix ad personam* remains necessary for the Patient is referred for reconsideration on a return date suitable to the Honourable Acting Deputy Judge President Petersen, the Honourable

Court, the Applicant, the *curatrix ad litem*, and the *curatrix ad personam* on these papers, duly supplemented if necessary.

4 That the First, Second, and Third Respondents, together with any other person(s) instructed by or acting under the control of the First, Second, and Third Respondents, are prohibited from obstructing, preventing, or inhibiting Advocate Delene Sally Gianni N.O (“*curatrix ad litem*”) or anyone so appointed by her, from executing her duties as *curatrix ad litem* to the Patient in terms of the Court Order handed down by the Honourable Acting Justice Dibetso-Bodike on 31 August 2023 under case number M431/2023.

5 That the First, Second, and Third Respondents, together with any other person(s) instructed by or acting under the control of the First, Second, and Third Respondents, are prohibited from obstructing, preventing, or inhibiting Ms Anneke Else Greeff or anyone so appointed by her, from executing her duties as *curatrix ad personam* to the Patient.

6 That the First, Second, and Third Respondents, together with any other person(s) instructed by or acting under the control of the First, Second and Third Respondents, are hereby ordered to cooperate with the *curatrix ad litem*, the *curatrix ad personam*, Mr Ewan Carter Smith (“*curator bonis*”) and any other person(s), which person(s) shall include the Patient’s legal representatives, the Patient’s Case Manager, the Patient’s medical team, the Sheriff or Deputy Sheriff of the Board of Sheriffs, any member of the South African Police Service or any other person(s) assigned, instructed or tasked by the *curator bonis* or the *curatrix ad litem* to render assistance or care to the Patient.

7 That the First, Second, and Third Respondents are hereby ordered to, within five (5) calendar days of receipt of this Court Order, disclose the location of the Patient to the *curator bonis*, the *curatrix ad litem*, and the *curatrix ad personam*.

8 That the First, Second and Third Respondents are hereby ordered to within ten (10) calendar days of receipt of this Court Order, deliver the Patient, alternatively allow the *curator bonis*, the *curatrix ad litem* and the *curatrix ad personam* to make the necessary arrangements for the Patient to be transported to Yonder Centre for Adults with an Intellectual Disability, alternatively a medical facility and/or medical experts for, *inter alia*, conducting a Social worker assessment, medical assessment of the Patient and commence treatment if necessary.

9 That the First, Second, and Third Respondents, together with any other person(s) instructed by or acting on the control of the First, Second and Third Respondents, are prohibited from committing or attempting to commit any hostile act or assault aimed or directed towards the *curator bonis*, the *curatrix ad litem*, the *curatrix ad personam* and any other person(s), which person(s) shall include the Patient's legal representatives, the Patient's Case Manager, the Patient's medical team, the Sheriff or Deputy Sheriff of the Board of Sheriffs, any member of the South African Police Service or any other person(s) assigned, instructed or tasked by the *curator bonis* or the *curatrix ad litem* to render assistance or care to the Patient.

10. That the First, Second, and Third Respondents are ordered to pay the costs of this application on the High Court attorney and client scale, jointly

and severally, the one paying the other to be absolved at Scale B (counsel) and C (*curatrix ad litem*) where applicable.

A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicant:	Adv D Viller
Instructed by:	MC Kruger Attorneys c/o Van Rooyen, Thlapi, Wessels Attorneys Mahikeng

For the First, Second, and Third Respondents:	Adv G E Matsietsa
Instructed by:	Motshabi & Associates Inc Mahikeng