REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG, PRETORIA

Case Number: **2023-016399**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

18 March 2026 [redacted]
DATE SIGNATURE

In the matter between:

WILLEM FRANCOIS BOUWER N.O.
AS *CURATOR BONIS* OF KHOMOTSO ALETTA SEBATJANE APPLICANT

and

MASTER OF THE HIGH COURT, PRETORIA FIRST RESPONDENT

ANNELIEN SMIT SECOND RESPONDENT

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be: 18 March 2026.

JUDGMENT

RAUBENHEIMER AJ

Introduction

[1] Before court is an application to review and set aside the decision of the second respondent to disallow the remuneration of the curator in the *curator bonis* estate of Ms Khomotso Aletta Sebatjane (the patient), who was involved in a motor vehicle collision on 1 March 2013, when she was still a minor. She sustained severe injuries including brain injuries as a result of the collision. A claim for damages was lodged in terms of the Road Accident Fund Act[1] (RAF Act). A *curator ad litem* was consequently appointed and authorised to settle the claim for damages in terms of a court order dated 16 April 2019. The settlement amount determined by the court was R 996 186 (nine hundred and ninety-six thousand one hundred and eighty-six rand) from which legal costs had to be deducted. The remainder had to be paid into an interest-bearing trust account pending the appointment of the *curator bonis.*

[2] The applicant was duly appointed as the *curator bonis* of the patient in terms of a court order dated 13 January 2020. Which appointment was confirmed by the first respondent in letters of curatorship dated 12 May 2020.

[3] The applicant submitted the first and second curator's account covering the period 12 May 2020 to 11 May 2021 and 12 May 2021 to 22 May 2022 respectively, on 7 June 2022. These accounts were examined by the second respondent, and the applicant was provided with a response on 30 June 2022 in which the second respondent requested the applicant to explain the administration fees plus Value Added Tax (VAT) in favour of the applicant. The second respondent maintained that the *curator bonis* fee will not be payable unless and until the explanation has been provided.

[4] The applicant duly provided an explanation on 4 October 2022 to which the second respondent replied on 11 May 2023. The second respondent accepted the administration fees reflected in the account but was not satisfied with the explanation in respect of the curator's fees.

[1] Act 56 of 1996.

[5] The basis for the objection to the curator's fees was that the fees were based on funds received from the Road Accident Fund (RAF) which constituted capital and not income. The curator's fees were however reflected in the account as fees earned on income and not capital.

[6] The applicant responded on 15 May 2023, citing that the second respondent was non-compliant with the relevant training manuals of the Department of Justice and acted in contravention of the Promotion of Administrative Justice Act[2] (PAJA).The applicant requested an urgent response from the second respondent.

[7] Having received no response from the respondents the applicant launched the review application on 23 June 2023.

The parties

[8] The applicant is a practising attorney appointed as the *curator bonis* of the patient.

[9] The first respondent is the Master of the High Court, Pretoria.

[10] The second respondent is an employee of the first respondent. She is cited in her personal capacity.

The basis for the review

[11] The first basis for the review is that the decision by the second respondent was procedurally unfair in that the second respondent contravened the provisions of PAJA in the following respects:

1 Failure to give notice of the nature and purpose of the proposed administrative action not to have the fees of the curator submitted for taxation;

2 Failure to provide the applicant with a reasonable opportunity to make representations in terms of section 2(a)(ii) of PAJA before arriving at a decision;

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[2] Act 3 of 2000.

3 Failure to give notice of any right to review in terms of section 2(a)(iv) of PAJA;

4 Failure to give notice of the right to request reasons in terms of section 2(a)(v) of PAJA;

5 Failure to afford the applicant an opportunity to obtain legal representation in accordance with section 3(3)(a) of PAJA;

6 Failure to afford the applicant an opportunity to present information and arguments in person in terms of section 3(3) of PAJA;

7 Failure to provide reasons for the decision.

[12] The second basis is that the second respondent contravened section 3(2)(a) of PAJA by not considering the objects, nature and purpose of the empowering provision.

[13] The third basis is that the applicant harbours a reasonable suspicion that the second respondent was biased against the applicant due to the following reasons:

1 The second respondent has a historic track record of making decisions against the applicant in his capacity as *curator bonis*;

2 A previous decision of the second respondent resulted in litigation of which at least one culminated in an adverse cost order in the Supreme Court of Appeal against the first respondent due to the conduct of the second respondent;

3 The second respondent has made defamatory and unsubstantiated statements against the applicant which is currently the subject of ongoing litigation;

4 The relationship between the applicant and the second respondent has deteriorated to such a degree that the applicant has on a number of occasions approached her superiors with complaints against the second respondent for making adverse decisions against the applicant in respect of estates in which the applicant is the executor or curator.

Submissions by the applicant

[14] After his appointment as *curator bonis,* the applicant complied with Regulation 8 of the Regulations to the Administration of Estates Act[3] by preparing and submitting the first and second curator's account covering the periods: 12 May 2020 to 11 May 2021; and 12 May 2021 to 11 May 2022 respectively.

[15] The accounts were examined by the second respondent who requested the applicant, in respect of both accounts, to explain the administrative fee to WF Bouwer attorneys plus VAT on the administrative fee.

[16] The applicant was furthermore informed in respect of both accounts that the fee for the *curator bonis* will only be approved on the provision of a proper explanation as to why the fees are claimed on the capital received.

[17] The applicant provided an explanation as requested which was accepted by the second respondent in respect of the first query.

[18] In respect of the second query the second respondent informed the applicant on 11 May 2023 that his fees cannot be taxed or approved because the fees reflected in the first account was impermissible on the basis that it was calculated on the capital and not the income.

[19] In the first account the applicant calculated the curator's fees at the rate of 6% on income actually collected in that particular year which fee amounted to R 48 559.35. In the second account the fee was again calculated at the rate of 6% on the income collected during the course of the particular period, amounting to R 1661. 84.

[20] The applicant contends that the calculation of the fee was done in accordance with the provisions of Regulation 7(3)(b) and 7(3)(c) of the Regulations to the Administration of Estates Act.

[21] The second respondent simply disallowed the fees without providing any reason for her decision neither did she indicate whether any other remuneration or

[3] Act 66 of 1965.

reduced taxed amount would be allowed as fees. She simply decided that no fees are to be paid for work rendered in the administration of the curatorship.

[22] The decision by the second respondent amounts to administrative action as she acted in her capacity as an employee of the Master of the High Court, and as such was exercising a public power or performing a public function in terms of legislation, namely the Administration of Estates Act, and consequently falls to be reviewed in terms of PAJA.

[23] The mentioned administrative action furthermore adversely affected his rights directly by denying him any form of remuneration to which he is entitled in terms of Regulation 8.

[24] When viewed holistically it is clear that the second respondent departed without reason from the provisions of PAJA by embarking on a course of action without considering the objects of the empowering provision, the nature, purpose and need to take administrative action or the likely detrimental effect that the administrative action would have on the applicant.

[25] The mentioned factors militate in favour of a judicial review in accordance with section 6(2) of PAJA as the action taken by the second respondent was procedurally unfair, arbitrary and in bad faith.

[26] There is furthermore a reasonable apprehension that the second respondent was biased in her decision making, due to the existence of a historical track record of making decisions unfavourable to the applicant on numerous occasions.

[27] The applicant refers to a specific court application, the subject matter of which were also the fees of a curator where the second respondent made defamatory, unsubstantiated and false statements about the applicant under oath.

[28] The applicant refers to numerous other incidents involving disputes over curatorship fees that occurred over an extended period of time.

[29] The applicant attended meetings at the first respondent with the superiors of the second respondent where the bad relationship between the applicant and the second respondent were discussed.

[30] The applicant consequently harbours a reasonable suspicion that the second respondent is biased against him.

[31] The baseless allegations in the answering affidavit confirms this suspicion of bias namely the failure to act in the best interest of the patient, failure to act with the highest degree of integrity in ensuring that the estate is not subjected to the unnecessary burden by charging unjustified fees, failure to provide details of account of the various transactions, failure to administer the estate with safety and security and exposing the estate to the risk of a potential tax liability.

[32] On 15 May 2023 the applicant caused a notice of contravention of PAJA to be delivered to the second respondent informing her that her conduct contravenes PAJA and affording her an opportunity to rectify her decision.

[33] The notice elicited no response from the second respondent.

[34] The second respondent as an Assistant Master was exposed to basic training within the office of the Master of the High Court and is in possession of a training manual provided to her by the Department of Justice and Constitutional Development which deals extensively with the provisions of PAJA.

Submissions by the second respondent

[35] The second respondent contends that no administrative action occurred and she merely requested additional information from the applicant as the accounts submitted did not comply with the applicable regulations.

[36] The basis for her contention is founded in Regulations 7 and 8, the court order, the ensuing letters of curatorship and the obligations of a curator in respect of payments by the RAF.

[37] Her argument commences with the court order in terms of which the RAF was ordered to make payment of a capital amount to the plaintiff. Paragraph 2 of the order reads as follows:

> "The defendant is ordered to pay the capital amount of R 996 186.00 (nine hundred and ninety-six thousand one hundred and eighty-six rand) to the plaintiff's attorney as more fully set out in paragraph 4 below."

[38] Paragraph 4 states that:

> "After deduction of the legal costs, the Plaintiff's attorney is ordered to pay the balance of the capital into an interest-bearing account, pending the appointment of the curator bonis."

[39] The letters of curatorship issued to the applicant included a directive referring to the court order in terms of which the applicant was appointed. He was to execute the powers conferred on him in the court order subject to the approval and consent of the first respondent.

[40] The powers conferred on the applicant were as follows:

1 To receive and take care of, and control and administer all assets of the patient;

2 To carry on or discontinue, subject to any law which may be applicable, any trade, business or undertaking of the patient;

3 To acquire, whether by purchase or otherwise, any property movable or -immovable, for the benefit of the patient;

4 To let, exchange, partition, alienate, and for any lawful purpose, to mortgage or pledge any property belonging to the patient, or in which she has an interest;

5 To perform any contract relating to the property of the patient, entered Into before she was declared incapable of managing her own affairs;

6 To exercise any power, or give any consent required for the exercise of such power, where the power Is vested in the patient for her own benefit or is in the nature of a beneficial Interest to her;

7 To raise money by way of mortgage or pledge of any of the movable property of. the patient, for the payment of her debts or expenditure incurred or to be incurred for her maintenance or otherwise for her benefit or provision for the expenses of her future maintenance; or maintenance of her property;

8 To apply any money for the maintenance or support of the patient;

9 To incur expenditure in respect of the improvement of any property of the patient by means of building or otherwise;

10 To expend any monies belonging to the patient on the maintenance, education or advancement of any relative of the patient, or any other person, wholly or partially dependent on her;

11 To continue such other acts of bounty or charity exercised by the patient, as the Master, having regard to circumstances and the value of the estate of the patient, considers proper and reasonable;

12 To invest or re-invest any monies of the patient which become available from time to time for investment, and which are not immediately required for the purposes defined in section 82(c) of the Administration of Estates Act no 66 of 1965 (as amended);

13 To institute proceedings which may be necessary in the interest of the patient, or for the due and proper administration of her estate;

14 To incur any expenditure to ensure that the patient is properly cared for;

15 To administer the undertaking issued by the Road Accident Fund in terms of section 17(4) (A) of Act 56 of 1996;

16 To open a bank account at a financial Institution for the patient, and to manage or close any existing bank accounts of the patient, to her benefit.

[41] The duties and responsibilities of the Master entails *inter alia* to scrutinize, consider and ensure the correctness and accuracy of accounts and whether the account conveys a true reflection of the administration of the estate under curatorship. The oversight function of the Master culminates in the taxation of the curator's fees.

[42] Regulation 8 limits the fees of a curator to 6% on income collected during the existence of the curatorship and 2% on the value of capital assets on distribution, delivery or payment thereof on termination of the curatorship.

[43] Regulation 7 prescribes the content and format of the account to be rendered by the curator and specifically refers to the capital account.

[44] In accordance with her responsibilities as an Assistant Master, the second respondent queried the allocation of the payment to the patient as curator fees earned on income and not capital, which is clearly at odds with the court order as well as the nature and purpose of the award. She also queried why the nature of the award changed in the second account from income to capital and the interest earned shown as income.

[45] In the first account the amount of R785 776.82 (seven hundred and eighty-five thousand, seven hundred and seventy-six rand and eighty-two cents) being the amount received from the patient's attorney after deduction of legal costs, is reflected as income and allocated to the income account. On this amount the applicant calculated his fee at the rate of 6%.

[46] The second respondent holds the view that not only is the fee calculated on the incorrect basis, it is also excessive.

[47] The purpose of the award as compensation for damages suffered is to supplement the income of the patient by employing the interest accrued to the capital or as a withdrawal from the capital to supplement any deficit in the income requirements of the patient.

[48] The effect of this classification is however much broader than a mere increase in the fees of the curator. The applicant chose the more expensive option and thereby depleting the funds available for the maintenance and care of the patient. The election furthermore contains the possibility of an increased tax liability as the capital is now regarded as income. The only person benefitting from this election is the applicant

[49] The duties of a *curator bonis* are always to act in the best interest of the person for whom he has been appointed, with the highest degree of integrity and must act in consultation with the person for whom he has been appointed as far as reasonably possible.

[50] Where a curator provides assistance, such assistance must be proportionate to the mental status of the person concerned and must be the least intrusive.

[51] The curator must respect the human dignity, privacy, and autonomy of the person for whom the *curator bonis* has been appointed and is to keep detailed records of his administration of the estate, and must lodge administration accounts, together with proper vouchers and receipts for all entries in the account, with the Master of the High Court, annually. He must invest the property of the person whose estate he is authorized to administer with safety and security.

[52] At no stage does the applicant mention rights of the patient and how these rights are affected. Neither does the applicant take cognizance of the emotional state of the patient about the increased fees charged to the estate.

[53] The applicant has consequently failed to execute his duties as a reasonable *curator bonis* should have done and have completely misconstrued the request for information as a rejection of his fees and his rights.

[54] The applicant has never been prevented from engaging with the second respondent to establish the reasoning for her request of the information.

[55] The second respondent acted as a representative of the first respondent. The allegations of bias is without merit as the applicant did not establish any factual basis for the allegations. In her capacity as an Assistant Master she is required to scrutinize accounts and it happens frequently that accounts are queried and items disallowed. To allege that by doing so amounts to bias and a vendetta is unwarranted.

[56] The second respondent has never previously approved fees calculated on the basis advocated for by the applicant in RAF matters and is also not aware of any such fees that have been approved by the first respondent . The second respondent has checked the records of the first respondent and could not find any.

[57] The second respondent has no personal interest in the querying of the fee; her query was solely based on the interest of the estate of the patient.

[58] The reference to a previous matter is irrelevant as the facts in this matter are different to the current set of facts and at the time of this application the subject matter of an appeal to the Supreme Court of Appeal.

[59] The failure to respond comprehensively to the query resulted in the second respondent not being able to assess the response properly.

Discussion

The Legislative Framework

[60] The legislative framework starts with the RAF Act, of which the purpose is the payment of compensation for loss or damage wrongfully caused by the driving of motor vehicles.[4] The obligation to compensate any such loss or damages is found in section 17. Payment is made by the Road Accident Fund (RAF), which was established in terms of the RAF Act. The RAF Act has the power to stipulate the terms and conditions upon which the compensation to victims is to be administered.[5]

[61] The administration of the payments to patients incapable of managing their own affairs due to the nature and gravity of the injuries is regulated by Rule 57 of the Superior Court Rules in terms of which a *curator bonis* is appointed by the court and subject to the powers conferred on such *curator* by the court on appointment. The *curator* appointment is confirmed by the Master of the High Court and is accountable to the Master for the administration of the estate of the patient. This relationship is regulated by the provisions of the Administration of Estates Act.[6] The Master's extensive statutory powers in respect of the supervision and oversight of the administration of estates were confirmed in *Harper v ABSA Trust Limited N.O and*

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[4] Section 3 of Act 56 of 1996.
[5] Section 4(1)(a) of Act 56 of 1996.
[6] Section 83(1) of Act 66 of 1965.
"Every... curator shall... lodge with the Master an account of his administration... Sect 85(1) "The Master shall examine every account... and if he is of the opinion that the account is not a full and proper account... he may reject the account... and direct the... curator to lodge another account...".
Section 85(3).
"Upon the completion of the examination... to the satisfaction of the Master, he shall... confirm the account...".

others[7] *and The Master of the High Court, Pretoria v The Pretoria Society of Advocates and Others.*[8]

Analysis

[62] The first basis for the review deals with procedural irregularities. The well-established principle in this regard is that not every deviation from a procedural requirement is fatal if it is just and equitable.[9]

[63] In the *All Pay Consolidated Investment Holdings (Pty) Ltd v CEO of SASSA*[10] decision the Constitutional Court, in a move away from a strictly formalistic approach adopted a more substantive evaluation of procedural flaws in terms of the materiality test which is a more flexible and pragmatic approach.

[64] The test comprises a two-stage analysis of which the first is a factual enquiry to establish whether there was a failure to comply with the legal requirements for procedural fairness as for instance stated in PAJA.

[65] In the second phase of the enquiry the court has to determine whether the failure was legally significant or material. A procedural failure is regarded as material if it had a real and substantial impact on the outcome of the administrative decision. It is thus not the mere existence of the procedural irregularity that establishes a ground for review. The focus of the enquiry is on the consequences of the procedural flaw.

[66] An administrative authority has the discretion to condone a mere formality or non-material deviation.[11]

[67] In determining whether the procedural irregularity is material the court will have regard to a number of factors such as: the purpose of the requirement and the

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[7] *Harper v ABSA Trust Limited N.O. and Others* [2023] ZAWCHC 242 at para 64-65.
[8] *The Master of the High Court, Pretoria v The Pretoria Society of Advocates and Others* [2022] ZAGPPHC 396 at paras 21-24 and 34.
[9] *All Pay Consolidated Investment Holdings (Pty) Ltd v CEO of SASSA* [2014] ZACC 12; 2014 (4) SA 179 (CC); 2014 (6) BCLR 641 (CC)at para 34.
[10] *All Pay Consolidated Investment Holdings (Pty) Ltd v CEO of SASSA* [2014] ZACC 12; 2014 (4) SA 179 (CC); 2014 (6) BCLR 641 (CC).
[11] *Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another* [2010] ZACC 21; 2011 (1) SA 327 (CC); 2011 (2) BCLR 207 (CC).

existence of actual prejudice,[12] the context of the entire process,[13] whether the outcome was potentially affected,[14] whether the decision was substantively lawful and rational[15] and whether the *audi alteram* rule was materially infringed.[16]

[68] The second basis for the review is the existence of a suspicion of bias by the second respondent. Bias in an administrative setting is governed by PAJA which requires a reasonable suspicion of bias.[17]

[69] In an administrative law context, bias has been defined as a "lack of the quality of impartiality essential for a fair decision"[18] or an "unfair slanting of a decision-maker's mind towards a particular outcome"[19]. The core of the principle is that a decision-maker must be, and must be seen to be, disinterested and impartial, having not prejudged the issue before them.[20]

[70] Any suspicion of bias must be based on reasonable grounds.[21]

[71] The test for bias is a double reasonableness test[22] in the sense that the suspicion must be held by a hypothetical "reasonable, objective, and informed person" who has considered all the relevant facts[23] and their suspicion must also be reasonable in the circumstances,[24] mere anxiety or an honest but unreasonably held suspicion is insufficient.[25] The suspicion may not be rooted in a mere

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12 *Millennium Waste Management (Pty) Ltd v Chairperson, Tender Board: Limpopo Province and Others* [2007] ZASCA 165; [2007] SCA 165 (RSA); [2008] 2 All SA 145; 2008 (2) SA 481; 2008 (5) BCLR 508; 2008 (2) SA 481 (SCA) and *Aurecon South Africa (Pty) Ltd v City of Cape Town* ZASCA 209; [2016] 1 All SA 313 (SCA); 2016 (2) SA 199 (SCA) and *Democratic Alliance v The Electoral Commission of South Africa and Another* [2024] ZAEC 6; and *Ashebo v Minister of Home Affairs and Others* [2023] ZACC 16; 2023 (5) SA 382 (CC); 2024 (2) BCLR 217 (CC).

13 *Moseme Road Construction CC and Others v King Sabata Dalindyebo Local Municipality and Others* [2010] ZASCA 13; 2010 (4) SA 359 (SCA); [2010] 3 All SA 549 (SCA).

14 *African Independent Congress v The Electoral Commission and Others* [2016] ZAEC 6 and *Group Five Construction (Pty) Ltd v The MEC for Public Transport and Roads Infrastructure, Gauteng* [2015] ZAGPJHC 55; [2015] 2 All SA 716 (GJ); 2015 (5) SA 26 (GJ); and *Legal Practice Council v Teffo* [2023] ZAGPPHC 1794.

15 *Helen Suzman Foundation v President of the Republic of South Africa and Others* [2014] ZACC 32; 2015 (2) SA 1 (CC); 2015 (1) BCLR 1 (CC).

16 *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd and Others* [2018] ZASCA 23; [2018] 2 All SA 660 (SCA); 2018 (5) SA 462 (SCA).

17 Section 6(2)(a)(iii) Act 3 of 2000.

18 Baxter *Administrative Law* (Juta & Co. Ltd, Cape Town 1984) at 558.

19 Baxter above n 20.

20 Devenish and Govender *Administrative Law and Justice in South Africa* (Butterworths, Durban 2001) at 322.

21 *S v Roberts* 1999 (4) SA 915 (SCA).

22 *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd Seafoods Division Fish Processing* [2000] ZACC 10; 2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC).

23 *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 11; 2000 (1) SA 1; 1999 (10) BCLR 1059.

24 Hoexter *Administrative Law in South Africa* 2nd ed (Juta & Co. Ltd, Cape Town 2012) at 565.

25 *S v Shackell* [2001] ZASCA 72; [2001] 4 All SA 279 (A); 2001 (4) SA 1 (SCA); 2001 (2) SACR 185 (SCA) at para 20.

apprehensiveness or the idiosyncrasies, suspicions or intelligence of a particular litigant.[26] The basis of the suspicion may also not be "surmise or conjecture"[27] or even gossip or speculation. There must be a factual basis that can be examined by the court.[28]

[72] The applicant is premising his suspicion of bias on the acrimonious relationship between him and the second respondent which has manifested in previous unfavourable decisions and defamatory utterances by the second respondent.

[73] A history of conflict and acrimony between an administrative decision-maker and the recipient of a decision does not necessarily or automatically indicate the presence of legally disqualifying bias in a subsequent decision. The allegation should be subjected to a rigorous, objective test. The mere existence of prior animosity is insufficient on its own; its impact must be assessed against the established standard of a reasonable apprehension or suspicion of bias.[29]

[74] In assessing whether the history of conflict indicates bias such history serves as the factual foundation, not the conclusion. In the process of assessment the court considers several factors such as the nature and gravity of the conflict during which the court determines if the conflict entails a professional disagreement that was conducted within acceptable bounds.[30] A further factor to be considered is the proximity of the conflict to the decision. The court will determine whether the conflict is recent and whether it is directly related to the subject matter of the decision being made.[31] Whether the conduct of the administrator during the administrative process betray any prejudice stemming from the past conflict.

[75] The criterion in such a case is whether the relationship is of such a nature that a reasonable person having access to all the relevant facts would conclude that the

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[26] *BTR Industries South Africa (Pty) Ltd and Others v Metal and Allied Workers' Union and Another* [1992] ZASCA 85; 1992 (3) SA 673 (AD); [1992] 4 All SA 701 (AD) 695F.
[27] *S v Roberts* above n 23 above.
[28] *SACCAWU* above n 25 at para 12.
[29] *Hoexter* above n 27 at 565.
[30] *S v Roberts* above n 23.
[31] *Liebenberg v Brakpan Liquor Licensing Board* 1944 WLD 52.

relationship has progressed to such a point where the impartiality of the second respondent has been compromised.[32]

Application

[76] The factual enquiry whether the applicant was afforded the rights contained in PAJA indicates that he was afforded some of the rights but not all the rights that he claimed to be entitled to.

[77] In assessing this ground of review the purpose of the procedural provisions in PAJA need to be considered. The purpose is to ensure that the second respondent has access to the necessary information to be able to exercise her discretion and to afford the applicant an opportunity to present his case.

[78] The second respondent had at her disposal the court order in terms of which the applicant was appointed including the powers of the applicant. the confirmation of his appointment by the Master together with the directives issued by the Master and the first and second curator's accounts. The applicant was afforded an opportunity to respond to the queries raised by the second respondent. When the second respondent was not persuaded by his explanation, he was again invited to provide her with an explanation. This he elected not to do and rather brought the review application.

[79] The applicant is an attorney, regularly appointed as a *curator bonis* and has interacted with the Master and the second respondent on numerous occasions in the past. There is consequently no basis to conclude that the procedural irregularities were material and that the applicant was prejudiced by the procedural irregularities.

[80] In respect of the suspicion of bias harboured by the applicant, the basis for this suspicion is the history of animosity and the allegation that the second respondent has made decisions in the past unfavourable to him. This in itself is not sufficient to create a reasonable suspicion. The second respondent states that she acted within her mandate when she inspected the accounts and raised the relevant queries. She furthermore states that she had never approved a curator account on the basis

[32] Plasket *The Rule Against Bias'. In South African Administrative Law* (Juta & Co. Ltd, Cape Town 2020) at 245-258.

advanced by the applicant and neither could she locate any evidence that any such accounts have been approved in the office of the Pretoria Master.

[81] The applicant relies on the matter of *Bouwer and Another NNO v The Master of the High Court, Pretoria*[33] that was decided in his favour and the second respondent castigated for the statements made by her. The reference to this matter is irrelevant as it dealt with an entirely different set of facts, circumstances and statutory framework. The judgment was furthermore delivered more than a year after the second respondent made her decision in the current matter. Even if I am wrong, this case, at para 17, makes it clear that the Master has a remedy in section 84(2)(a) or (b) of the Act, a remedy that she clearly exercised.

[82] That the second respondent exercised her discretion on previous occasions unfavourable to the applicant is not indication that she is biased against the applicant. It is in the nature of her functions and statutory obligations to make decisions on a daily basis of which some practitioners would not find favourable . The applicant does not provide any detail regarding the unfavourable decisions which the court can use in assessing this element.

[83] Although some of the statements by the second respondent may be wrong in law, such as the reference to the potential tax liability, which is at odds with the provisions of the Income Tax Act[34] none of the statements by the second respondent in her answering affidavit is unsubstantiated or of a personal nature and bears reference solely to the professional conduct of the applicant.

[84] The assertion by the applicant that he harbours a reasonable suspicion that the second respondent is biased towards him does not survive the double reasonableness test.

[85] In assessing whether the outcome of the administrative action would have been any different if the applicant would have been able to prove that the procedural irregularities and the bias did prejudice him to such an extent that the outcome would indeed have been different, cognizance have to be taken of the underlying context of

[33] *Bouwer and Another NNO v The Master of the High Court, Pretoria* (916/2022) [2023] ZASCA at para 135.
[34] Section 10(1)(g) Act 58 of 1962.

the decision namely the payment of compensation by a statutory body tasked with the payment of compensation to victims of motor vehicle accidents.

[86] The RAF Act is an important building block in the South African social legislation landscape.[35] Its purpose is not singular but constitutes a multi-layered construct comprising a tripartite mandate involving an overarching constitutional objective of social security, a functional delictual mechanism of restorative justice, and a pragmatic imperative for financial sustainability.[36]

[87] The overarching constitutional mandate of a system of social security and solidarity has been affirmed by the Constitutional Court.[37] The RAF is consequently not a simple insurer of last resort but a key instrument of the constitutional state's welfare obligations that is rooted in the values of human dignity and social solidarity.[38]

[88] In *Law Society of South Africa v Minister of Transport*[39] the Constitutional Court declared the RAF scheme as fundamentally a "social security measure."[40] The court stated that the objective of the Act is to give effect to the rights to social security and access to healthcare, as enshrined in sections 27(1)(c) and 27(1)(a) of the Constitution, by providing a "safety net for all road users and their families."[41] The purpose is to prevent the "social-ills of destitution and hardship that may befall victims of road accidents," thereby affirming the state's constitutional duty to protect its vulnerable citizens.[42] This judgment was the culmination of a jurisprudential trend which commenced with *Engelbrecht v Road Accident Fund* in which the RAF was referred to as a form of "social insurance."[43] This proposition was further solidified in *Road Accident Fund v Mdeyide*, where the Court described the Act's purpose as establishing a "social safety net" for a "class of victims who would otherwise be remediless."[44] The Court's emphasis on the Fund's "public character" legally

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[35] Klopper *The Law of Third Party Compensation* 3rd ed (LexisNexis 2012) at 11. Road Accident Fund v Busuku 2023(4) SA 507 (SCA) par 6.
[36] *Law Society of South Africa v Minister of Transport* [2010] ZAGPPHC 26; 2011 (1) SA 400 (CC); 2010 (11) BCLR 1140. Par 46
[37] *Law Society of South Africa v Minister of Transport* above (n 37)
[38] *Road Accident Fund v Mdeyide* [2010] ZACC 18; 2011 (2) SA 26 (CC); 2011 (1) BCLR 1 at para 9.
[39] Above n 39.
[40] *Law Society of South Africa v Minister of Transport* above n 37 at para 4.
[41] *Law Society of South Africa v Minister of Transport* above n 37 at para 81.
[42] *Law Society of South Africa v Minister of Transport* above n 37 above at para 81.
[43] *Engelbrecht v Road Accident Fund* 2007 (6) SA 96 (CC) at para 22.
[44] *Road Accident Fund v Mdeyide* above n 39 at para 9.

distinguishes its purpose from that of a private, profit-driven insurer and aligns it with public-good objectives.[45]

[89] In *Aetna Insurance Co v Minister of Justice*, the Supreme Court of Appeal confirmed the principle of widest possible protection to injured persons[46]"

[90] While the Act's overarching aim is social security, its functional, on-the ground mechanism for achieving this is the payment of compensation.[47] The purpose of this compensation is deeply rooted in the common law of delict, specifically the principle of *restitutio in integrum*, which is aimed at returning a party to the position they occupied prior to the wrongful act, and/or injury,

[91] The purpose of damages was articulated in *Southern Insurance Association Ltd v Bailey NO* as to place the plaintiff in the monetary position they would have occupied "had the delict not been committed".[48] The purpose of the compensation is therefore purely restorative.[49]

[92] This principle has been continuously reaffirmed by the Supreme Court of Appeal in for instance *Road Accident Fund v Guedes*, where it stated that the "primary rule for the assessment of damages... is *restitutio in integrum*."[50]

[93] In the determination of the damages, courts treat a person's physical and mental integrity as a capital asset.[51] The purpose of compensation is to place a monetary value on the damage to this "human capital."[52]

[94] In *Dippenaar v Shield Insurance Co Ltd* it was held that a claim for loss of earnings is for the "diminution of the capacity to earn that income," which is an asset in a person's patrimony.[53] This was clarified in *Santam Versekeringsmaatskappy Bpk v Byleveldt* where it was held that earning capacity is an "incorporeal right" and a "part

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[45] *Road Accident Fund v Mdeyide* above n 39 at para 9.
[46] *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) at 285E-F. See also above n37 at para 11.
[47] *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at para113F-G.
[48] *Southern Insurance Association Ltd v Bailey NO* above n 49 at para 113F-G.
[49] Neethling and Potgieter *Law of Delict* 8th ed (LexisNexis 2019) at 205.
[50] *Road Accident Fund v Guedes* [2006] ZASCA 19; 2006 (5) SA 583 (SCA) at para 8.
[51].Millard, D Loss of earning capacity: its nature and its place in South African Law. Unpublished LLD thesis, University of Johannesburg 2005. Botha v RAF [2025] ZAGPPHC 458 par 13. Zitzke, E Transforming a child's claim for loss of earning capacity, De Jure 2023, 646
[52] Rudman v Road Accident Fund [2002] 4 All SA 422 (SCA par10.
[53] *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A) at para 917B.

of a person's estate."[54] The purpose of the award, therefore, is to compensate for the impairment of this capital asset. This is why the loss is calculated as a single lump sum, representing the present capitalised value of that diminished capacity.[55]

[95] It is thus clear that the compensation paid to a victim of a motor vehicle accident amounts to capital and remains capital. The capital may be invested to produce interest which would be regarded as income in accordance with the tree and fruit analogy.

[96] The mere fact that the amount awarded as capital is paid into the interest-bearing trust account of the instructing attorney who deducts the legal costs and then pays the remainder into the curator's account is not sufficient to transform the nature of the award from capital to income.

[97] Capital is regarded as the foundational wealth or productive resource base and is distinct from the income it produces as interest. It represents a durable store of value or a resource base intended for long term use, investment or wealth preservation.

[98] The test to determine the true economic nature of an asset is whether it constitutes and enduring source of wealth in which case it would be regarded as capital.

[99] The award for damages is intended to be an "ongoing source of financial support for the remainder of the plaintiff's lifetime."[56]

[100] One of the primary duties of a curator is the preservation of the estate's capital in order to serve as an ongoing source of financial support.[57]

[101] In terms of section 83(1) of the Administration of Estates Act the curator is to lodge with the Master an account in the form as prescribed in Regulation 7, which provides for a capital account. As an amount for damages is regarded as capital it should consequently be reflected in the capital account.

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[54] *Santam Versekeringsmaatskappy Bpk v Byleveldt* 1973 (2) SA 146 (A) at para 150.
[55] Koch *The Quantum Yearbook* (Juta, updated annually) 105.
[56] *Master of the High Court v The Pretoria Society of Advocates and Others* [2022] ZAGPPHC 396; 2022 (6) SA 446 (GP) at para 1 and *Sandenbergh and Another v Master of the High Court and Another* [2024] ZAGPPHC 436.
[57] *Ex Parte Boedel Steenkamp* 1962 (3) SA 954 (O).

Conclusion

[102] The applicant has not shown the procedural irregularities to have been of such a nature that it substantively deprived him of the rights afforded to him in PAJA. He was afforded an opportunity to make representations which he did. The procedural irregularities were consequently not material and would have had no impact on the final outcome of the decision by the second respondent.

[103] The suspicion of bias harboured by the applicant does not satisfy the double reasonableness test and would likewise not have had any effect on the ultimate outcome of the decision by the second respondent.

[104] The decision by the second respondent is a reasonable decision and is based on rational grounds.

Order

[105] The application for review is dismissed with costs on scale B.

[redacted]

E RAUBENHEIMER
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Electronically submitted

For the Applicant:	Adv Coetzee instructed by WF Bouwer Inc
For the First Respondent:	Adv Nyabane instructed by State Attorney