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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-035298

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

8 May 2026

DATE

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SIGNATURE

In the matter between:

CATHARINA SIBILLA VAN AS N.O.

First applicant

HARRY BERNARD HOLSBOER N.O.

Second applicant

BONNEMAN & PARTNERS BV N.O.

Third applicant

And

D[...] P[...] H[...]

Respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this

matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 8 May 2026.

J U D G M E N T

CORAM: LIEBENBERG AJ:

- [1] The applicants, who are appointed as curators to M[...] B[...] H[...] (the patient) by the Cantonal Court of North Holland, approached this court on a bifurcated basis for relief. Before this Court was part A of the application for an interim maintenance order, an order that the respondent make financial disclosure, an order that the respondent pays for the services of a forensic auditor to be appointed by the applicants to calculate the accrual in the respondent's estate, and costs.
- [2] The respondent opposes the relief sought on primarily three bases: firstly, contending that this court does not have the requisite jurisdiction to make a stand alone interim maintenance order in circumstances where the relief falls squarely in the remit of the Maintenance Court; secondly, that the first and second applicants did not have *locus standi* to institute the proceedings absent authorisation by the Cantonal Court of North Holland which granted the initial order appointing them as interim curators and any alleged subsequent authorisation afforded to the third applicant does not cure the defect; thirdly, that there is no basis in law to order him to make financial disclosure when there is no suggestion that the marriage is to be dissolved and not case is made out for the immediate division of the accrual in terms of section 8 of the Matrimonial Property Act 88 of 1984 (the MPA).

Jurisdiction

- [3] In terms of section 3 of the Maintenance Act 99 of 1998 (the Maintenance Act) every Magistrate's Court for a district is a maintenance court for purposes of the Maintenance Act which is endowed with the power to entertain maintenance complaints and the payment of maintenance. Such complaints are lodged in the prescribed manner, investigated by the maintenance officer who may institute a maintenance enquiry in the maintenance court. Although the jurisdiction of the High Court has not been ousted as a matter of law, a Maintenance Court is a specialised court geared to determine matters arising from the provisions of the Maintenance Act.
- [4] It is only in very exceptional cases where bypassing the Maintenance Court procedure would be justified.¹ The conundrum is not the jurisdiction of the High Court but rather how that jurisdiction is exercised.² It is in exceptional circumstances where it may be justified to side-step the lower court's processes. Exceptional circumstances is case specific and defies universal definition, but it is the litigant who seeks to invoke the High Court's jurisdiction who must make out its case adequately in its founding affidavit. Herein, the applicant's failed. They made no attempt to justify bypassing the Maintenance Court processes in seeking this Court to engage in a maintenance enquiry in two parts, both interim and final.
- [5] This matter does not fall within the ambit of Rule 43, there being no pending matrimonial action. The applicants seek stand-alone maintenance orders

¹ *AD and another v DW and others (Centre For Child Law as Amicus Curiae; Department For Social Development as Intervening Party)* 2008 (3) SA 183 (CC) at para [34].

² *In Re XN* 2013 (6) SA 153 (GSJ).

which are ordinarily and properly to be adjudicated by a Maintenance Court. Absent exceptional circumstances, the applicants must follow the lower court processes to obtain the relief they seek.

Legal standing

[6] The first and second applicants were provisionally appointed by the Cantonal Court of North Holland as *bewindvoerders* to the patient. The role is akin to that of a South African curator bonis. In June 2025 they were replaced by the third respondent as independent curator. By all accounts, the third applicant sought authorisation to engage in litigation and was so authorised. It is wholly unclear whether the authorisation is retrospective, as contended for by the applicant or whether the first and second applicants' actions were also condoned by the Cantonal Court. The document relied upon is not a court order but appears to be an application for authorisation and the annotation that authorisation is granted is cryptic at best.

[7] The parties are ad idem that the patient is not capable of conducting litigation for and by herself. She requires the assistance of a curator. In the South African context, when faced with a litigant who does not have capacity to litigate, a curator ad litem is appointed to act on behalf of such litigant. When launching these proceedings, the applicants did not have authorisation from the Cantonal Court to institute the proceedings nor did they seek the appointment of a curator ad litem to the patient.

[8] At common law a curator bonis does not have inherent litigation powers

especially not in matrimonial litigation.³ This has been the position since *Voet*,⁴ who stated the common law to be as follows:

“Husband's curator has no power over wife or children — However that may be, it has been remarked in the same passage above that the wife or children of one who is a madman or a prodigal are certainly not subject to the power of a curator assigned to the mad or prodigal husband or father.”

[9] The position is confirmed in LAWSA,⁵ stating that certain acts considered to be of too personal a nature which cannot be performed by a curator. A curator, for example, is said to have no locus standi to institute an action for divorce on behalf of an insane person. The common law position was applied with approval in *Ex parte AB* and confirmed with approval in *Spangenberg and Another v De Waal*.

[10] In *LM v DM*⁶ the Court developed the common law to allow a curator bonis, who is ordinarily a supervisor of the patient's property and does not inherently possess power to institute certain proceedings, to exercise litigation powers specifically conferred by court order, subject to the Master's prior approval.

[11] The applicants did not ask this Court to develop the common law and argument was based purely on their appointment as *bewindvoerders* by the Cantonal Court and subsequent (unclear) authorisation by that court.

[12] Spousal maintenance and an application in terms of section 8 of the MPA constitute matrimonial litigation. These are of a very personal nature. At common law, a curator bonis does not have legal standing to institute such

³ *Ex parte AB* 1910 TPD 1332; *Spangenberg NO and Another v De Waal* [2008] 1 All SA 162 (T).

⁴ 27.10.10.

⁵ 20(1) LAWSA 2 ed at 487.

⁶ 2021 (5) SA 607 (GP)

proceedings on half of a patient. It is only in exceptional circumstances and with leave of the Court that a that a curator bonis can institute such litigation. In the present matter no exceptional circumstances were raised by the applicants. Absent exceptional circumstances, the common law position holds sway and the applicants had no locus standi to institute the present proceedings.

[13] The retrospective authorisation contended for is not borne out by the documents before Court and did not cure the initial nullity tainting the present proceedings.

[14] In sum, the applicants do not have the requisite legal standing to institute and litigate these proceedings on behalf of the patient.

Financial disclosure

[15] An accrual claim vests upon the dissolution of a marriage, whether by death or divorce, or, exceptionally, upon an order in terms of section 8 of the Matrimonial Property Act 88 of 1984 (the MPA) if the applicant spouse's estate has shown a smaller accrual and the right to share in the accrual is not declared forfeit in part or in whole.⁷ Prior to vesting, the contingent right is protectable by interdictory relief such as an "anti-dissipation" order or other interdict.

[16] In *PAF v SCF*⁸ the Supreme court of Appeal summarised the position thus:

"Although the accrual claim only arises at the dissolution of the marriage, both spouses acquire a protectable contingent right against each other during the subsistence of the marriage, which the law will protect in circumstances of irregularity and a lack of bona fides. Thus, upon vesting of such right, there is a legal obligation on both spouses to satisfy the accrual claim (and hence to share in

⁷ *Reeder v Softline Ltd* 2001 (2) SA 844 (W).

⁸ *PAF v SCF* 2022 (6) SA 162 (SCA) at para [35].

their respective gains) at the dissolution of their marriage. Furthermore, s 7 of the MPA obliges both spouses to furnish 'full particulars of the value' of their estates. Therefore, an accurate reflection of the parties' respective accruals is necessary to give effect to the intention behind the legislature's provision of the accrual system in the first place."

[17] The obligation created in section 7 arises "[w]hen it is necessary to determine the accrual of the estate of a spouse", that is when the right has vested or is about to vest such as when divorce litigation is pending. As long as a spouse needs the information to prepare for a trial at which an accrual calculation will have to be made, the jurisdictional requirement of the provision would be triggered.⁹

[18] It is patent from the wording of the notice of motion that financial disclosure is sought to enable the applicant to appoint an expert of their choice, at the respondent's costs, to calculate the value of the respondent's estate to determine the extent of the patient's accrual claim against him. But there is no necessity to determine the extent of the patient's contingent accrual claim at this juncture. There is no divorce litigation pending between the patient and the respondent. This Court is not called upon to pronounce on Part B of the application wherein the applicants seek an order in terms of section 8(1) of the MPA. Accordingly, the jurisdictional requirement of section 7 is not triggered and there is no legal basis for the disclosure sought.

[19] The applicants cannot invoke the machinery of discovery without legal proceedings, nor can ordinary discovery principles be transformed into a general matrimonial obligation to disclose all assets on demand. Outside of the

⁹ *DM v DM* 2025 (4) SA 183 (GJ) at para [22].

latter recognised proceedings or judicial sources, a spouse seeking broad disclosure of the other spouse's assets, liabilities, income, trusts, companies, or financial records has no general entitlement to such relief and information.

[20] In the result, the applicants are not entitled to the financial disclosure they seek at this juncture.

Costs

[21] The respondent argued for a costs order *de bonis propriis* against the applicants in their personal capacities rather than milking the estate of the patient. As attractive as the argument was, the applicants did not act reckless or with ill-intent in bring this application.

[22] In the result, costs must follow the result which costs are to be recouped from the patient's estate.

Order

[23] Accordingly, I make the following order:

1. The application is dismissed.
 2. The applicants are to pay the costs of the application including counsel's fees on scale B.
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SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the applicants:

Adv Metzer

Instructed by M Strydom and Associates

For the respondent:

Adv Haskins SC and Adv Grobler

Instructed by Delberg Attorneys

Heard on 30 April 2026

Judgment on 8 May 2026