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

Case No. 026212/2026

(1) REPORTABLE: ~~YES~~/NO

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

(3) REVISED

DATE: **18 May 2026**

SIGNATURE:

In the matter between:

ADVOCATE LUZELLE ADAMS

Applicant

and

N[...] C[...] M[...] A[...] L[...]

Respondent

In re: the *Ex-Parte* application of:

N[...] C[...] M[...] A[...] L[...]

Applicant

For the appointment of a *curator ad litem* to:

M[...] G[...] P[...] L[]

Patient

ADVOCATE LUZELLE ADAMS

Respondent

Coram: Millar J

Heard on: 8 May 2025

Delivered: 18 May 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 18 May 2026.

JUDGMENT

MILLAR J

- [1] This is an application for leave to appeal against a judgment handed down on 23 March 2026. The notice of application for leave to appeal was delivered on 15 April 2026. The application was only heard on 8 May 2026, as that is when the counsel for the parties were both available.

- [2] The order granted on 23 March 2026 was a declaratory order relating to the capacity of the late Mr. L[...] to manage his affairs during his lifetime. There was also an order for costs against Ms. Adams.
- [3] It is not in issue that during his lifetime, Mr. L[...] was married in community of property to his wife, Mrs. L [...], and that at least from 25 May 2025, he was of unsound mind and incapable of managing his own affairs. This fact was within the knowledge of Ms. Adams, who lived with the late Mr. L[...] and accompanied him to all his medical appointments. Ms. Adams knew that Mrs. L[...] and her son K[...] L[...] were concerned about the state of health of Mr. L [...], and despite knowing that Dr. Makasi was of the view that he was of unsound mind, sought to enlist her assistance in concealing this fact by withdrawing the consent to receive Dr. Makasi's report.
- [4] I dealt with these circumstances at some length in the main judgment and will not repeat them here. It suffices to state that Ms. Adams' conduct in attempting to conceal the true state of Mr. L[...]’s health was for selfish reasons.
- [5] It cannot be overlooked that while Mr. L[...] was alive, his estate was a community estate with Ms. L [...]. Ms. Adams was aware of this but nonetheless proceeded to empty the bank accounts anyway, while she was consenting to the appointment of an interim *curator bonis*.
- [6] I have set out in summary what this case is about because it concerns an elderly Mrs. L[...] whose interests in the community estate were disregarded by Ms. Adams, who transacted with assets in that estate – a person who had no right to do so. Once Ms. Adams agreed to the order on 12 February 2026, one would have thought that from that point onward, the case would be administrative in nature. It was never denied by her that Mr. L[...] had not been

of sound mind and capable of managing his affairs from 25 May 2025 or that Dr. Makasi's report was impeachable.

- [7] Turning now to the two main grounds upon which this application for leave to appeal has been brought. The first is that the application for the declaratory order had not been brought by the curator, who, in any event, had been discharged by operation of law upon the death of Mr. L[...] and the second was that the court had misconstrued the application as being one for maintenance as opposed to one to determine the best interests of Mr. L[...].
- [8] Firstly, the original application was brought by Mrs. L[...] in both her capacity as the wife of Mr. L[...] and regarding his state of mind and well-being, but also regarding the financial management of the joint estate. Mrs. L[...] had an interest in the administration of the joint estate during the lifetime of Mr. L[...] and this interest, together with the declaratory order, which was sought and granted, persists.
- [9] Ms Adams does not seem to accept that the affairs of the joint estate have nothing to do with her. At best, the claim for maintenance that she may prefer in respect of her minor child is only against Mr. L[...]’s share of the joint estate. Before that can be determined, the whole of the estate is to be determined. Raising this issue seems to be for no purpose other than to obfuscate the fact that, for almost nine months, despite knowing Mr. L[...] was incapable of managing his affairs, she continued transacting on his accounts, well knowing that, as a matter of law, any authority he may have given her to do so, had lapsed.
- [10] It simply doesn't lie in the mouth of Ms. Adams to complain that the declaratory order ought not to have been granted upon application by Mrs. L[...]. In any event, the curator had reported, and that report had revealed the extent to

which Ms. Adams had transacted on the account and the fact that she had *mala fide* emptied Mr. L[...]’s bank account on the day that she was agreeing to the order appointing the interim *curator bonis*. It is correct that, having become deceased, no order in terms of rule 57 would be of effect in respect of Mr. L[...]. The declaratory order is, however, of application to the joint estate and will be of moment in the winding up of that estate.

- [11] Secondly, the application was not moot or limited solely to the provisions of rule 57. Ms. Adams was well aware that no affidavits had been procured from the experts concerned relating to the state of mind of Mr. L[...], but did not place this in issue in agreeing to the order that the interim *curator bonis* be appointed. This is unsurprising as it cannot be placed in issue that Ms. Adams knew from at least 25 May 2025 of the condition of Mr. L[...] but persisted, nonetheless. The Rules are there for the Court and not the other way around. This ground would have the Court place form over substance in the face of an undisputed state of affairs.
- [12] Lastly, it was stated in the notice of appeal that a costs order ought not to be granted against Ms. Adams as she was not before the Court. The Court order of 12 February 2026 is explicit – she was granted leave to intervene and then became a respondent in the proceedings. Costs are a matter which fall within the discretion of the Court and the contention that costs ought not to have been awarded against her in circumstances where her *mala fide* conduct had been brought to the attention of the Court is simply unsustainable.
- [13] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act¹ as follows:

¹ 10 of 2013.

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that

(a) (i) the appeal would have a reasonable prospect of success or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”

[14] I have considered the grounds upon which this application has been brought and the reasons given by me for the judgment. I have also considered the submissions made by counsel for the granting of leave to appeal and those on the part of counsel opposing the granting of leave to appeal.

[15] For the reasons set out above, I am not persuaded that another court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.

[16] Costs will follow the result on the same basis as was granted on 23 March 2026.

[17] In the circumstances, I make the following order:

[17.1] The application for leave to appeal is refused.

[17.2] The applicant for leave to appeal is ordered to pay the costs of the application on the scale as between attorney and client, which costs are to include the costs of counsel on scale C.

A MILLAR

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD ON: 8 MAY 2026

JUDGMENT DELIVERED ON: 18 MAY 2026

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