IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number:2025 - 146980

In the matter between:

JUANN BOOYSEN N.O	First Applicant
DANIEL FLANDORP N.O	Second Applicant
And	
THE ROAD ACCIDENT FUND	First Respondent
THE MASTER OF THE HIGH COURT	Second Respondent

Date of Hearing: 17 October 2025

Date of Delivering: 03 June 2026

ORDER

The applicants' application is dismissed with no order as to costs.

JUDGMENT

MANTAME, J

Introduction

[1] This is an unopposed application in which the applicant seeks the following declaratory relief:

1.1 that a *curator bonis* is entitled to charge a fee on any compensation payment made by the Road Accident Fund (RAF), and such payments constitute income in the patient's estate;

1.2 that where the Road Accident fund has issued an undertaking in terms of section 17 (4) (a) of the Road Accident Fund Act, 56 of 1996, and the fee has been approved by the Master of the High Court, the Road Accident Fund is obliged to make payment of such fee to the *curator bonis;*

1.3 an order directing the first respondent to make payment to the applicants, in respect of their *curator bonis* fees, the amount of R1 026 970.65, which amount constitutes 6% of each respective compensation payment made by the first respondent to each of the estates.

Background Facts

[2] The applicants are both attorneys and directors at Visagie Vos Inc, have been appointed as curator *bonis* in various estates resulting from claims against the first respondent. This application was necessitated by the first respondent's refusal to

pay the applicants' fees in respect of eleven estates currently under curatorship, despite (a) court order mandating the first respondent to pay the fee of the applicants for all eleven estates (b) approval of the fee calculation by the second respondent, and (c) the authority of the Supreme Court of Appeal in *Bouwer and Another NNO v Master of the High Court, Pretoria (916/2022) [2023] ZASCA 135* (the SCA Bouwer judgment).

[3] It is therefore common cause that the eleven estates have received compensation from the RAF, which the applicants in their capacities as *curator bonis*, administer on behalf of the patients. In all of these matters the RAF has received orders to pay the fees of the applicants. The applicants have duly executed their duties in accordance with their mandated obligations and prepared annual statements of administration in each estate.

[4] In the applicants' view in these accounts, their fees on the RAF payments received are each calculated at 6 % in accordance with section 84 (1) (b) of the Administration of Estates Act, 66 of 1965, as amended and the Regulations (Administration of Estates Act). The applicable regulations in Regulation 8 (3) as substituted by GN R1602 of 1 July 1991 which provide as follows:

'The remuneration of tutors and curators referred to in section 84 (1) (b) of the Act shall be assessed according to the following tariff:

(a) on income collected for the duration of the tutorship or curators: 6 per cent;
(b) on the value of capital assets upon distribution, delivery or payment thereof on termination of tutorship or curatorship: 2 per cent'.

[5] The applicants in calculating their fees in all the eleven matters, based it on the SCA Bouwer judgment/order that:

'A curator bonis is entitled to a 6% fee on all funds reflected in the income account of an annual curator's account, whether collected or actually collected, regardless of the origin thereof.'

[6] In support of this assertion, the court also determined that once capital assets are realised, their character and identity undergo transformation. The capital assets are no longer extant, and include the asset in the capital account will yield a misleading financial statement. Consequently, the curator must record the realised assets in the income and expenditure account.

[7] The RAF as stated, refused to pay the 6% fee, asserting that only the actual income accrued during the existence of the curatorship qualifies for the 6% fee on income generated in the estate during the subsistence of the curatorship. The RAF payment is capital and not income therefore, curators are not entitled to claim a 6% fee on the RAF payment. Any lump sum from RAF would only become subject to fees if (and to the extent that) it produces income, such as through interest or investment returns.

Discussion

[8] It appears that the issue surrounding costs of the *curator bonis's* s has consistently proven to be a controversial one. In the decisions that has been considered, there has always been a requirement that they always be included in the Court Order – See *Reynecke NO v Mutual & Federal Insurance Co. Ltd and Master Of The High Court v The Pretoria Society Of Advocates*

(1st amicus curiae) and Others[1] at paragraph [85], both of which state that the costs of the *curator bonis* which are included in the damages suffered by the Plaintiff, needs to be expressly stated in the Order of Court.

[9] Ketzew AJ in *Mazibuko v Road Accident Fund*[2] held that the RAF defendant was required to consent to the inclusion of costs of the *curator bonis* being included in the Order Of Court, which consent was duly obtained by the *curator ad litem*. This Court subsequently had no difficulty in granting an order that the defendant cover all costs associated with the appointment of the *curator bonis* and all future administration fees, costs and disbursements including but not limited to the *curator bonis*' fees according to tariff and direct disbursements related to the Administration of the Curatorship Account as set out in section 84(1)(b) of the Administration of Estates Act 66 of 1965 read together with Regulation 8 and such additional disbursements as may be approved by the Master of the High Court. Upon consideration of these decisions there are valid reasons why these costs must be sanctioned by the RAF.

[10] Quite interesting, the same Mr. Bouwer who claimed the 6% fees in the aforementioned SCA Bouwer judgment recently launched an application in *Bouwer NO v Master of the High Court Pretoria and Another*[3] (the Pretoria Bouwer judgment) 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

[1] Case No: 35182/2016 – delivered 20 May 2022
[2] 2024 JDR 4511 (GJ)
[3] 2026 JDR 1456 (GP)

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. 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.*

[11] Mr. Bouwer, 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.

[12] 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. The second respondent examined these accounts, 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.

[13] 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.

[14] The objection to the curator's fees was predicated on the assertion that the fees were based on funds received from the Road Accident Fund which constituted capital and not income. The curator's fees were reflected in the account as fees earned on income and not capital.

[15] 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 (PAJA). The applicant requested an urgent response from the second respondent.

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

[17] On 18 March 2026, Raubenheimer AJ dismissed the review application, examining the legal framework and important decisions related to funds emanating from the RAF compensation which are administered by *curator bonis.* It would assist in setting out the analogy that the learned judge undertook as it is in all fours with this case. The Court held as follows:

'*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. 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 compensation to victims is to be administered.

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

…

[81] The applicant relies on the matter of *Bouwer and Another NNO v The Master of the High Court, Pretoria* (916)/2022 [2023] ZASCA at para135 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.

…

[86] The RAF Act is an important building block in the South African social legislation landscape. 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.

[87] The overarching constitutional mandate of a system of social security and solidarity has been affirmed by the Constitutional Court. 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.

[88] In *Law Society of South Africa v Minister of Transport,* the Constitutional Court declared the RAF scheme as fundamentally a "social security measure." 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." 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. 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." 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." The Court's emphasis on the Fund's "public character" legally distinguishes its purpose from that of a private, profit-driven insurer and aligns it with public-good objectives.

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

[90] While the Act's overarching aim is social security, its functional, with its practical implementation achieved by the disbursement of compensation. The purpose of this compensation is deeply rooted in the common law of delict, more particularly the principle of *restitutio in integrum*, which seeks to restore 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". The purpose of the compensation is therefore purely restorative.

[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*."

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

[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. This was clarified in *Santam Versekeringsmaatskappy Bpk v Byleveldt* where it was held that earning capacity is an "incorporeal right" and a "part of a person's estate." 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.

[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 fees 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 an 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."

[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.' [footnotes and references omitted]

[18] As already stated above, the SCA Bouwer judgment is distinguishable from the instant case. The income referred to in the SCA Bouwer judgment emanated from interest accrued on Standard Bank account, pension received from the Department of Justice, Government Employees Pension Income, an ABSA cheque deposit from an ABSA current account, proceeds of a vehicle sale, and a debt collected from a Rita Nel. The ABSA current account was realised by the appellants for the purpose of using the proceeds to cover the patient's monthly expenses. The total amount realized was R423 084.60. The first curators account reflected the total income collected, being R1 311 392.94, wherein provision was made for remuneration for the curators at the prescribed tariff provided for in Regulation 8 (3) (a), being 6% of the total income collected for the period 2018/2019, which was an amount of R78 683.58. It is for this reason that the SCA issued an order that: "*A curator bonis is entitled to a 6% fee on all funds reflected in the income account of an annual curators account as collected or actually collected, regardless of the origin thereof*".

[19] In my understanding, the afore-mentioned order was based on the *curator bonis's* entitlement to 6% after all funds collected are posted in the income account and after the assets changed in nature and identity from a capital asset to income received. In the current matter, nothing was collected by the *curator bonis*. The funds' source of origin is compensation from the RAF for injuries sustained by the patients. Simply because the funds have been transferred from the instructing attorneys' interest-bearing account to the curator bonis's account, the funds do not change from capital account to an income account as nothing was realized, 6% applies to income actually collected within the meaning of Regulation 8 (3) (a).

[20] In the current circumstances, I am unable to agree with the interpretation employed by the applicants. Once the RAF funds are depleted by the *curator bonis'* fees that might prove to be expensive, the patients would be unable to proceed with a dignified, decent and / or reasonable standard of life. In as much as the *curator bonis* are entitled to their fees, the interests of the patients also need to be protected.

[21] I am unable to comment about the court order mandating the first respondent to pay the fee of the applicants for the eleven estates as that was not what this court was required to do. Further, I am not aware of the circumstances that resulted in the approval of the fee calculation by the second respondent. Similarly, I elect not to give my opinion on that aspect as it is not before this Court for adjudication. These issues were merely set out as the basis for the applicant's argument on their entitlement to a 6% fee.

[22] For these reasons, the applicants' application is dismissed with no order as to costs.

BP MANTAME, J

WESTERN CAPE HIGH COURT