REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 125708/2026

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

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SIGNATURE **DATE**

In the matter between:

GRANT LEE-OR GONEN Applicant

and

MARC SCHULMAN First Respondent

MASTER OF THE HIGH COURT, JOHANNESBURG Second Respondent

JUDGMENT

LEECH, AJ:

1 This judgment pertains to an urgent application concerning the care and wellbeing of an elderly man who, it is common cause, is no longer capable of caring for himself.

2 The *Patient*, as I shall refer to him, suffers from Parkinson's disease and Lewy Body Dementia—both of which are progressive and neither of which can be arrested or reversed. At best, he has occasional moments of lucidity, but even this is disputed; he is otherwise incapable of managing his affairs or seeing to his day-to-day care and needs.

3 The Patient's adult son, who I will refer to by his first name *Grant* so as to avoid any possible confusion arising in future between him, other family members, and the Patient, is the applicant in the urgent application before me. He claims to enjoy the support of other of the Patient's adult children.

4 The second respondent in the application is the Master of the High Court, Johannesburg (*Master*), cited in his capacity as such and having an indirect interest by virtue of the relief claimed. The Master has elected to abide by its outcome.

5 The application is, however, opposed by the first respondent, Mr Schulman, who also contests its urgency.

5.1 Mr Schulman is the Patient's husband, married to him out of community of property.

5.2 Mr Schulman accepts that the Patient is no longer capable of looking after his affairs. This is a position that he has maintained since at least March 2026, when he applied to the Master under section 60 of the Mental Health Care Act, 17 of

2002 (*Mental Health Act*) for his appointment in terms of section 59 of the Act as an administrator to care for and administer the property of the Patient. Section 59 permits of the appointment of an administrator—in the prescribed circumstances—in respect of a mentally ill person or person with severe or profound intellectual disability.

5.3 On 24 April 2026 the Master appointed Mr Schulman as an interim administrator of the Patient's estate, in accordance with section 60(4) of the Mental Health Act. Mr Schulman says that since his appointment he has been acting in terms of that appointment. This interim appointment expires on 24 June 2026.

5.4 Mr Schulman also holds and has relied on a general power of attorney authorising him to act on behalf of the Patient. It would appear as though Mr Schulman may have continued to act ostensibly in terms of this general power of attorney, even though his authority to do so may have lapsed with the Patient's apparent loss of contractual capacity.

6 The principal relief Grant claims in his Notice of Motion is for an order appointing a *curator ad litem* to the Patient. The *curator* will be authorised and directed to conduct a number of investigations and inquiries and provide a report setting out any findings made. Amongst other aspects, the *curator ad litem* will be asked to report on whether or not a *curator bonis* or *curator ad personam* should be appointed. The full powers and duties of the *curator ad litem* are reflected in the order below and I need not dwell on them further in this aspect of my judgment.

7 As I understand the primary basis for his opposition to this aspect of the relief claimed, Mr Schulman says that there is already an interim administrator appointed by the Master under the Mental Health Act (himself) and an investigation is underway, initiated by the Master in terms of the Mental Health Act, to determine if a permanent administrator should be appointed. Furthermore, as the Patient's spouse, he is more than capable of fulfilling the roles of *curator bonis* and *curator ad personam*. There is therefore is no need for a *curator ad litem* to be appointed or for any investigation to be undertaken. Indeed, it was argued before me that I should not countenance a dual process—one under the Mental Health Act, the other at the hands of the *curator ad litem*.

8 According to Mr Schulman, this also disposed of any urgency in the matter, because the Patient's proprietary and other needs were already being adequately catered for by him.

9 As I made clear in my debate with Mr Schulman's attorney in court, I am of the view that this argument is misplaced.

9.1 First, there is the question of whether or not an appointment under the Mental Health Act is competent at all, given that the value of the Patient's estate and his annual income both exceed by significant margins the prescribed monetary limits set under the Mental Health Act. There is no dispute that the value of the Patient's estate is measured in tens of millions of Rands and the validity of the appointment of Mr Schulman as interim administrator is therefore subject to some doubt.[1]

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[1] For present purposes it exists as a fact unless and until set aside by a court of competent jurisdiction (*MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) at [64] *ff* approving and endorsing *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA)). That is not relief that is sought before me.

9.2 Mr Schulman's appointment as interim administrator is in any event shortly to lapse and, on my understanding of the Act, cannot be made permanent.

9.3 What then? Mr Schulman cannot continue to manage the financial and proprietary affairs of the Patient as though they are his own or on the basis that he has a right in law to do so. He has no such right. Nor can anyone else do so, with the result that the Patient's sizeable estate and financial affairs will be left unattended. This is surely not a state of affairs that is in the interests of the Patient or, for that matter, any of the Parties affected by this litigation, including Mr Schulman.

9.4 There is an urgent need, after 24 June 2026, for this unsatisfactory position to be regularised. Mr Schulman's arguments to the contrary—both as to the merits and in respect of urgency[2]—don't appear to me to sensible, reasonable, or rational.

9.5 His argument that the existing process and appointment under the Mental Health Act is sufficient is, in my view, not correct.

9.6 The appointment of an administrator under the Mental Health Act fulfils an entirely different purpose to the appointment of any one or a combination of a *curator ad litem*, *curator bonis*, and *curator ad personam*. The administrator (as well as an interim administrator) is appointed to care for and administer the property of the person in respect of whom he is appointed. This is made clear in both section 59(1) and the definition. Pregnant within that definition is a constraint on the extent of the administrator's powers.

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[2] Mr Schulman has plainly not been prejudiced by the time afforded him to answer the application: he has managed in the time available to him to file a 180 page answering affidavit. His opposition to the application being entertained under Rule 6(12) smacks of being obstructive.

9.7 A *curator bonis'* powers and duties go much further than simply the care for or administration of property.[3] (The *curator ad personam* fulfils an even more markedly different role.[4]) The *curator ad litem* is the person through whom a court inquires into the need for the appointment of either a *curator bonis* or *curator ad personam*. He fulfils a role as an officer of the court and is not concerned with the administration of the Mental Health Act.

9.8 An investigation undertaken in terms of the Mental Health Act is limited to questions regarding *inter alia* the suitability of the appointment of a permanent administrator. It is a far more circumscribed investigation than one that a *curator ad litem* ordinarily undertakes on behalf of a court appointing him and for an entirely different purpose.

9.9 The fact that the Master has authorised an investigation under the Mental Health Act therefore does not substitute for an inquiry to be undertaken by the *curator ad litem* to be appointed by me pursuant to this judgment and the Order appearing below. Even if it were competent, nor would the appointment of a permanent administrator by the Master under the Mental Health Act substitute for the appointment of someone as a *curator bonis*.

9.10 Whilst I make no finding on this, Mr Schulman's actions—including apparently holding himself out in correspondence as being the Patient and negotiating for the sale of the Patient's principal assets—appear to me *prima facie* at least to exceed

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[3] *Ex parte Du Toit: In re Curatorship Estate Schwab* 1968 1 SA 33 (T); *Ex parte Hulett* 1968 (4) SA 172 (D).
[4] *Clarke v Hurst NO and Others* 1992 (4) SA 630 (D).

the bounds of his lawful authority as interim administrator under the Mental Health Act. That too is a concern and, I would have thought, should also be a concern for Mr Schulman himself: he cannot continue in that vein. The situation cries out for the appointment of a *curator bonis* if only to allow Mr Schulman, if he is appointed as such, to lawfully administer the Patient's financial affairs and deal with his assets in full.

9.11 The appointment of a *curator bonis* can only be made by a court and, in terms of the Rules, this follows on the prior process of the appointment of a *curator ad litem*. It should be abundantly clear to all concerned that at very least an order effecting the appointment of a *curator bonis* is required in relation to the Patient and, it would seem, this needs to be done on an urgent basis. The sole gateway to this outcome is via an application of the type brought by Grant.

9.12 In the circumstances, I do not understand why Mr Schulman is opposing that outcome or this application. His opposition strikes me as being at best for him misconceived and at worst *mala fide*.[5]

9.13 I would add, in this regard, that the *curator ad litem* might ultimately conclude and recommend that Mr Schulman be appointed the *curator bonis*. That this outcome may eventuate makes Mr Schulman's present opposition to the urgent application all the more puzzling.

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[5] Grant attributes *mala fides* to Mr Schulman. I don't need to make a finding in that regard—it is something that a future court can determine, including in relation to costs.

9.14 I appreciate that the position in relation to the appointment of a *curator ad personam* might stand in a different position. Mr Schulman no doubt wishes to preserve his role, in the capacity of spouse, as the Patient's next of kin, entitled thereby to make decisions about his husband, including the prospect of some time in the future having to make difficult decisions about the Patient's medical care.[6]

9.15 But the appointment of someone else as *curator ad personam* is also not a foregone conclusion. Whatever that outcome is will follow upon the *curator ad litem's* investigations and report.

9.16 I am not going to preempt that outcome by making precipitous findings in urgent court regarding Mr Schulman's alleged conduct in relation to the Patient. But, once again, I am concerned that Mr Schulman's opposition to this application is not justifiable on the basis of his seeking to prevent the appointment of a *curator ad personam*—whoever that *curator ad personam* might be—in the event that this is what the *curator ad litem* ultimately recommends.

10 It follows that the application must be enrolled as one of urgency and that the primary relief must be granted.

11 In his Notice of Motion Grant applied for the appointment of Mr Doron Block, an advocate of the High Court, to be appointed as the *curator ad litem*. Mr Block has confirmed his availability and willingness to act.

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[6] *Cf Clarke v Hurst NO and Others* 1992 (4) SA 630 (D).

11.1 This proposal was opposed from the Bar on behalf of Mr Schulman, solely on the basis that Mr Block had been proposed by Grant. Mr Schulman did not propose an alternative, but instead I was asked to appoint someone else.

11.2 I made inquiries and engaged the Parties in relation to an alternate person to be appointed instead of Mr Block. Neither Party objected to the appointment I proposed, although on behalf of the applicant the position was maintained that Mr Block was and remained a suitable candidate and that the objection to his appointment lacked any proper basis.

11.3 I agree that Mr Schulman's objection to Mr Block is baseless—he is an officer of the court, experienced in these matters, and there is no reason to question his partiality or independence. On review, the objection seems obstructive and unhelpful, especially in the absence of a putting forward an alternative.

11.4 That said, the issue has become largely academic as the person I was considering as an alternative to Mr Block is unable to complete the investigation and compile a report within the urgent constraints that this matter requires.

11.5 In the circumstances and there being no proper objection raised to Mr Block's appointment, his appointment is confirmed in the Order below.

12 Grant also sought interdictory relief aimed at the appointment of Mr Schulman as interim administrator and potentially as the administrator under the Mental Health Act.[7]

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[7] That relief was set out in prayer 4 of the Notice of Motion as follows:

> Pending the finalisation of this application and/or any further proceedings flowing therefrom:

12.1 As I debated with his counsel and as presaged by my reference to *Kirland* and *Oudekraal* above, it is not clear to me that I can grant the relief in prayer 4.2 or, for that matter, prayer 4.3. Mr Schulman has been appointed and his appointment can only be set aside by a court on review. Equally, once appointed, it is not clear to me on what basis I can interdict him from carrying out that appointment.

12.2 I accordingly decline to grant this relief.

12.3 The relief sought in prayer 4.1 is, however, a different matter. I am satisfied that a proper case has been made out for this relief, including having regard to the proper interpretation and application of the Mental Health Act set out above, and so I include relief to that effect in the Order below.

13 Prayer 5 is a matter that has also proved to be contentious and, I am once again of the view, unnecessarily so.

13.1 By way of background, in his founding affidavit Grant raised concerns about Mr Schulman's conduct in relation to the healthcare of the Patient, who has undergone a number of apparently inexplicable emergency medical admissions in the past months.

13.2 Grant sought an order as follows:

4.1 the second respondent is interdicted and restrained from finally appointing the first respondent as administrator of the below patient's estate;
4.2 the first respondent's appointment as interim administrator of the below patient's estate is terminated; and
4.3 the first respondent is interdicted and restrained from accessing, withdrawing or transacting on any bank accounts or investment accounts owned or held by the below mentioned patient pending the finalisation of these proceedings

> The patient is to remain placed in Intercare Sandton or a suitable alternative facility to ensure the patient is cared for and maintained pending the curator *ad litem's* report and the recommendations therein.

13.3 It is not necessary for me to make a finding on the allegations Grant directs at Mr Schulman in relation to the care of the Patient or whether Mr Schulman is unsuited to continue to care for him. That too is something that should be investigated by the *curator ad litem* untrammelled by anything I say in my judgment.

13.4 On a conspectus of all of the evidence before me, however, it is clear that the collective wisdom of the healthcare professionals attending to the Patient is that he should be discharged to Intercare or a like facility. This was confirmed in argument before me on behalf of both Parties.

13.5 In these circumstances, I am of the view that the applicant has succeeded in making out a *prima facie* right justifying the interim relief sought, having regard to the balance of convenience, the risk of irreparable harm, and the absence of any alternative remedy.

13.6 The *curator ad litem* has been expressly afforded the power, in the Order, to return to Court—including on the strength of an interim report—should there be a requirement for a variation of this or any other aspect of the Order granted below. This will no doubt cater for a situation where the medical advice or other circumstances change.

14 The remaining aspects of the Notice of Motion in respect of which relief was sought appear from the Order. They are not contentious and are otherwise self-explanatory.

15 Finally, as to costs. Grant sought a punitive costs order against Mr Schulman. There is merit in this claim, but that would require me to make findings of fact on issues that I have indicated would best be investigated by the *curator ad litem* and by the Court hearing Part B with the benefit of both the report and more time. Ordinarily, costs are not urgent and especially where punitive costs are sought where disputes of fact are at stake. In these circumstances, I am of the view that costs should best be reserved.

16 I accordingly make the following order:

1 The application is enrolled as one of urgency under Rule 6(12).

2 Doron Block, an advocate of this Court, is hereby appointed as *curator ad litem* to the patient, **MEIR GONEN,** with Identity Number: 570427 5258 087, with the powers as set out below, together with such incidental powers as are necessary properly to perform the said powers.

3 The *curator ad litem* is authorised and directed to:

a. attend on and interview the patient, as well as all professionals that have provided reports supporting the application for the appointment of the curator *ad litem*, all family members and friends of the patient that may be able to provide information relative to the report to be provided by the curator *ad litem* to the court as set out below and investigate the identity of the person or persons to be nominated for appointment as the curator *bonis* and / or curator *ad personam* and make recommendations in respect of their powers;

b. subject the patient to further medical evaluation to establish his ability to manage his affairs should he deem it necessary to do so; and

c. prepare and submit to the second respondent and to this Honourable Court within six weeks of this appointment of the curator *ad litem*, a report of what the curator *ad litem* has done, in accordance with the requirements of this order.

4 The *curator ad litem* is also expressly afforded the power, should it prove to be necessary, to approach this Court on the strength of an interim report to seek a variation to or supplementation of this Order.

5 The final report of the curator *ad litem* must deal fully and appropriately with the following aspects:

a. the age and general health of the patient, including the patient's ability to appreciate financial aspects generally and specifically to make decisions involving the patient's own money, resources and investments;

b. the assets and liabilities of the patient, including the short-, medium -, and long term financial needs of the patient and the ability of the patient's current and fixed assets to provide in those needs;

c. the current home and care provision that has been made for the short, medium- and long term personal needs of the patient;

d. the identity and general disposition of the patient's immediate family and friends and their interaction with the patient;

e. the curator *ad litem's* opinion as to whether the patient is of unsound mind and should be declared of unsound mind and as such incapable of managing his own affairs and, in particular whether a curator for the person and/or the property of the patient should be appointed with specific reference to the question whether the assets of the patient would be sufficient to afford such appointment, and whether the

appointment should be in respect of all the patients affairs or only some of them and if so, which of them;

f. whether or not any curator appointed for the patient should be required to furnish security to the second respondent for the performance of his/her duties;

g. a proposed order to be issued by the court, including provision for appropriate powers to be conferred upon any curator so appointed, and provision for the payment of the fees and costs of the curator *ad litem* from the resources of the patient; and

h. any other matter which in the opinion of the curator *ad litem* should be brought to the attention of the court.

6 Pending the finalisation of this application and/or any further proceedings flowing therefrom, the second respondent is interdicted and restrained from finally appointing the first respondent as an administrator of the Patient's estate under Chapter VIII of the Mental Health Care Act, 17 of 2002.

7 Upon his discharge from hospital, the patient is to remain placed in Intercare Sandton or a suitable alternative facility to ensure the patient is cared for and maintained pending the curator *ad litem's* report or interim report and the recommendations therein.

8 The applicant is granted leave to file his supplementary founding affidavit dated 10 June 2026.

9 The applicant and opposing parties, are permitted to supplement their papers, as they may deem necessary upon receipt of the curator *ad litem's* report, with the applicant to supplement within 10 days of receipt of

the report and those respondents who oppose to supplement 10 days thereafter

10 The costs of this Part A are reserved for determination in Part B.

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B.E. LEECH
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the applicant:	Ms S Meyer
Instructed by:	Saul Ginsberg Attorneys
For the 1st respondent:	Ms N Kinstler
Instructed by:	Kinstler Attorneys Inc.
Date of hearing:	19 June 2026
Date of judgment:	23 June 2026