IN THE NORTH GAUTENG HIGH COURT, PRETORIA

Case Number: 50546/12

In the matter between:

THE REGISTRAR OF MEDICAL SCHEMES **APPLICANT**

and

SIZWE MEDICAL FUND **RESPONDENT**

JUDGMENT

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

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

(3) REVISED.

22/1/2013

DATE SIGNATURE

A A LOUW J:

Introduction

[1] The respondent is a registered medical fund with 193 000 beneficiaries.

[2] On 4 September 2012 Pretorius J granted an *ex parte* order placing the respondent under provisional curatorship as contemplated by the provisions of section 56(1) of the Medical Schemes Act, 131 of 1998 ("the MS Act"), read together with section 5 (1) and (2) of the Financial Institutions (Protection of Funds) act, 28 of 2001 ("the FI Act").

[3] Mr. Gobinca was appointed as provisional curator and clothed with certain powers and duties.

[4] This application was argued before me on the extended return date.

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namely 12 October 2012.

[5] The main grounds for the curatorship are firstly that the respondent's Board of Trustees ("BOT") has not been properly constituted over a considerable period and, most importantly, also not when this application was brought. In clause 4.6 of the respondent's rules "Board" is defined as "*the Board of Trustees constituted to manage the Scheme in terms of the Act and these Rules.*" These rules are the rules registered by the applicant on 30 January 2012, effective from 1 January 2012. The application was argued on this version of the rules. It was not contended by any of the parties that any previous version of the rules was relevant, presumably because there were no amendments to the rules relevant to the outcome of this application.

[6] The second main ground for curatorship is that the BOT remained supine after becoming aware of election fraud allegations and allegations of other irregularities. Specifically it is alleged that over a long period of time the BOT was unwilling to address the deficiency in its composition, despite admonitions to the contrary. It demonstrated an unwillingness to comply with regulatory requirements and was prepared to resort to machinations in effecting its composition.

[7] Apart from these two grounds for curatorship, the provisions of rule 7(1) of the Uniform Rules are relevant. That sub-rule reads:

"*Subject to the provisions of sub-rules that sub-rules (2) and*

(3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at anytime before the judgment, be disputed, where after such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application."

[8] On the date the provisional order was granted applicant's attorney served such a notice on the attorneys of the respondent challenging its authority to act. The response of the respondent was threefold: it served an answering affidavit on 11 September 2012 together with a notice of anticipation of the return date and a notice in terms of Rule 7. The latter notice asks for the following relief;

1. *"Declaring the respondent's board of trustees has authority to appoint attorneys to act on behalf of the respondent to oppose the main application;*
2. *Declaring in terms of rule 7 of the uniform rules of court that the respondent's board of trustees has duly appointed Gildenhuys Lessing Malatji Incorporated which is duly authorised to act on behalf of the respondent."*

[9] I agree with respondent's submission that the latter issue is so interwoven with the main application that it can not be decided

separately. The rule 7(1) issue is therefore to be decided herewith.

[10] To decide on the rule 7(1) issue and the grounds for curatorship primarily calls for an interpretation of the rules of the respondent. In so far as it will be necessary, I will deal with other issues thereafter.

[11] In order to do so I may rely on events subsequent to the provisional order of 4 September i.e. until 28 September when the fifth set of affidavits were filed.

The legal position

[11] Section 5 of the Financial Institutions (Protection of Funds) Act 28 of 2001 ("the FI Act"), permits the bringing of the application *ex parte*.

Section 56 of the Medical Schemes Act, 131 of 1998 ("the MS Act"), provides as follows:

> (1) The Registrar may, notwithstanding the provisions of ss52 and 53, if he or she is of the opinion that it is in the interest of beneficiaries or that it is desirable to do so, because material irregularities have come to his or her notice, or because a medical scheme is not in sound financial condition or as a result of an inspection of the affairs of the medical scheme, apply, with the concurrence of the Council, to the High Court, for the appointment of a curator to take control of and to manage the business of that medical scheme.
>
> (2) The provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), insofar as these provisions relate to the appointment of a curator in terms of the said Act, and insofar as they are not inconsistent with the provisions of this Act, shall apply with the necessary changes to the appointment of a curator of a medical scheme in terms of this section.

The test under Section 56(1) aforesaid is the opinion of the Registrar that:

It is in the interest of beneficiaries or that it is desirable to do so, because material irregularities have come to his notice or because a medical scheme is not in sound financial condition.

The "opinion" is the subjective opinion of the Registrar which must be held on objective grounds.

Section 5 of the FI Act, in turn, provides:

(1) The Registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.

In Section 1 of the FI Act, "Registrar" is defined as including

the Registrar of medical schemes referred to in Section 1 of the MS Act.

Section 1 of the FI Act defines "institution" for purposes of Section 5 as meaning *inter alia* a financial institution which in turn is in Section 1 defined as including

any medical scheme contemplated in Section 1 of the MS Act.

The Registrar is accordingly empowered to bring an application such as the present both by Section 56 of the MS Act as well as by Section 5 of the FI Act. In terms of Section 56 of the MS Act, however, the application must be brought with the concurrence of Council.

In dealing with the requirement of "good cause" under Section 5 of the FI Act, the SCA in the case of Executive Officer FSB v Dynamic Health 2012 (1) SA 453 (SCA) held in paragraph 4:

(4) The Registrar must therefore satisfy the court that there is good cause to appoint a curator. Reading ss(1) together with ss(4) that means that the court must be satisfied on the basis of the evidence placed before it that it is desirable to appoint a curator. Something is desirable if it is "worth having, or wishing for". The court must assess whether curatorship is required in order to address identified problems in the business of the financial institution. It assesses this in the light of the interests of actual or potential investors in the

> [1]financial institution, or investors who have entrusted or may entrust the management of their investments to it. It must determine whether appointing a curator will address those problems and have beneficial consequences for investors. It must also consider whether there are preferable alternatives to resolve the problems. And ultimately what will constitute good cause in any particular case will depend upon the facts of that case....

And in paragraph 5:

> (5) In the court below the respondents relied on the judgment in *Ex parte* Executive Officer of the Financial Services Board: In re Joint Municipal Pension Fund, where it was held that s5 "does not suggest a test which is more lenient than that set by the common law for the removal of trustees" and the court consequently applied in relation to s5(1) of the FI Act the approach to the removal of trustees laid down by this court in Sackville West v Norse and Another. That test is broadly whether the trustees have endangered the trust property by their acts or omissions or shown a want of honesty, fidelity or capacity to perform their duties. A lack of honesty or capacity on the part of the financial institution and those responsible for managing its affairs will ordinarily justify the appointment of curators to manage its business under s5(1) of the FI Act. To that extent it is correct to say that circumstances that warrant the removal of trustees of a trust, whether testamentary or *inter vivos*, would, if present in relation to a financial institution, ordinarily justify the grant of an order for the appointment of curators. However it by no means follows that the power of a court to make such an order is limited to that class of case....

And in paragraph 6:

> (6) ... the inability or unwillingness of the institution to comply with regulatory requirements applicable to protected funds itself provides a reason for appointing a curator.... When dealing with the investment of the funds of the public, where considerable hardship will be suffered by ordinary people if things go wrong, the Registrar cannot be expected to resolve factual disputes by litigation before obtaining an order appointing a curator. Provided the court is satisfied that the Registrar's concerns are legitimate and that the appointment of a curator will assist in resolving those concerns, it will ordinarily be appropriate to grant an order.

[12] The approach to the interpretation of any document, be it legislation, some other statutory instrument, contract or any other document has recently been eloquently expounded by Wallis JA in the now oft-quoted Natal Joint Municipal Pension Fund case.

[13] In paragraph 18 of this judgment it is made clear that whatever the nature of the document, consideration must be given to the language

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[1] *Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)*

used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. I quote from the last part of this paragraph: '*inevitable point of departure is the language of the provision itself*', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

Relevant Facts

[14] On 1 July 2011 at a BOT meeting the then PO, Gabela, raised election fraud in relation to the December 2010 election. Carrying on on 25 July Gabela wrote to the BOT urging it to appoint an independent investigator, and to appoint a committee to manage the investigation. She also stated in this report to the BOT that her own investigations suggested that Teegler's and Marcus's election had been actuated by fraud and forgery.

[15] On 24 August 2011 the BOT resolved to a point KPMG to investigate the allegation against these two trustees. That report became available on 14 September 2011 in which KPMG concluded that Teegler's and Marcus's nominations which preceded their elections, had been secured "*in a deceptive manner*". KPMG further recommended that appropriate action be taken against these two and that the matter be fully investigated.

[16] After its investigation, KPMG on 14 September 2011 reported that the election of the two Trustees had been secured in "a deceptive manner" and recommended appropriate action.

[17] In reaction, the BOT on 22 September 2011 gave the 2 implicated Trustees 30 days to make representations.

[19] It thereafter met with the applicant. The applicant indicated that I would proceed with its own independent, Potgieter investigation. As will appear from further facts hereunder the BOT did not take any steps relating to the deficiency in its constitution until the Potgieter report became to its attention of 16 May 2012.

Rule 19.1

[20] Rule 19.1 of the Scheme Rules provides:

> **Constitution of a Board**
>
> The affairs of the Scheme must be managed according to these Rules by a Board of Trustees in terms of Section 29 of the Act consisting of the following persons who are members of the Scheme and are fit and proper to be Trustees.
>
> 19.1.1 5 who shall be elected from among members by members and
>
> 19.1.2 5 who shall be nominated by employer or co-opted by the Fund....

The provisions of rule 19.1 aforesaid are clearly peremptory, as is evidenced by the use of the words "must be managed ... by a Board of Trustees ... consisting of the following ... 5 who shall be elected and ... 5 who shall be nominated.

[21] In the answering affidavit it is contended that "*all that rule 19.1 does is*

to indicate the ideal composition of the board is ten members" (my emphasis). This approach by the BOT and/or the PO of the respondent probably explains why the number of trustees were often quite low and that for periods the BOT has repeatedly been left inquorate with the result that decisions taken during such periods were invalid.

[22] However during argument Mr. N.G.D Maritz SC (who drafted supplementary heads of argument after the original set was drafted by two other counsel) conceded that the BOT must consist of ten members. Prior to this concession the chairman of the BOT in both his answering and duplicating affidavits obstinately persisted with the untenable stance that this was not a requirement but merely an ideal.

[23] Respondent's counsel argued that this was a *bona fide* error. This can not be accepted for the following reasons:

1. It is manifestly in conflict with the clear and peremptory provisions of rule 19.1.
2. It flies in the face of the respondent's own attorney's advice during October 2010. It is undisputed that Mr. Malatji then cautioned the BOT that it had to be comprised of ten members, that it consisted of four members only and that it was urgent that the scheme should act to fill the various vacancies.
3. This submission can also not be reconciled with the following as minuted at a special meeting of the BOT held on 1 July 2011: "*Mss*

Teegler suggested that there should be assessment of what gaps of knowledge exist on the Board. Mr. Baloyi commented that he had spoken to Mr. Malatji who had said that the situation is grave. The Board should really consist of ten trustees today or latest on Monday."

[24] I can only find that the BOT's inaction or refusal over a period of years to take steps to ensure that the Board was properly constituted in terms of the rules, must be marked down as deliberate.

What should happen when the BOT becomes inquorate

[25] It is clear from the abovequoted part of rule 19.1 that there are three ways in which a member of the scheme can become a trustee, namely election at the AGM, nomination by an employer and co-option by "the Fund".

[26] It is the interpretation of the third of these which is in dispute.

[27] "Fund" is not defined in the rules. Neither is the word "scheme". In the rules these two words are not used consistently, but interchangeably – see for instance rule 19.2.2, 19.2.8, 19.7.1 and 19.7.7. It is however clear that both words can only refer to the respondent.

[28] However pointing out this inconsistency does not solve the question. The question remains whether co-option by the fund in rule 19.1.2

means that the BOT may at any time, as the respondent contends co-opt a member of the respondent to the BOT. In this regard it is argued in respondent's supplementary heads of argument as follows:

> *"The appointment of 5 of the 10 members of the Board is consistent with section 29(1)(a) and section 57(2) of the Medical Schemes Act 1998. On analysis of the Rules it is clear that every reference to something which the Scheme shall or is empowered to do, is to be done on behalf of the Scheme by the Board. As the word "Fund" in Rule 19.1.2 can only mean the "Scheme", the co-option of a member by the Scheme is a power which the Board is entitled to exercise. The only provision made in the Rules for voting by members either at a general meeting or otherwise relates to the voting upon motions tabled at the annual general meeting, a voting to elect trustees as contemplated in rule 19.1.1, and voting on a decision whether to dissolve or amalgamate the Scheme."*

[29] On the other hand the applicant's argument in its written argument in reply states:

> *"An interpretation that "Fund" in Rule 19.1.2 means the BOT and that the BOT consequently has the power at any time to co-opt someone as Trustee:*
>
> *6.3.1 Necessarily would render Rule 19.6 completely redundant which, as a matter of interpretation, is not permissible in law;*

6.3.2 Ignores the fact that the Rules in both Rule 19.6 and Rule 19.19 employ the word "Board" instead of "Fund". It follows that "Fund" must bear a different meaning than "Board";

6.3.3 Ignores the fact that Rule 19.6 expressly states that the vacancy "shall be filled at that meeting", being the first ensuing Annual General Meeting;

6.3.4 Would, or could, result in the preposterous and absurd result that the five elected Trustees could co-opt one other under Rule 19.6 (dealing with casual vacancies) who then together could co-opt all of the remainder (to make up the ten) under Rule 19.1.2. On this interpretation, the five elected members could effectively determine the composition of the entire remaining Board. This would be both preposterous and clearly not what the Rules envisaged."

[30] Rule 19.6 reads:

> "***Casual vacancies**: The Board shall have the right to fill any casual vacancies, which may occur. A person so appointed shall retire at the first ensuing annual general meeting and that meeting shall fill the vacancy for the unexpired period of office of the vacating member".*

[31] I therefore agree with the applicant's interpretation for all of the reasons

as set out in the abovequoted part of the written argument on its behalf.

The appointment of Pohler as PO

[32] Ms Pohler was appointed as principal officer at the BOT meeting of 30 May 2012. There were seven trustees present, including Marcus and Teegler.

[33] At that stage it was clear to the BOT that Teegler and Marcus had to either resign or be dismissed. The following is stated in the minutes:

> "*The report of Mr. Potgieter has made clear that there were fraudulent irregularities in the proxies used in the election process of Trustees at the Annual General Meeting held on 10 December 2010. This fact had also been confirmed by an earlier investigation by KPMG commissioned by the Board. These actions implicated both Mr. Marcus and Miss Teegler. There were only two options available to these parties, those being of immediate resignation or alternatively, immediate termination by the Board of their right to hold office as Trustees and Members of the Board*".

[34] The decision was taken that they cease to hold office as trustees. It then continues to state that their resignation will be accepted if received before 12h00 on the next day i.e. 31 May 2012, and then strangely: "*If not, the decision of the Board that they be removed with*

immediate effect will stand. The matter is closed."

[35] Despite the facts available to the BOT and well-knowing that the ineluctable conclusion from the reports had to be the termination of their trusteeship, they were first "used" to have Pohler appointed as PO. The appointment of Pohler just "happened" to be earlier on the agenda. Of course if Teegler and Marcus could not participate, then there was no corum.

[36] If this is not clear evidence of dishonesty in orchestrating the appointment of Pohler, then I do not know what is.

Pohler's conduct since the interim order

[37] Since the 4 September 2012 order was granted Pohler absented herself from work without leave. Purportedly she does not wish to be caught in the cross-fire between the provisional curator and the BOT.

[38] In so acting she does not act in the best interests of the scheme. She is withholding her knowledge of the scheme's affairs from the provisional curator. One would have expected a PO, Pohler having being that for approximately one year before the order (initially in an acting position), To share her particular knowledge of the scheme's affairs with the provisional curator.

[39] Instead of assisting with the management of the scheme, she chooses

to assist and support the five trustees in opposing the confirmation of the curatorship order.

[40] In my view this reflects on her ability to act as PO of such a large medical scheme. She clearly acts in her self-interest only as she well knows that her appointment is invalid.

BOT adopting resolutions after the court order

[41] On 17 September 2012 the BOT met.

[42] The clear intention of this meeting was to constitute a BOT that was quorate.

[43] Firstly it is accepted that the purported appointment/co-option of MCcarthy as trustee was invalid because he was not a member of the scheme. Secondly it purports to co-opt Mr. Gé Vermeulen as trustee in terms of rule 19.1.2 and thirdly it decided that Mafela also be co-opted in terms of the same rule in the event that the court should find that he should have retired at the June 2012 AGM.

[44] For purposes of this decision I do not find it necessary to decide on the latter aspect i.e. whether Mafela should have retired at the 2012 AGM, because the appointment of Vermeulen is in any event invalid.

[45] The BOT could not have taken any of the decisions referred to above

as the court order of two weeks previously had taken away all their powers. The relevant part of the 4 September order reads that pending the outcome of the return date, the provisional curator be and is hereby:

"6.1 *authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;*

6.2 *vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent.*"

[46] The argument on behalf of the respondent that this order did not take away the board's power to co-opt a person in terms rule 19.1.2 has no merit. The argument that such a power is not part of "management" of the affairs of the scheme is really clutching at straws. The argument refers to the definition of "Board of Trustees" in section 1 of the MS act to support its argument.

[47] The argument culminates in paragraph 7.5 of the written heads as follows:

"It is therefore submitted that the trustees who were in office on

the date on which the provisional order of curatorship was granted, and even if the number had fallen below 6, were entitled, as the continuing members of the Board, in terms of Rule 19.14 to appoint trustees to fill a vacancy in the category of trustees contemplated in Rule 19.1.2 or to summon a general meeting for purposes of electing trustees to fill vacancies falling within the category of trustees contemplated in Rule 19.1.1."

[48] I reject this argument. It will create chaos if there is a provisional curator in control of the business and operations of the respondent and in the meantime there is an inquorate BOT still carrying on as the quoted submission foresees.

[49] The question is in the first place the interpretation of the court order in its context. The order is not only about "management" but paragraph 6.2, quoted above, makes it clear that the provisional curator is also *"vested with all powers of control.... which would ordinarily be vested in and exercised by the board of trustees..."*.

[50] The purported co-option of Vermeulen and thereafter the purported ratification of the decision of the BOT on 3 September 2012 to appoint its attorneys to oppose the curatorship application are therefore invalid.

[51] This means that both on 3 September 2012 and still today, the BOT can at best, that is without even deciding the position of Mafela, have

five trustees.

Conclusion

[52] This leads to the following findings:

1. The applicant's challenge in terms of rule 7(1) succeeds. The purported opposition of this application was at all times invalid.
2. The BOT has consistently failed to ensure that a properly constituted BOT was in place and failed to take immediate action when irregularities came to the fore.
3. The BOT acted dishonestly and in its, and Pohler's, self-interest in taking the decision to appoint Pohler as PO at the same meeting at which Marcus's and Teeglers's trusteeships were terminated.
4. The actions of Pohler since the court order demonstrate that she is not fit to occupy such a position.
5. The BOT's obstinacy in refusing to acknowledge the validity of the court order and purporting to take further decisions on 17 September 2012 is in my view contemptuous of this court.

[53] The belief of the applicant that it is in the best interests of the beneficiaries of the scheme to have the curator appointed is therefore fully justified. In that sense it is desirable to do so, applying the legal test set out above.

[54] A curator, once appointed, will be in a position to take control of and

manage the affairs of the respondent. There is currently a void in the respondent's governance due to the lack of a validly constituted BOT. The continuance of the management of the present BOT would entail the respondent's continued improper management. It would furthermore place the respondent at risk in view of the dishonesty inherent in its appointment.

Costs

[55] The respondent's attention has been drawn so many times to the fact that its BOT is improperly constituted, not only by its own attorney but also by the KPMG report of September 2011 and the Potgieter report which was given to the respondent on 16 May 2012. Nevertheless, three and a half months after the latter event, when this application was launched, it still did not have any properly constituted BOT.

[56] Notwithstanding this fact is proceeded to oppose this application. The BOT was not authorized to instruct the respondent's attorney of record to do so.

[57] This justifies a special costs order, as requested by applicant. I do not however agree with the applicant's submission that the costs are to be paid by the respondent's deponent, Hlabangwane, personally.

Order

[58] I therefore make an order in the following terms:

1. Confirming the curatorship of the respondent as contemplated by the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;

2. Confirming the appointment of Marshall Ngubekhaya Gobinca as curator ("the curator") of the respondent, in terms of the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;

3. Confirming the powers and mandate of the curator to be that he is –

   3.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interest relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

   3.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;

   3.3 directed to give consideration to the best interests of the members of the respondent;

   3.4 directed to exercise the powers vested in him with the view to conserving the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to

the extent and for the purposes set out hereunder;

3.5 directed to take control of the cash, cash investments, shares and other securities, as well as of all other assets owned, held or administrated by or on behalf of the respondent;

3.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;

3.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;

3.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administrated or held by or on behalf of the respondent;

3.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;

3.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or

financial instruments as he may regard financially sound and appropriate;

3.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts for the purposes of the curatorship.

3.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any person who may be guilty of misconduct or a crime;

3.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on any ex parte basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

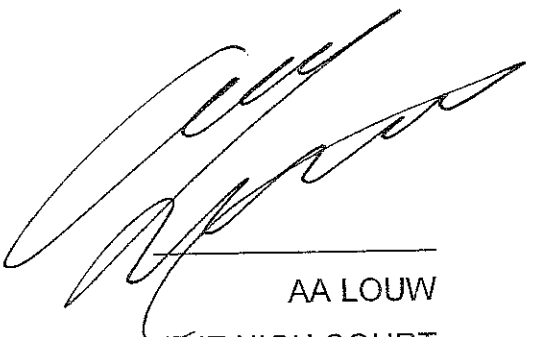
3.14 authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively; failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets.

4. Directing the curator to report on his curatorship to the applicant and the respondent within twelve (12) months from the date of this order and to include in his report a statement of his findings and recommendations concerning the respondent's affairs and the continuation, if necessary, of the curatorship.

5. Directing the curator to report on the respondent's affairs to the applicant on a monthly basis during the aforesaid period of twelve (12) months;

6. Directing the curator to take all steps which are necessary to convene a special general meeting of the respondent at which a new beard of trustees who are fit and proper for this purpose shall be elected and report thereon within the twelve (12) month period referred to above;

7. Directing that the costs of this application on the scale between attorney and client be paid by the respondent.



AA LOUW
JUDGE OF THE HIGH COURT