



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(NORTH GAUTENG HIGH COURT)**

Case number: 38578/2008

Date: 2012-11-16

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
16/11/2012	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

**VISAGIE, SIAS MARE**

Plaintiff

And

**ADT SECURITY (PTY) LIMITED**

Defendant

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**JUDGMENT**

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**PRETORIUS J**

[1] In this claim the court has to decide the quantum, after the defendant had

conceded 100 % liability on the merits in October 2011.

[2] The plaintiff applied to have the particulars of claim amended as follows:

- "1. To replace the figure of R297 338,17 where that figure appears in paragraph 7.1 of the Particulars of Claim, with the figure of R207 376,25.*
- 2. To replace the figure of R1 000 000,00, where that figure appears in paragraph 7.3 of the Particulars of Claim, with the figure of R1 160 361,00.*
- 3. To replace the figure of R2 000 000,00, where that figure appears in paragraph 7.4 of the Particulars of Claim, with the figure of R4 143 432,94.*
- 4. To replace the figure of R4 315 338,17, where that figure appears in paragraph 7 (twice) and in prayer 1 of the Particulars of Claim, with the figure of R6 529 170,19."*

[3] This application for amendment was not opposed by the defendant and the court granted the amendment in terms of Rule 28(10) of the High Court Rules.

[4] The history of the matter is that on 31 March 2007 an employee of the defendant, Mr. A. Maswabi, shot and wounded the plaintiff in front of his wife

and killed an innocent bystander whilst shooting at Mr. Visagie. The claims of Mrs. Visagie and the loss of support claims by the dependants of Mr. Magagula, the deceased, were settled and made orders of court.

[5] As Mr. Visagie was on duty at the time of the shooting he was entitled to compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (the Act).

[6] The parties reached an agreement on the figures which equates the compensation paid by the Compensation Commissioner in terms of the Act which is:

*“(a) That Mr Visagie’s only hospital, medical and related expenditure to date arising out of his injuries and their consequences is that which was met by the Compensation Commissioner, in the amount of R207 376,25.*

*(b) That between Mr Visagie and his employer the Compensation Commissioner paid R14 926,94 in respect of absence from employment, which represent loss in Mr Visagie’s hands (but which in turn falls to be deducted from the Defendant’s liability).”*

[7] The following items set out in Schedule A of the actuary, Mr. Robert Koch’s report of 29 October have been agreed as follows:

- “(a) *Psychiatric costs and psychotherapy (in effect, items 1-4, 11-13, 24 and 25) at R170 000,00.*
- (b) *Ophthalmic costs (items 5-7) at R121 267,00.*
- (c) *The costs of vestibular rehabilitation (item 8) at R4 484,00.*
- (d) *Occupational therapy and assistance and devices recommended by the occupational therapists other than the question of a driver (items 14-21) at R65 628,00.*
- (e) *The driver (item 22) at R300 000,00.*
- (f) *The costs of symptomatic treatment of headaches and other pains (items 23 and 30) at R30 000,00.*
- (g) *The costs of treatment by ear, nose and throat surgeons (items 31 and 34) at R48 000,00.*
- (h) *The costs of hearing aids and so forth as per items 33-35 at R333 630,00.”*

[8] General damages was agreed during the trial as to be R700 000,00 (seven hundred thousand Rand).

- [9] The court consequently has to decide on the claim for the costs of PPI medication as testified to by Prof. Bizos and loss of income and earning capacity. The defendant conceded liability for the costs of two counsel in this action.
- [10] The parties agreed that the reports and joint minutes constituted agreed evidence which the parties could use when arguing. These reports and joint minutes are: the reports of the neurosurgeons Drs Du Plessis (Plaintiff) and Osman (Defendant) and their joint minute; the reports of the psychiatrists Dr Shevel (Plaintiff) and Professor Vorster (Defendant), and their joint minute; the reports of the neuropsychologists Mr Ormond-Brown (Plaintiff) and Mr Mallinson (Defendant), and their joint minute; the reports of the ear, nose and throat surgeons Dr Viljoen (Plaintiff) and Dr Bouwer (Defendant), and their joint minute; the reports of the audiologists and physiotherapists Mesdames Bester and Martin (Plaintiff) and Van Zyl and Roux (Defendant), and their joint minute; the reports of the occupational therapists Ms Grové (Plaintiff) and Ms Ledwaba (Defendant), and their joint minute; the reports of the ophthalmologist Dr Gous for the Plaintiff dated 14 May 2012 and 28 October 2012; and the various actuarial calculations by Dr Koch, on the basis that the parties agree that the calculations are actuarially correct, and accept the actuarial assumptions (mortality, interest, inflation, taxation and so forth), but are free to dispute the factual assumptions.
- [11] Prof. Bizos, the gastro-enterologist, gave evidence that he was a professor in gastro-enterology at the University of the Witwatersrand and was also in

private practice. He examined the plaintiff on 23 April 2012 as the plaintiff's main complaint was abdominal pain. The plaintiff informed Professor Bizos that he takes Panado and Grandpa, as well as non-steroidals for persistent headaches. These headaches occur up to twice a week. Dr du Plessis, the neurosurgeon found that the plaintiff was still struggling with headaches and neck pain which was confirmed in the joint minute with Dr. Osman. It was further noted in the joint minute that the plaintiff suffers from pain in his right eye socket due to the loss of his eye. Prof. Bizos testified during cross-examination that he recommends proton pump inhibitors (PPI) for life. He based his expert opinion on the fact that the plaintiff will continuously take a non-steroidal for his headaches which would require that he takes PPIs daily to prevent epigastric pain and gastritis. Prof. Bizos was adamant that the consumption of alcohol would not exacerbate the problem. He reiterated that the plaintiff would have to take PPI on a daily basis. The court finds that Prof. Bizos was an excellent witness who answered all the questions truthfully. His evidence was consistently the same that the plaintiff would need to take PPIs on a daily basis for the rest of his life.

- [12] The defendant did not lead any evidence to counter Prof. Bizos' evidence. The court accepts the evidence of Prof. Bizos that the plaintiff will have to use PPIs daily and that the figure set out by Dr. Koch should be accepted as he has already taken inflation into account.
- [13] Counsel for the plaintiff then called witnesses to prove loss of income and earning capacity. Mr. Venter, regional manager of Protea Coin Security, and

Ms. Myburgh, who was a branch manager when the incident occurred, both had known the plaintiff for some time when he had been shot. Both testified that prior to 31 March 2007 the plaintiff was an exceptional employee who had been fast-tracked to Rustenburg Branch Manager after he had only been at the company for a year or less. He was given the responsibility to open a branch at Rustenburg. They were both almost certain that the plaintiff would have been promoted to general manager in 2007, when Protea and Coin merged; this in spite of the fact that he may have had more competition for the position after the merger.

[14] Both witnesses were of the opinion that the plaintiff had never been the same since the shooting. He has to be medically boarded as a result of the consequences of the shooting and it is foreseen that he will be medically boarded in March 2013.

[15] The evidence was that there was three levels of branch managers and that the plaintiff would have been promoted to level 2 as his promotion would have been an appointment from within the entity. Mrs. Myburgh's evidence under cross-examination was that she was 99.9 % sure that the plaintiff would have been promoted in the organization to the post of general manager.

[16] Mr. Linde, the industrial psychologist, confirmed the findings of the psychiatrists which was set out in the joint minutes. Both Dr. Shevel and Dr. du Plessis noted that the plaintiff's depression disappeared when he left the police service. Mr. Linde's evidence was that the plaintiff's salary was market-

related. The actuarial reports were correct and admitted as such. The assumption that the plaintiff would only have been promoted to general manager on 1 April 2012 is very conservative, as both Mr. Venter and Ms. Myburgh testified that he would have been promoted during 2007.

[17] Dr. Koch accepts the assumption that the salary the plaintiff would have earned, but for the incident, the salary he will be earning until boarded and the 75 % disability benefit will increase in line with inflation. Ms. Myburgh testified that salary increases are usually between 6 – 8 % per annum, which is more than the inflation rate that Dr. Koch took into consideration.

[18] In ***Southern Insurance Association v Bailey NO 1984 (1) SA 98 (AD)*** the two approaches that can be used to ascertain future loss of earnings are discussed on p113 where Nicholas JA found:

*“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.*

*It has open to it two possible approaches.*

*One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of*

*guesswork, a blind plunge into the unknown.*

*The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative."*

[19] Counsel for the plaintiff referred the court to numerous decisions to emphasize that contingencies differ due to different circumstances. Courts must apply the contingencies in a manner that they see fit after considering the particular circumstances of a case and there is no rule of thumb.

[20] Nicholas JA further held in ***Southern Insurance Association v Bailey NO (supra)*** at p116-117 –

*"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is 'tied down by inexorable actuarial calculations'. He has 'a large discretion to award what he considers right' (per HOLMES JA in **Legal Assurance Co Ltd v Botes 1963 (1) SA 608 (A)** at 614F). One of the elements in exercising that discretion is the making of a discount for 'contingencies' or the 'vicissitudes of life'. These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due*

*to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See **Van der Plaats v South African Mutual Fire and General Insurance Co Ltd 1980 (3) SA 105 (A)** at 114-5. **The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.**"*  
(Court's emphasis)

[21] Counsel for the respondent agreed that a 5 % contingency deduction should be applied for accrued loss and that the figure should then be R86 885.00. Mr. Mullins, for the plaintiff, argued that future uninjured income should be subject to a low contingency reduction, as the calculation was on the premise that the plaintiff would only have been promoted to the level of general manager in 2012, whereas the evidence clearly showed that he would have attained that position in 2007. The calculations only dealt with increases which would be commensurate with inflation, whilst the uncontested evidence was that Protea Coin salary increases are generally above inflation.

[22] The court is aware that these facts can only assist the court to come to a contingency deduction which the court will regard as fair if all the facts are carefully considered and balanced. In this instance a 10 % contingency deduction would be reasonable considering all the facts. It is also clear that

the plaintiff is employed in a business which involves more risk than normal employment as the security industry may be dangerous in some instances. Therefore the court is of the opinion that 15 % deduction for contingencies would be fair and would take the risk of injury into consideration. The uncontested evidence was that salary increases may be higher than pension increases.

[23] The total loss for earning capacity and income, accrued and prospective, will then be R4 128 506.00.

[24] The amount awarded to the plaintiff will thus be:

1.	Past hospital, medical and related expenses	R207 376,25
2.	Past loss in respect of absence from employment	R14 926,94
3.	Future hospital, medical and related expenditure	R1 160 361,00
4.	Loss of income and earning capacity	R4 128 506,00
5.	General damages	<u>R700 000,00</u>
	<b>Subtotal</b>	<b>R6 211 170,19</b>
6.	<u>Less</u> compensation paid by Compensation	

Commissioner in terms of COIDA

R1 525 999,00

**TOTAL AMOUNT OF DAMAGES TO BE AWARDED**

**TO MR. VISAGIE**

**R4 685 171,00**

[25] I must agree with counsel for the plaintiff that there existed no reason for the defendant to oppose Professor Bizos' evidence and he had to be called by the plaintiff. The defendant had nothing to counter his evidence or to persuade the court not to accept his evidence. The court accepts his evidence that the plaintiff will have to use PPIs daily for the rest of his life. The full amount as an expert witness should be paid in regards to Professor Bizos as the plaintiff should not be out of pocket due to the defendant's decision not to admit his evidence, knowing that the defendant cannot oppose it.

[26] There was agreement between the parties that a trust should be set up to assist the plaintiff to manage the award although it was also agreed that the defendant should not be burdened with these costs.

[27] It is hereby ordered as follows:

1. The Defendant is ordered to pay the capital amount of R4 685 171,00 (FOUR MILLION SIX HUNDRED AND EIGHTY FIVE THOUSAND ONE HUNDRED AND SEVENTY ONE RAND) to the Plaintiff's Attorneys of Record.

2. In the event that the aforementioned capital amount is not paid within 21 (twenty one) days of the date of this order, same will bear interest at the rate of 15,5 % per annum calculated from and including the day after the date of this order to and including the date of payment thereof.
3. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs, including the following costs:
  - 3.1 The costs of two Counsel;
  - 3.2 The costs of the obtaining by the Plaintiff of the reports of the following experts:
    - 3.2.1 Dr du Plessis;
    - 3.2.2 Dr Gous;
    - 3.2.3 Dr Ormond-Brown;
    - 3.2.4 Dr Shevel;
    - 3.2.5 Ms du Plooy;
    - 3.2.6 Ms Martin;
    - 3.2.7 Dr Viljoen;
    - 3.2.8 Professor Bizos;
    - 3.2.9 Ms de Villiers (assisted by Ms Coetzee);
    - 3.2.10 Ms Grové;
    - 3.2.11 Mr Linde; and
    - 3.2.12 Dr Koch;

- 3.3 The reasonable preparation/qualifying and reservation fees (if any) of the experts referred to in paragraph 3.2 above, including the costs of consultations (if any) with the legal team (it being stipulated that in respect of Professor Bizos the allowance of R1 500,00 contained in Rule 70(3) for his fee for attending court on 29 October 2012 will not apply, and the Plaintiff will be entitled to recover in respect thereof the fee charged by Professor Bizos in this regard, subject to the views of the Taxing Master as to reasonableness); and
- 3.4 The costs attendant upon the obtaining of payment of the amount referred to in this order.
4. The nett proceeds of the payments referred to above, after deduction of attorney and own client costs and an amount of R400 000,00 which nett proceeds will be referred to hereinafter as "the capital amount") shall be payable by the Plaintiff's Attorneys to a Trust, to be created within 12 (twelve) months of the date of this Order, which Trust will:
- 4.1 Be created on the basis of the provisions as more fully set out in the draft Trust Deed attached hereto marked "A".
- 4.2 Have, as its main objective, the controlling and administering of the capital amount on behalf of the Plaintiff.

4.3 Have, as its Trustee, JACOBUS FREDERIK DE BEER, with powers and abilities as set out in the draft Trust Deed attached hereto marked "A".

5. Should the aforementioned Trust not be created within the aforementioned period of 12 (twelve) months, the Plaintiff is directed to approach this Court within 1 (one) month thereafter in order to obtain further directives in respect of the manner in which the capital amount is to be utilised in favour of the Plaintiff.

6. Until such time as the Trustee is able to take control of the capital sum and to deal with same in terms of the Trust Deed, the Plaintiff's Attorneys of Record:


6.1 Are authorised to invest the capital amount in an interest-bearing account with a registered banking institution in terms of Section 78(2A) of the Attorneys' Act, 53 of 1979, to the benefit of the Plaintiff, pending the finalisation of the Trust.

6.2 Shall be prohibited from dealing with the capital in any other manner unless specifically authorised thereto by the Court subject to paragraph 6.3 hereunder.

6.3 Are authorised and ordered to make any reasonable payments

to satisfy any of the Plaintiff's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.

7. The appointment of the Trustee is subject thereto that the Trustee furnish security to the satisfaction of the Master of the High Court.



C PRETORIUS  
JUDGE OF THE HIGH COURT

CASE NUMBER: 38758/2008

DATE OF HEARING: 29 October 2012 to 30 October 2012

ON BEHALF OF THE PLAINTIFF: ADV. J.F.MULLINS SC

ADV. B. BOOT

INSTRUCTED BY: Weavind & Weavind

ON BEHALF OF THE DEFENDANT: ADV. F.F. DOCRAT

INSTRUCTED BY: Jacobson & Levy Inc

DATE OF JUDGMENT: 16 November 2012

" A "

## DEED OF TRUST

### THE PARTIES, THE DEED OF TRUST, AND THE DONATION:

1.

This Deed of Trust is entered into in pursuance of a Court Order of the High Court of South Africa (North Gauteng High Court Pretoria) in Case No: 38758/2008 in the matter between SIAS MARE VISAGIE and ADT SECURITY (PTY) LIMITED.

2.

The Deed of Trust is entered into between:

- 2.1 On the one hand, NICK VIVIERS, in his capacity as Attorney for the Plaintiff, MR SIAS MARE VISAGIE ("Mr Visagie") (and who will be referred to hereinafter as "the Donor"), and
- 2.2 On the other hand, JACOBUS FREDERICK DE BEER, in his capacity as Trustee appointed in terms of this Deed of Trust (and who will be referred to hereinafter as "the Trustee").

3.

The Donor donates to the Trustee the sum of R100,00, which amount is to be held by the Trustee in trust and to be administered by the Trustee in terms of the conditions and terms of this Deed of Trust.

**NAME OF THE TRUST:**

4.

The name of the Trust will be **THE SIAS VISAGIE TRUST**.

**THE TRUSTEE:**

5.

5.1 The first Trustee of the Trust will be the person described in clause 2.2 above as the Trustee. The office of Trustee will be held by such person for an indefinite period until resignation or incapacity or the termination of the Trust.

5.2 In the event of the Trustee's appointment terminating for any reason, the Trustee will be succeeded by such person as might be nominated by the Master of the High Court, subject to the provisions of this Trust Deed.

- 5.3 The Trustee is required to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust, and for the due compliance of all of the Trustee's obligations towards the Trust.

**THE BENEFICIARY OF THE TRUST:**

6.

- 6.1 The beneficiary of the Trust will be Mr Visagie.
- 6.2 Mr Visagie will be the beneficiary of the Trust with regard both to the capital and to the income derived therefrom.
- 6.3 As outlined below, the capital and income of the Trust shall be used for the benefit of Mr Visagie, in such manner as the Trustee should deem appropriate, having regard to the interests of Mr Visagie and his family.
- 6.4 Should Mr Visagie pass away, the Trust's assets will be transferred to his heirs as set out in his Will and Testament.

Should he not leave any Will and Testament, the Trust shall be transferred to the intestate heir or heirs of Mr Visagie in accordance with the law of intestate succession as it then would apply.

**THE OBJECTIVES OF THE TRUST:**

7.

The objectives of this Deed of Trust are the following:

- 7.1 To administer the capital amount (as defined in paragraph 4 of the order), which represents damages payable to Mr Visagie by ADT SECURITY (PTY) LIMITED arising out of injuries sustained by him, in such a way that, as far as reasonably possible, the capital amount received by the Trust achieves its purpose of compensating him in respect of the damage suffered by him arising out of the injuries.
- 7.2 Subject to 7.1 above, to maintain and support Mr Visagie, being a person who suffers from disability as described in Section 1 of Act 17 of 2002 as a result of the shooting injury suffered by him in the incident which formed the basis of his action against ADT Security (Pty) Limited.
- 7.3 In accordance with the foregoing, to see to it that the hospital, medical and related needs of Mr Visagie, particularly those arising out of the injuries sustained by him in the incident in question, are met.
- 7.4 To do anything that the Trustee in the Trustee's discretion deems necessary for the general well-being of Mr Visagie. It is recorded that the Trustee will be entitled to incur such reasonable costs as the

Trustee deems necessary in this regard in the Trustee's absolute discretion.

- 7.5 To invest the assets of the Trust and to act therewith in such a manner so as to attempt to increase same and if possible to cause capital growth in order for the funds paid over to the Trust to be administered for as long as possible to the benefit of Mr Visagie, keeping in mind the aims outlined in paragraphs 7.1 and 7.2 above.

**THE ASSETS OF THE TRUST:**

8.

The assets of the Trust will include the following:

- 8.1 The donation described in paragraph 3 above.
- 8.2 The capital amount paid to the Trust by Mr Visagie's Attorneys of Record, as outlined in paragraph 4 of the Court Order referred to in paragraph 1 above.
- 8.3 All donations and inheritances donated or bequeathed to the Trust.
- 8.4 All assets that the Trust may purchase with its own funds, or borrowed funds that may be acquired by any other juristic act.

8.5 All assets that may be allocated to the Trust in terms of an Order of Court.

**INCOME FROM THE TRUST:**

9.

The income of the Trust will be all income earned by means of the Trust's assets.

**POWERS OF THE TRUSTEE:**

10.

10.1 To enable the Trustee to comply with all obligations in terms of the Deed of Trust, the Trustee will be entitled:-

10.1.1 To perform any act in general, whatsoever, that is according to the Trustee's opinion, beneficial for the preservation and growth of the assets of the Trust, or in the interest of the Beneficiary. The powers entrusted to the Trustee according to the paragraphs hereinafter do not limit the generality of this sub-paragraph;

10.1.2 To use any part of the assets or income of the Trust for payment of any costs reasonably incurred by the Trustee in relation to the Trustee's duties and obligations as Trustee;

- 10.1.3 (a) To invest the assets or income of the Trust or any part thereof, in such a manner as the Trustee may deem proper in the Trustee's discretion.
- (b) Without detracting from the generality of the aforementioned clause, the Trustee will be entitled to invest in shares in public companies, building societies, loans with security, investments in state and municipal shares, investments in fixed property or any such assets as the Trustee may deem beneficial to the Trust and its beneficiary, which will also include moveable assets of whatsoever nature if deemed reasonably to the benefit of the beneficiary. Such movable assets may be used or consumed by the Trustee if, in the Trustee's discretion, it is deemed to be reasonably in the interest of the beneficiary.
- (c) The Trustee will furthermore be entitled to call up any investments, to make any investments solvent, to convert, amend, realise and to re-invest such investments in any manner reasonably deemed appropriate;

10.1.4 If the Trustee practices a profession and in such capacity performs any other act or service on behalf of the Trust in such capacity, the Trustee will be remunerated for the Trustee's professional services rendered without limiting or reducing the

Trustee's right to remuneration as stipulated hereinafter;

10.1.5 To institute legal and arbitration proceedings and to oppose same in any competent court with regard to any matter forthcoming from the Trust and to pay the costs incurred in relation thereto from the assets or income of the Trust;

10.1.6 To purchase, sell, let, hire or to hire-purchase any assets;

10.1.7 To reasonably acquire or renounce, in any manner whatsoever, rights on behalf of the Trust where such actions are in the best interest of the Trust;

10.1.8 To acquire money through a loan or expend money by way of a loan on any conditions and against proper security being furnished where money is expended by way of a loan;

10.1.9 To encumber any assets of the Trust by way of a bond, pledge, hypothec or session as security;

10.1.10 To perform all acts on behalf of the Trust which may be necessary to effect transfer of any assets of the Trust;

10.1.11 To grant extensions for the complying with any duty towards the Trust, to reach compromises and oppose claims against the Trust, to recognise, and settle same and to handle any claims in favour of the Trust in the same manner;

10.1.12 To employ people to perform any act and to remunerate them from the assets or income of the Trust. The possibility that the Trustee would have been able to perform such act personally does not detract from the aforementioned entitlement;

10.1.13 To utilise the assets and income of the Trust in such a manner as the Trustee may deem proper for the conservation, maintenance or replacement of any assets of the Trust and to demolish any buildings if deemed appropriate by the Trustee to erect new buildings on the fixed property of the Trust;

10.1.14 (a) To exercise such voting right as the Trustee might deem appropriate, with regard to any shares which belong to the Trust and are held in any company or society.

(b) The exercise of the Trustee's discretion and authority hereunder is not reduced where the Trustee directly or indirectly has an interest in such company or society, neither will such Trustee due to the confidential relationship with the Trust be obliged to give account of any benefit, which accrues to the Trustee due to such interest either directly or indirectly, nor is any act, agreement or deed of the Trustee void or voidable on the ground that the Trustee received such benefit.

(c) The object of this clause is to avoid that the

consequences of voidability or voidness due to the confidential office of the Trustee will supervene and insofar as it may affect agreements and relationships with companies and societies in which the Trustee has a personal interest;

10.1.15 To lend money to any person or legal entity on such conditions as the Trustee in the Trustee's absolute discretion may stipulate on the condition that proper security is provided by the lender;

10.1.16 To enter into insurance contracts and to pay the premiums from the assets of the Trust;

10.1.17 To pay the debts of the Trust;

10.1.18 To accept or refuse donations and inheritances to the Trust;

10.1.19 To open a bank account and to borrow money from a bank on the overdraft facility or otherwise;

10.2 10.2.1 Notwithstanding any contrary stipulation in this Deed, the Trustee will not be entitled to dispose of any assets or income of the Trust for the Trustee's own benefit or the benefit of the Trustee's estate.

10.2.2 Without detracting from the generality of the aforementioned the Trustee will specifically not be entitled or authorised to

appropriate or to dispose of any of the assets or income of the Trust as the Trustee's own, as the Trustee deems fit, if by doing so this will benefit the Trustee or the Trustee's estate directly or indirectly.

10.2.3 The Trustee will furthermore not be authorised to use or consume any of the assets of the Trust directly or indirectly, for the Trustee's own benefit unless so authorised by the Master of the High Court of South Africa;

10.3 10.3.1 If the Trust shows drastic growth and if the administration thereof requires it, the Trustee will be entitled to employ a person or persons, full time or part time, to assist with the administration of the Trust and in this respect the Trustee will be entitled to pay a reasonable salary or remuneration, which the Trustee in the Trustee's discretion deems appropriate, to such a person or persons.

10.3.2 Control and care over the Trusts assets will however always be the responsibility of the Trustee including fixed property or a bond with regards to any place in the Republic of South Africa. In this regard the only limitation is that investments may only be made within the borders of the Republic of South Africa.

**BOOKKEEPING:**

11.

11.1 The Trustee must keep a complete set of accounting records with regard to the affairs of the Trust;

11.2 The Trustee will ensure that the accounting records of the Trust are audited by a chartered accountant and that such accountant will have free access to the books, documentation and assets of the Trust.

**APPLICATION OF INCOME:**

12.

The Trustee will use the income of the Trust to pay the administration costs for the administration of the Trust and to realise the objectives of the Trust.

**DUTIES OF THE TRUSTEE:**

13.

The Trustee will have the following duties:

13.1 To as far as possible endeavour to realise the objectives of the Trust;

13.2 To open a current account with a registered commercial bank of the

Trustee's choice, which account will be used for the receipt of all cash which is paid to the Trust;

- 13.3 To invest and reinvest the funds of the Trust in such a manner as the Trustee may deem fit in shares, securities or any assets of whatsoever nature including fixed property or on bond in any place in the Republic of South Africa and in this respect the only limitation is that investments may only be made within the borders of the Republic of South Africa;
- 13.4 To amend, regroup or reinvest the investments in such a manner and on such conditions and for such objectives as the Trustee in the Trustee's sole discretion may deem appropriate;
- 13.5 To see to it that proper minutes of all decisions made by the Trustee, are kept in a safe place;
- 13.6 To see to it that the financial statements of the Trust for each year are kept in safe custody for the period of the existence of the Trust;
- 13.7 To see to it that all contracts are fulfilled;
- 13.8 To make all payments that may be payable on the income of the Trust;
- 13.9 If the Trustee deems it necessary to effect any amendments to the Trust Deed, the Trustee will be entitled to make the said amendments on condition that such amendments are approved by the Donor during the Donor's lifetime. After the death of the Donor, the Donor will be

entitled to make such amendments as the Donor may deem appropriate on condition that such amendments will not amend the objective of the Trust;

13.10 To see to it that the set of books that he must open and keep will immediately become operational and at the same time appoint a firm of auditors for the Trust as soon as the Master of the High Court has registered this Deed;

13.11 To see to it that the firm of auditors that is appointed for the Trust will at all times have free access to the books and accounts and vouchers of the Trust and the Trustee further undertakes to obtain such information as the auditors may require and to make same available to the firm of auditors and if explanations are required, to provide same.

#### APPOINTMENT OF THE TRUSTEES:

#### 14.

The following people will be incompetent to act as Trustee of this Trust:

14.1 Any person who is incompetent to act as a director of a company in terms of the stipulations of the relevant Company Laws of the Republic of South Africa;

14.2 Any person who is an unrehabilitated insolvent;

- 14.3 Any person who has previously been removed as a Trustee from a trust due to his/her misadministration of the said Trust;
- 14.4 Any person who has previously been found guilty, in the Republic of South Africa or elsewhere, of theft, fraud, forgery, perjury, corruption or any misconduct or offence where dishonesty was an element of and resulted in that person being found guilty;
- 14.5 Any person who has been declared mentally ill or incapable of managing his/her own affairs.

**TERMINATION OF THE TRUST:**

15.

The Trust will be terminated with the death of Mr Visagie, or when the Master of the High Court of South Africa orders it so, whichever event may happen first.

**DISSOLUTION OF THE TRUST:**

16.

On termination of the Trust, the Trust will be liquidated and the capital will be allocated according to the stipulations of clause 6.4 above or as otherwise ordered, after all the administrative costs and debts as well as claims against the Trust have been paid.

**EXEMPTIONS:**

## 17.

With regard to the aforementioned the following exemptions will be applicable:

- 17.1 No Trustee will be incapable due to his/her office as Trustee of this Trust, to enter into a contract with the Trust or any company in which the Trust has an interest. Furthermore any contract entered into between the Trust and such company will not be void due to the Trustee's interest in the company. The only requirement with regard hereto, is that the Trustee must before any negotiations are entered into, disclose his/her interest in the contract or entity, to the Master of the High Court of South Africa before such negotiations take place;
- 17.2 Any Trustee, who is a member of or a partner in a firm of professional practitioners, may be employed by the Trust or render services for the Trust and in such instance the Trustee will be entitled to a fee in his/her professional capacity;
- 17.3 No Trustee will be requested to make good any damages that the Trust may have suffered, regardless of how such damage was caused, with the exception of such damage that was caused by the dishonesty of a Trustee or as a result of his/her negligence;
- 17.4 No Trustee will be liable for any dishonesty or wrongful act committed

by any of the other Trustees unless such a Trustee had knowledge thereof and allowed such dishonest acts or acted as an accessory, or could have prevented such act but negligently failed to do so;

17.5 The Trustee shall be indemnified out of the assets of the Trust with regards to any claims that may be instituted against her/him personally and which result from the reasonable acts of the Trustee and the exercise of any of his/her competencies which he/she is entitled to exercise in terms of this Deed;

#### **REMUNERATION:**

18.

If the Trustee is a professional person, he/she will be entitled to his/her reasonable professional fees for any professional work done for the Trust. Such fees will include any fees that are reasonably payable to his/her partners and he/she will further be entitled to make use of the services of other similar professional people as also auditors, medical doctors, attorneys and advocates. With regard to services rendered by the Trustee for the general administration of the Trust and arrangements which he/she will make with regard to the care of Mr Visagie the Trustee will be entitled to a yearly fee as stipulated in the relevant legislation of the Republic of South Africa.

**MARRIAGE:**

19.

All the benefits that Mr Visagie is entitled to in terms of this Deed of Trust are for all purposes excluded from any community of property or any community of profit and loss. The accrual system in terms of the Matrimonial Property Act. 88 of 1984, is not applicable to any benefit hereunder. It may not be seized for the debts or liabilities of any spouse of Mr Visagie and may not form part of any insolvent estate of such a spouse or vest in the curator of such insolvent estate.

**ACCEPTANCE:**

20.

The Trustee hereby accepts the donation made according to this Deed subject to the conditions of this Deed and further undertakes to realise the objectives of this Trust Deed.

SIGNED at PRETORIA on this the 30th day of OCTOBER 2012.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

DONOR

SIGNED at PRETORIA on this the 30<sup>th</sup> day of OCTOBER 2012.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

TRUSTEE