THE REPUBLIC OF SOUTH AFRICA

IN THE GAUTENG HIGH COURT: PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE:

(2) OF INTEREST TO OTHERS JUDGES:

✓ (3) REVISED-

DATED: 30 November 2016

SIGNATURE:

30/11/2016

86454/16

Case number: ~~868454/16~~

ADV NEL N.O obo WEZI BEVERLY JUMBA	**Applicant**
AND	
MACBETH ATTORNEYS INCORPORATED	**First Respondent**
MANDLA MACBETH NCONGWANE	**Second Respondent**
BONGANI MANTSANE	**Third Respondent**
SIBONGILE MUWAMBA CHIMIMBA	**Fourth Respondent**
FRIDAY JUMBA	**Fifth Respondent**

LAW SOCIETY OF THE NORTHERN PROVINCE **Sixth Respondent**

Heard: 17 to 18 November 2016

Order made: 21 November 2016

Reasons: 30 November 2016

Reasons for Judgment

Molahlehi AJ

Introduction

[1] This judgment provides reasons for the order which was made on the 21 November 2016. The order was made following the urgent interim interdict launched by the applicant. The matter was heard over a period of a day and a half. The essence of the order, which was made thereafter, is that the first respondent is required to pay into the trust account of Weavind and Weavind Attorneys (the applicant's attorneys), moneys received from the Road Accident Fund (RAF) on behalf of Ms Wezi Beverley Jumbe (the patient). The first respondent was further ordered to deliver to the applicant's attorneys certain documents relating to the estate of the patient.

[2] The first part of the order, being Part A, is an interim order pending the launch of further proceedings against the first and second respondents (the respondents) by the applicant, which has to be made within ninety (90) days of the date of the order. The

relief sought for the proceedings that are to follow hereafter, is set out in Part B of the notice of motion.

[3] In Part B of the notice of motion the applicant seeks an order directing the sixth respondent, the Law Society of the Northern Province, to conduct an inspection of the books of accounts of the first respondent relating to the management of the settlement amount paid on behalf of the patient into the trust account of the first respondent.

[4] The order was also varied to effect certain typographical errors at paragraph 5 thereof.

[5] The respondents opposed the application and applied for condonation for the late filing of their answering affidavit. Erroneously the order does not deal with the condonation for the late filing of the answering affidavit by the first and second respondents. Having regard to the context in which this application is made and the reasons proffered by respondents, I am of the view that it would be in the interest of justice to grant condonation. The late filing of the first and second respondents' answering affidavit is accordingly condoned.

[6] The other application that needs consideration, in this matter is the counter- application filed by the respondents.

[7] In opposing the application, the respondents raised certain points *in limine* which were dismissed with costs. The reasons for that are also set out in this judgment.

[8] It was agreed at the beginning of the hearing that the points *in limine* would be heard first and thereafter the counter-application. It follows from this approach that the court

would deal with the main application only if the points *in limine* and or the counter-application were unsuccessful. As it appears later in this judgment both the points *in limine* and the counter-application were unsuccessful and accordingly the court proceeded to deal with the main application.

[9] It seems to me that it is apposite to deal with the background facts, before dealing with the points *in limine* raised by the respondents, for the purposes of providing the broader and objective understanding of what the issues are in this matter. Those facts are important, for in addition to placing the matter into its context, they also serve to highlight the reason for the conclusion arrived at the end of the hearing. I do not intend dealing with each and every fact relating to the background facts of this matter but the focus is on those which I regard as relevant and important for the determination of the issues raised.

Background facts

[10] It is common cause that the patient instructed the first respondent, to assist her in launching her claim against the Road Accident Fund (RAF) arising from the injuries she suffered as a result of the motor vehicle collision, she was involved in The first respondent is a firm of attorneys registered with the Law Society of the Northern Provinces. The patient suffered severe injuries including a severe head injury as a result of the collision.

[11] The doctor who attended the patient recommended that a *curator ad litem* be appointed to assist her in lodging a claim against the RAF. The doctor's made the recommendation is based on the finding that the patient was not capable of managing her own affairs.

[12] The third respondent, Mr Bongani Mantsane, was on 13 April 2011 appointed as *curator ad litem* for the patients in terms of Rule 57(1) of the Uniform Rules of the Court (the Rules). The order provides as follows:

1. " Appointing Bongani Matsana as curator *ad litem of* Wezi Beverlyy Jumbe born on the 28th of February 1980 ("herein referred to as the patient") for the purpose of proceeding with the action for damages instituted under case number 08/50304 arising out of injuries sustained by the patient in a motor accident which occurred on the 4th of November 2008.
2. THAT granting Bongani Matsane all such powers and or authority as is necessary to proceed with the action and pursue such proceedings to their final end and conclusion and granting the power and or authority to him to negotiate a settlement of such claim on behalf of the patient which settlement shall be subject to the approval of this Court

including the power to ratify all steps take to date hereto in pursuit of such action.

3. THAT APPOINT Bongani Matsane as curator *ad item* with powers and for the purposes Contemplated in Rule 57.
4. THAT the remainder prayers be and is hereby postponed *sine die*."

[13] It is common cause that following the above order the parties concluded a settlement agreement which was subsequently made the order of the court on 24 May 2013. In terms of the order the RAF undertook to pay the patient the amount of R5 432 784, 00 in settlement of the damages claim. The amount was to be paid into the trust account of the first respondent.

[14] The order further required the RAF and the first respondent to do the following:

i. Furnish the trustees who were to be appointed with an undertaking in terms of s 17 (4) (a) of the Road Accident Fund Act 56 of 1996, concerning future medical expenses,

ii. the undertaking in terms of s 17 (4) (a) of the Act was to be administered by the trustees,

iii. Pay the patient's taxed or party and party costs,

iv. the first respondent was to pay the capital remaining after all the relevant cost had been paid into the Trust which was supposed to have been created within 12 months of the date of the order,

v. the Trust Deed was to be signed within 30 days from the date of the order.

[15] The importance of the establishment of the Trust is underscored by clause 6 of the order which provides as follows:

> "6. Should the aforementioned Trust not be created with in the aforementioned period 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 Wezi."

[16] The first trustees of the Trust were supposed to have been:

i. Mr Macbeth Ncongwane , the second respondent

ii. Sibongile Muwemba Chimimba, a citizen of Malawi, apparently resident in England.

Friday Jumba, apparently based in Malawi.

[17] The events after the order of 24 May 2013 was made, are briefly as follows:

a. the second respondent informed the patient that the money was in the Trust and that he was appointed as her "guardian."

b. the patient was furnished with a bank card from which she could draw the monthly allowance of R15 000,00.

c. the bank debit card issued to the patient was in the name of the second respondent.

d. at some point, the patient lost the debit card but was thereafter issued with a substitute card by the second respondent.

[18] It would appear that the patient became suspicious after receipt of the substitute bank debit card from the second respondent. The suspicion was raised by the fact that the account details were not the same as those of the lost card. It was following this discovery that she requested a statement of account detailing how the capital amount was invested and dealt with by the first respondent. After this discovery, the patient addressed several emails to the respondents expressing her dissatisfaction with the manner in which the capital amount was being managed. She, for instance, addressed the email on 26 August 2014 to the office manager of the first respondent wherein she requested four months' bank statement.

[19] The patient pursued the issue of the management of the capital amount in another correspondence dated 11 June 2015, addressed to the respondents. This was followed by a telephone conversation between the patient and the office manager of the first respondent who during that conversation informed her that the second respondent had approached the court to have the estate handed over to her. The reason for this, the

patient, was informed, was because the second respondent believed that she (the patient) was in a position to run her own affairs.

[20] The idea to have the estate handed over to the patient was confirmed further in an email from the first respondent dated 6 April 2016, wherein she was informed that preparations were underway for a variation of the order made on 24 May 2013, the purpose of which was to ensure that the patient took charge of her own affairs.

[21] On 12 June 2015 the second respondent in response to the queries raised by the patient addressed the letter to her which reads as follows:

> "Dear Wezi
>
> The Courts are reluctant to keep you inside the country. DOH wants you to apply outside the country. We got the Court ordered that you must not be deported as per Judge Prinsloo but emphasis was made by Judge Nuiwenhuizen that you must apply for medical visa outside the Republic if your visa has expired. Mima told you that and you insisted that you want tickets for August. This also distresses me because you don't wanna follow the law and my instructions. Last year you said you wanted money to pay for you Granny's flight ticket to come and resolve your status in the country it did not happened (sic).
>
> I'm unable to claim from the fund all the money is used for medical and stay in SA because there is no Trust established by Bongi, Uncle and I, as a result

your funds will deplete very fast because nothing is claimed at RAF hence I have instructed counsel to amend the order that you can plan your affairs including to correct your status in the Country on your own. . .

The Range Rover I bought for you is at Land Rover Nelspruit and it is a subject of litigation due to the fact that it was not fixed and eventually was stripped by the previous owners of the dealership (Autotech) now Supergroup the new owners they don't wanna take responsibility.

I'm your guardian by law, the Judge said you are here because of me but if you don't wanna do as I advise I have no choice but to report your defiance to authorities. So I need you to cooperate with me."

[22] During August 2016 the patient was invited to attend a meeting at Dyson Attorneys where she was presented with a draft founding affidavit supporting an application for the variation of the court order made on 24 May 2013. The draft affidavit suggests that the patient was declared incapable of managing her personal affairs because of a miscommunication and misunderstanding by some trustees. At the same time the affidavit states that there had been significant improvement in the physical and mental state of the patient; since the order of 24 May 2013. It is for this reason that the doctor had apparently, now belief, that she is capable of managing her affairs. The affidavit further states the following:

"5.1

5.7 5.8 "As a result of the above-mentioned I submit the order granted on 24 May 2013 was granted as a result of a mistake, common to both parties, in that it was believed I would not be able to look after my own affairs. The report referred to in 5.6.1 above states that I can manage my own.

5.9 The attorney who presently administers the funds allocated to me, Macbeth Ncongwane supports this application and I attach hereto his confirmatory affidavit . . ."

[23] On 30 September 2016, Mr Cloete of the applicant's attorneys of record, send the email to the first respondent informing it that they had received instructions from the patient and that they would be writing to them regarding the concerns they have regarding her matter.

[24] On 3 October 2016, the first respondent addressed an email to Mr Cloete enclosing therein the draft application for the variation of the order of 24 May 2013 and indicating that the delay in moving the application was due to the patient not signing the same. The email further requested Mr Cloete to persuade the patient to sign the affidavit.

[25] On 24 October 2016, the first respondent addressed the letter to Mr Cloete, the essence of which was to inform him that the patient was owing rental at the property where she was staying at Willow Crest. The letter demanded payment of the arrears immediately otherwise she would be evicted. It later transpired that the property in

question is owned by AA-TAK-THINK Trading 102 CC. The sole member of that close corporation is the second respondent.

[26] In another letter dated 31 October 2016 the applicant's attorneys summarised the issues which the first respondent was supposed to have attended to in terms of the court order of 24 May 2013. The most important aspect of that letter for the purposes of this judgment is found at paragraph 10 which reads as follows:

> "In addition to the aforegoing, and insofar as you might be labouring under any misconception, our client hereby formally terminates your mandate. In this regard we specifically wish to point out that your contentions raised in various correspondence that our client has been declared a "*Patient*" and that you have been appointed as her "*Guardian*" in terms of the Court Order is not only totally misplaced, but untenable in law. We specifically invite you before the deadline furnished herein to draw out attention to the paragraph in the Court Order in terms of which our client was declared a "Patient" or incapable of managing her own affairs."

Preliminary points

[27] The respondents in opposing the applicant's application have raised the issue of *locus standi* of both Mr Cloete and the applicant in the present curator ad litem. . They also contended that the approach adopted by the applicant in instituting these proceeding constitutes "a fatal irregularity".

i.

[28] The *locus standi* point is based on the following contention:

i. The complaints against the respondents were not submitted to the Law Society prior to it being brought before the court.

ii. At the time of instituting the proceedings, to have Adv Nel appointed as the *curator ad litem,* Mr Cloete did not have a proper mandate from the patient to institute such proceedings.

iii. The order of the 24 May 2013, amongst other things, directed that the patient's money from the RAF should be paid into the trust account of the first respondent as attorneys of record of the patient.

[29] Counsel for the respondents contended in his submission that the patient was incapable of giving instructions to Mr Cloete to institute the proceedings to appointed Adv Nel as a *curator ad litem* in terms of Rule 57 (1) of the Uniform Rules of the Court (the Rules). The patient was, according to Counsel, incapable of giving instructions to Mr Cloete, because she had been declared, "unable to act in her best interest in financial and legal matters." It was further contended that the patient knew the second respondent much better than she did with Mr Cloete and thus had an intimate relationship with the second respondent.

[30] In relation to the applicant, the respondents contended that he could not claim to have personal knowledge of the affairs of the patient because the first time he became involved with the patient was on 4 November 2016, when he was appointed *curator ad*

litem. His testimony as contained in the founding affidavit was hearsay and further that no application was made to have that evidence admitted as such.

Evaluation and analysis

[31] Whilst it may be correct that the applicant came into the picture in as far this matter is concerned after the order of 4 November 2016, the facts set out in his affidavit are largely based on documents the contents of which have not been disputed and the respondents on their own version had knowledge thereof. The failure to comply, for instance, with the provisions of the court order set out in applicant's affidavit are not in dispute. Firstly, the Trust was, on the version of the respondents, never established. Secondly the purchase of the Land Rover and the repairs effected to it from the funds of the patient has not been disputed. In any case, I see the evidence provided by applicant having been directed at establishing the fundamental issues which the respondents had to deal with in their answering affidavit.

[32] In my view the *locus standi* points raised by the respondents have no merit and stands to be dismissed for the reasons set out hereafter. Mr Cloete in instituting the proceedings in terms of rule 57 (1) of the Rules, for Adv Nel to be appointed as a *curator ad litem*, did so on the basis of the instructions received from the patient. The contention

that the patient did not have the capacity to instruct Mr Cloete is unsustainable when regard is had to the totality of the facts and the circumstances of this matter.

[33] It is common cause in this respect that the order appointing applicant as *curator ad litem* has not been set aside and the attempt to do so in terms of the counter-application has, as will appear later in this judgment been, unsuccessful. As the matter stands currently, there can be no dispute that applicant, as *curator ad litem* is the most qualified person to protect the interest of the patient. This is even more so when regard is had to the failure by the first respondent to comply with the court order of 24 May 2013. In this context the mandate which was given to the third respondent, as by the court order has to be noted. His main role was to assist the patient in litigating against the RAF. It is common cause that the issue of litigating against the RAf came to the end when the settlement agreement was concluded and more importantly when that settlement agreement was made the order of the court.

[34] As concerning the issue of the capacity of the patient to instruct Mr Cloete, on her behalf, it is common cause or at least it cannot be disputed that the patient was never declared insane but was rather declared to be incapacitated from dealing with her financial and legal affairs. In fact on the version of the respondents, but for her delay in signing the supporting affidavit to vary the order of 24 May 2016, she would have at that stage been permitted to take full responsibility for her own affairs. The application to vary the order to that effect was drafted by the second respondent who also drafted his own

supporting affidavit for the application to vary the order. The view that the patient had the capacity to approach and instruct another attorney of her own choice, in circumstances where *prima facie* evidence pointed to mismanagement of her fund by the respondents, is even stronger when regard is had to the exchange of correspondence between her and them.

[35] The contention that Mr Cloete could not take instructions from the patient because there was "no intimacy" between them bears no merit as it has no basis in public policy consideration or legal principle.

[36] The other point, which does not appear on the papers, raised by the respondents' Counsel is that Mr Cloete had no right to "investigate another attorney." The approach adopted by Mr Cloete, according to the respondents' Counsel, is unconstitutional and amounted to discrimination. Counsel did not, however, provide any authority for this proposition. The basis of the alleged discrimination was not substantiated neither was it made out in the respondents' papers.

[37] The contention that the applicant should have approached the Law Society before instituting these proceedings is also unsustainable. It is unsustainable because there is no law or policy considering that dictates that the Law Society must first be approached before instituting proceedings in court against an attorney who is mismanaging the financial affairs of a client.

<u>The counter-application</u>

[38] Although the counter-application is silent as to which rule is relied on in instituting the proceedings, it is apparent from the reading of the affidavit that it is rule 42 of the Rules. The respondents are, in this regard, seeking to have the order made on 4 November 2016 rescinded. The application is essentially based on the contention that the approach adopted by the applicant is subversive of the order made on 24 May 2013.

[39] It is important to note that the respondents' counter-application was initially not supported by a notice of motion. In response to the question put to him about this issue by the court, Counsel for the respondents contended that it was not necessary to do so as this was a counter-application. He, in this respect, relied on Erasmus Superior Court Practice and referred specifically to page D1-81. The notice of motion was, however, submitted on the second day of the hearing.

> (a) Counter – applications are governed by Rule 6 (7) of the Rules. Rule 6 (7) reads as follows Any party to an application proceedings may bring a counter application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event rule 10 shall apply *mutatis mutandis*.

[40] The above authority relied on by the respondents' Counsel do not support his proposition that counter-application are dependent on the main application and thus the

applicable general rules regarding applications would not apply. In fact, the very first comment made by the learned author in dealing with the provisions of rule 6 (7) (a) states that; "Counter-applications are subject to the general principles applicable to applications."[1] It, accordingly, follows that a counter-application has to comply with the provisions of rule 6 (1) of the Rules, in that it must be brought on notice and supported by an affidavit setting out the facts relied upon.[2] Put in another way, a counter-claim is not deferent to any other application in that it has to comply with the requirements of the rule as an application.

[41] The counter-application was brought on an urgent basis and thus rule 6 (12) of the Rules is applicable. Rules 6 (12) provides as follows:

> "(12) *(a)* In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet.

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[1] See also Livanos v Oates 2013 (5) SA 165, where the court in dealing with the issue of disputes of fact in a counter-application held that the respondent would be subject to the general rule regarding resolution of disputes of facts.

[2] Rule 6(1) of the Rules reads as follows: "Save where proceedings by way of a petition are prescribed by law, every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief."

(b) In every affidavit or petition filed in support of any application under paragraph *(a)* of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

The respondents do not seem to take issue with the fact that they in their counter-application were required to comply with the requirements of Rule 6 (12) of the Rules.

[42] The respondents deal with the issue of urgency in their counter application under the heading "COUNTER-APPLICATION AND URGENCY" and that is from paragraph 63 to 68 of the application. It is clear from the reading of these paragraphs that the issue urgency is neither dealt with explicitly nor can it be inferred therefrom. The same applies to the irregular notice of the counter-application which was submitted on the second day of the hearing. It is silent in as far as urgency is concerned. There is no prayer in the belated notice of motion or the founding affidavit requesting condonation for the non-compliance with the rules relating to time frames for service and filing the application. There is also no prayer to have the matter treated as one of urgency.

[43] It is for the above reasons that all the points *in limine* raised by the respondents were dismissed with costs. The counter-application was struck of the roll for lack of urgency.

<u>The main application</u>

[44] The main application in the present matter is instituted by the applicant, as the *curator ad litem* of the patient. The relief sought is quasi-vindicatory in nature. In Stern and Ruskin N.O v Appleson,[3] the court in dealing with the vindicatory relief had the following to say:

> "... applicants cannot obtain an interdict unless they prove in addition to a prima facie case an actual or well-grounded apprehension of irreparable loss if no interdict is granted. In the case of vindicatory or quasi-vindicatory claims, this is presumed until the contrary is shown. In the case of all other claims, it must be established by the applicant for the interdict as an objective fact. It is not sufficient to say that the applicant himself bona fide fears such loss."

[45] In Pieterse v Broderick and Others,[4] the court held that:

> "[15] Generally, the quasi-vindicatory claim is in respect of some object, however, in certain limited and circumscribed circumstances money too can be interdicted. This is so if the money to be interdicted is identifiable with or is earmarked as a particular fund to which the plaintiff claims to be entitled."

[46] In Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd and Others,[5] the court held that:

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[3] 1951 (3) SA 800 (W) at 803.
[4] (CA96/2013) [2014] ZAECGHC 8 (27 February 2014).

'[16] Money has also been interdicted in cases of misappropriation of funds where the money has indeed been mixed with other monies and moved from one account to another. In such circumstances where an interdict is sought to preserve the money held in a given account pending a trial."

[47] There can be no doubt in the present matter, and it has not been disputed that the money in question is identifiable and earmarked for the patient.

[48] Turning to the approach to adopt when considering an interim interdict pending further litigation, it was stated in Erickson Motors v Protea Motors Warrenton and Another, that:[6]

"The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court's approach in the matter of an interim interdict was lucidly laid down by INNES, J.A., in *Setlogelo v Setlogelo*, 1914 AD 221 at p. 227. In general, the requisites are -

(a) a right which, 'though *prima facie* established, is open to some doubt';

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[5] 2003 (3) SA 268 (WLD) at 278C-D).

[6] 1973 (3) SA 691 (A) 691 C-G.

(b) well-grounded apprehension of irreparable injury

(c) the absence of ordinary remedy.

[49] In exercising its discretion the Court weighs, *inter alia*, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience.

[50] The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities ..."

[51] In dealing with the onus of applicant concerning irreparable harm in urgent interdicts concerning vindicatory or quasi-vindicatory interdicts the court held that:

"[13] Where the interim interdict seeks to protect the property forming the subject matter of the main action in cases of a vindicatory or quasi-vindicatory claim irreparable harm is presumed and there is no onus on the applicant to make out a case in this regard. . ."

[52] The case of the applicant in the present matter is based on the complaints that the respondents failed to comply with the provisions of the court order and are in breach of

the obligations set out in that order. There are two main aspects relating to the non-compliance with the court order which the applicant relies on in support of the application and these are:

a. Failure to invest the patient's money in terms of the law and misappropriation of the patient's funds,

b. failure to establish the trust which was ordered by the court order.

[53] The other complaint relates to the contingency fee agreement which the applicant contends is void because it does not comply with the provisions s 3 of the Contingency Fees Act of 1997. Counsel for the respondents contended that the agreement is valid because it was subsequent to its conclusion ratified by the third respondent being the curator ad litem. It has to be noted that the third respondent also at some point questioned the validity of that agreement and suggested that a directive be obtained from the court regarding its validity.

[54] The aspect of the applicant's case that carried considerable weight and persuaded this court that the applicant had established a *prema facie* case for the relief sought, concerns the alleged misappropriation of the patient's funds and non-compliance with the provisions of the order made on 24 May 2013.

[55] In terms of the order of the 24 May 2013, the first respondent was required to invest the capital amount received on behalf of the patient from the RAF as provided for in terms of section 78 (2A) of the Attorneys Act. It would appear from the answering

affidavit that the capital amount was partially invested. This, however, is not what the court order required of the first respondent. The requirements of the court order of 24 May 2013 which the first respondent failed to comply with was that a Trust to manage the funds of the patient's fund was to be established, within 12 months of the date of the order. The order also made provision in the event the first respondent not being unable to establish the Trust within the said period to approach the court for a directive regarding the manner in which the capital amount of the patient could be utilized in favour of the patient.

[56] It is common cause that the Trust was never established. It is also not disputed that the court was never approached for a directive relating to the manner in which the capital amount of the patient could be dealt with. The explanation for the failure to establish the Trust is totally unsatisfactory. There is also no explanation as to why the court was not approached for a directive as to how the found could be dealt with following the failure to establish the Trust. This failure is exacerbated by the fact that respondents did nothing even after they were reminded of the issue by the RAF in the email date 1 May 2016.

[57] The greatest concern in this matter is what appears to be both maladministration and misappropriation of the funds of the patient by the respondents.

[58] It is common cause that before the court order of 24 May 2013, was made the second respondent purchased a Range Rover, using the patient's funds. He claims in

the answering affidavit that the motor vehicle was purchased on the request of the patient. The facts surrounding the purchase of the motor vehicle carried a significant weight in the consideration of whether or not the court should intervene. In this respect the following facts are relevant:

a. It is common cause that the patient does not have a driver's license.
b. The motor vehicle is registered in the name of the second respondent.
c. There is no evidence that the car is being used for the benefit of the patient.
d. The repairs to the motor vehicle, which is evidently been used by the second respondent, are paid from the patient's capital fund.

[59] There is also *prema facie* evidence that supports the need to investigate both issues of the validity of the contingency fee agreement and travelling expenses to Malawi by both the second and third respondents.

[60] It was for the above reasons that the following order was made:

PART A

1. The normal rules relating to form, procedure and service are dispensed with and this matter is treated as one of urgency in terms of Rule 6 (12) (b) of the Uniform Rules of the Court.
2. All the points in limine raised by the first and second respondents are dismissed with costs.

3. The counter claim of the first and second respondents against Adv Nel, Mr Cloete, and the law firm Weavind & Weavind is struck of the roll for lack of urgency with costs to be paid by the first and second respondents on the scale as between attorney and client, the one paying the other to be absolved, including the costs of two counsels.
4. The first respondent is ordered to, within two(2) days of service of this order, pay to the Weavind & Weavind Attorneys into their trust account, any or all the funds held on behalf of Ms Wezi Beverley Jumbe, which were received by the first respondent in terms of the court order dated 24 May 2013 under case number 50304/2008, together with interest earned thereon to be dealt with by Weavind & Weavind in accordance with the aforesaid court order of 24 May 2013.
5. The first respondent is ordered to within five(5) days of service of this order deliver to the applicant's attorneys of record, Weavind & Weavind the following documents:
    i. The copy of the first respondent's journal/ledger evidencing all payments received on behalf of Ms Wezi Beverly Jumbe by the first respondent from the Road Accident Fund under case number 50304/2008 and in terms of the court order dated 24 May 2013.

ii. A detailed statement of account duly supported by vouchers in terms of all expenditures incurred on behalf of the applicant, Ms Wezi Beverly Jumbe, and which were expended in terms of and in the process of giving effect to the terms of the court order made on 24 May 2013.

iii. A detailed statement of account supported by vouchers in respect of all fees and disbursements incurred by the first respondent on behalf of the applicant, Ms Wezi Beverly Jumbe, in respect of services rendered by the first respondent to the applicant under case number 50304/2008 made on 24 May 2013.

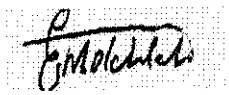
iv. The second respondent is ordered to give effect to prayers 4 including 5; above

v. Prayers 2 including 3 shall operate as an interim interdict with immediate effect pending the institution of action and or proceedings to be instituted by the applicant against the first and second respondents and such process or processes shall be instituted within 90 days from the date of this order, failing which this order shall lapse and the applicant shall be ordered to pay the cost of the application.

6. The costs of this application (Part A) shall be paid by the first and second respondents on scale as between attorney and client jointly and severally the one paying the other to be absolved and shall include two counsels.
7. The applicant is granted leave upon receipt of the documents referred to in paragraph 3 above to approach this court on the same papers duly supplemented for the relief prayed for in Part B.
8. There is no order as to costs made against the third respondent.

PART B

9. The sixth respondent is ordered to conduct an inspection of the books of account including the trust accounts of the first respondent with reference to all the files received by the first respondent in terms of the court order dated 24 May 2013 under case number 50304/2013 to compile a report serve it on all the parties in this application within 30 calendar days from the date of this order.
10. The sixth respondent is ordered to investigate the conduct of the second and third respondents and thereafter to compile a report and serve it on all the parties in this application, within thirty (30) calendar days from the date of this order.



E M Molahlehi
Acting Judge of the Gauteng High

Court: Pretoria.

Appearances:

For the Plaintiff: Adv

Instructed by : Weavind & Weavind Attorneys

For the Defendant:

Instructed by: Macbeth Attorneys INC