



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 18079/2020**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

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IN THE MATTER BETWEEN:

**KOKETSO TSEBE**

**Applicant**

AND

**ABSA TRUST LIMITED**

**First Respondent**

**THE MASTER OF THE HIGH COURT, PRETORIA**

**Second Respondent**

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**JUDGMENT**

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**FABRICIUS J**

- [1] The applicant herein, a major male, seeks an order terminating a trust that was established after he succeeded with a claim for damages against the Road Accident Fund. He was the sole beneficiary of such Trust.
- [2] Respondent was appointed as the sole Trustee. It obviously acts through an employee, who need not be joined in these proceedings, contrary to Respondent's contention.
- [3] According to cl.5.1 of the Trust Deed applicant will have immediate vested rights in the trust fund.
- [4] It is difficult to discern on which basis Respondent opposed this application. There is no or insufficient evidence that Applicant cannot deal with the trust monies on the basis of mental incapacity. In Respondents' heads of argument it is stated that respondent will abide by the decision of the court.
- [5] There is no need to deal with collateral issues such as whether or not the Respondent diligently dealt with applicant's monies to his satisfaction or not.
- [6] It is not its concern how applicant now wishes to deal with his monies. According to the provisions of s13 of the Trust Property Control Act 57 of 1988 a court has a discretion to terminate a Trust if certain circumstances arise or are present. I am satisfied that Applicant also has the constitutional rights that he refers to in par 4 of his Replying Affidavit.
- [7] The following order is therefore made:
- 7.1 The Trust is terminated with immediate effect;
- 7.2 The Trust monies are to be paid into the Trust account of Applicant's Attorney for his benefit and disposal.

7.3 Each party shall pay its own costs.

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**H FABRICIUS**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

**DATE OF HEARING: NO ORAL HEARING**

**DATE OF JUDGMENT: 4 AUGUST 2020**

**FOR THE APPLICANT: K NMAILA**

**INSTRUCTED BY: NMAILA ATTORNEYS INC**

**FOR THE RESPONDENT: ADV C.B ELLIS**

**INSTRUCTED BY: GILDENHUYS MALATJI INC**