REPORTABLE

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 14435/2009

DATE:07/12/2011

In the matter between:

MODAN BILKES OBO N Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

MALULEKE, J:

[1] The Plaintiff, BILKES MODAN, adult female, brings this claim for personal injury damages against the ROAD ACCIDENT FUND (Defendant) in her personal capacity and in her capacity as a mother and natural guardian of her minor daughter N M (N) born on the 27 September 1998 who sustained bodily injuries in a motor

vehicle collision which occurred on the 25 April 2003 at 18h45 at the intersection of Main Reef Road and Park Drive in City Deep, Johannesburg.

[2] Both the issues of liability and quantum are in dispute and are therefore both to be determined in this trial.

COMMON CAUSE FACTS ON LIABILITY

[3] The following are the material facts which are undisputed and are therefore common cause:

[3.1] The minor child was a rear seat passenger in a Volkswagen Golf bearing Registration Number : BTZ 715 EC ("Golf"), and the Plaintiff was a front seat passenger in this vehicle which was being driven by Mr H KHAN ("Khan");

[3.2] The Golf was travelling from North to South on Park Drive and collided with a Minibus taxi with Registration Number: WHM 404 GP ("Minibus") driven by Mr S KUBHEKA ("Kubheka") which was travelling from West to East along Main Reef Road. The first impact involved the Golf and the Minibus. A Toyota Corolla bearing Registration Number: CNK 693 GP ("Toyota") driven by Mr T H GODONGWANE ("Godongwane") travelling from East to West on Main Reef Road, was involved in the second impact of the same collision. The collision therefore involved a first and second impact.

[3.3] The collision occurred in the traffic lights controlled intersection of Main Reef Road and Park Drive. The tarmac surfaced roads were dry, the intersection was reasonably well lit with street lights, and all three vehicles had their lights on and the sun had already set and it was getting dark. Main Reef Road has two lanes of travel in both directions. Park Drive also has tow lanes of travel in either direction although the inside lane was marked for right turn vehicles only.

[3.4] The second impact which involved the Toyota did not play any role in the primary collision between the Golf and the Minibus. The point of impact of the primary collision is in the North - Eastern portion of the intersection and the second impact is in the South - Eastern portion of the intersection.

THE DISPUTE ON THE ISSUE OF LIABILITY

[4] The Plaintiff contends that the traffic lights had turned green for the Golf when they moved from a stationery position into the intersection and the Minibus came from their right side against a red robot and collided into the Golf on its right front side. Defendant, on the other hand contends that the Minibus entered the intersection with the traffic lights green when the Golf entered the intersection from the left side against the red traffic lights and collided into the minibus.

[5] It is contended on behalf of the Plaintiff that as a result of the first impact the Golf veered and collided with the Toyota, and the Defendant contends that it is the Minibus which veered and collided with the Toyota. Nothing material really turns on this dispute.

[6] It is trite that in order to succeed, the Plaintiff has to prove on a balance of probabilities that the Minibus driver was negligent and that such negligence caused the collision and the consequent injuries. The test for negligence has been succinctly stated as follows in *Kruger v Coetzee 1966 (2) SA 428 at 430 E – G:*

"*For the purposes of liability culpa arises if-*

(a) *a deligens paterfamilias in the position of the defendant-*

(i) would foresee the reasonable possibility of his conduct

injury another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) The Defendant failed to take such steps".

In other words the Plaintiff has to establish on a balance of probabilities that Kubheka failed to take reasonable steps to prevent the collision when he could and should have done so. However, as the minor child was a passenger, her claim will suceed in full if the proverbial 1% contributory negligence is established against Kubheka.

[7] The versions of the parties are opposed and irreconcilable and the dispute has therefore to be determined by making findings on the credibility as well as reliability of the various factual witnesses together with the probabilities. The principle is pertinently stated as follows in *SFW Groups Ltd & Another v Markel et Cie & Others* 2003 (1) SA II (SCA) at 14 I-J.

"*The technique generally employed by the Courts in resolving factual disputes of this nature may conveniently be summarised as follows:*
To come to a conclusion on the disputed issues a Court must make findings on;

(a) the credibility of the various factual witnesses;
(b) their reliability; and
(c) *the probabilities".*

THE EVIDENCE

[8] Khan and the Plaintiff testified for the Plaintiff. Kubheka and Godongwane testified for the Defendant. Briefly Khan and the Plaintiff testified that when they reached the intersection the traffic lights were red for them and they then stopped the Golf at the stop line. They noticed the Toyota travelling slowly from East to West on Main Reef Road come to a stand still on the stop line on the East – Southern side of the intersection, and at that moment the robot turned green for them and Khan moved the Golf into the intersection they suddenly noticed the Minibus approach from West to East and crash into the right front side of the Golf, inside the intersection, causing the Golf to spin once or twice and crash onto the Toyota. The first impact was very hard which gave Khan the impression that the Minibus was travelling fast through the intersection. The first impact was near the point at which the Golf entered the intersection and the second impact was at the point where the Toyota had stopped. As a result of the first impact the minor child was flung from the rear seat and hit the windscreen with her head and face thereby breaking her nose and injuring her head. The Plaintiff and Khan also sustained bodily injuries which were more serious and necessitated prolonged hospitalisation in the case of the Plaintiff. Khan testifies further that after the collision Kubheka came to the Golf and apologised for causing the accident and he was smelling strongly of alcohol and appeared to have been intoxicated. Immediately Khan accused Kubheka of having caused the collision because he was intoxicated, and when the police arrived he pointed out to them that Kubheka was under the influence of alcohol.

[9] The version of Kubheka and Godogwane is that the traffic lights were green for traffic on Main Reef Road and red for traffic on Park Drive, they both drove into the intersection, Kubheka first, and the Golf came speeding into the intersection

against the red traffic light, crashed into the Minibus, causing it to veer to its right and collide with the Toyota which was on the point of entering the intersection. Kubheka testifies that he was prevented by the Plaintiff from speaking to Khan, but he noticed that Khan who was coming out of the Golf was staggering like someone under the influence of alcohol. Kubheka further testifies that he then went to speak to Godongwane about the accident and the damages to their vehicles. Godongwane was then standing outside the Toyota and by the time that the Police arrived Khan had disappeared from the scene.

[10] All the four witnesses were cross examined extensively and their credibility and reliability was intensively tested. In argument it is strongly contended on behalf of the Defendant that Godogwane is an independent witness in regard to the primary collision and his evidence should be regarded as reliable because, it is contended, he was not involved in the primary collision, he did not know both Khan and Kubheka and did not speak to neither of them on the accident scene.

[11] **ANALYSIS OF THE EVIDENCE**

(11.1) Did the Golf move from a stationary position?

Khan and Plaintiff are adamant that they stopped at the red robot and drove into the intersection fro m a stationary position where the robot turned green for them and did not see the minibus until it was upon them. Kubheka supported by Gondongwane is adamant that the Golf come speeding into the intersection and he only saw it when it was upon him. These factual disputes require to be resolved in the light of the principle in the *SFW Group (Supra)* case. From the analysis of the evidence of the four factual witnesses as set out bellow, I come to the conclusion that the evidence of Khan and plaintiff is the more credible and reliable and is not inconsistent with the probabilities.

(11.2) Which vehicle collided with the Toyota?

Both the Plaintiff and Khan are adamant that the Golf was involved in the second impact with the Toyota and that they did not see when the Minibus came to a standstill after the collision. Kubheka and Godongwane are adamant that only the Minibus collided into the Toyota. The version that it is the minibus that collided with this Toyota is the more probable. It seems the Plaintiff and Khan are *bona fid*e mistaken on this point, particularly since their vehicle spun around as a result of the minibus. There is clearly no reason for them to lie about this since nothing really turns on the issue in point.

(11.3) Which of the drivers was probably intoxicated?

The evidence of Khan that Kubheka was visibly intoxicated when he came to him whilst he was getting out of the Golf and apologised to him for the accident was never challenged nor was the version of Kubheka that he is a teetotaller and that it was Khan who was visibly drunk put neither to Khan nor to the Plaintiff. Neither was Khan's evidence challenged that when the police came to the scene he pointed out to them, that Khubeka was intoxicated, in the presence of Khubeka. The inference is inescapable that this is a late fabrication on the part of Kubheka.

(11.4) Did Kubheka speak to Godongwane at the scene?

(a) The Plaintiff and Khan agree with Kubheka that after speaking to Khan, Kubheka immediately went to speak to Godongwane. Godongwane denies that he spoke to Kubheka. The crucial question then is why does Godongwane deny this? could it be he does not want to testify on the state of intoxication of Kubheka? or could it be he is protecting a liaison between the two of them?

(b) Whatever the reason, this is a material contradiction in the evidence of Kubheka and Godongwane which puts into question whether he is truly an independent witness.

(11.5) Kubheka is clearly untruthful that he was accosted by the Plaintiff who already was outside the Golf and had no visible injuries, and that the Plaintiff prevented him from speaking to Khan or getting near Khan. The objective facts are that the Plaintiff was so seriously injured that she had to be taken out of the Golf into the ambulance and remained in hospital for a long time. Godongwane heard Khan and Kubheka arguing loudly as to who of them had gone through a red robot; Kubheka denies that he spoke to Khan. Kubheka's further evidence that he did not notice that any of the occupants of the Golf were injured is belied by the objective facts. Khubeka's evidence is improbable and falls to be rejected as false. Plaintiff and the child were clearly seriously injured and were removed from the accident scene by ambulance in the presence of Khubeka. Further Khubeka is untruthful that Khan left the scene before the ambulance and the police came. It is further strange that when the two drivers were arguing about the cause of the accident, Godongwane who was involved in the same accident stood apart indifferently.

(11.6) Kubheka's testimony that he could not have seen the Golf earlier because it was partly obscured by a large tree near the intersection is also more like a recent fabrication and is unconvincing. Further, this version was never put to the Plaintiff nor to Khan. This evidence of the existence of the tree, which obscured his vision, did not arise until Kubheka testified. Godongwane also says nothing about a large tree which could have obscured Kubheka's version, no one but Kubheka's speaks about this tree. At any event if his vision was so obscured, then there would have been greater reason for him to approach the intersection with even greater caution. On his own

evidence and also on the evidence of Godongwane Kubheka did not reduce speed as he approached and drove into the intersection.

(11.7) In my view the previous consistent statement of Godongwane falls to be disregarded. In *S v Scott Crossley, 2008 (1) SACR 223 (SCA) at Paragraph 17* the principle was restated that a prior consistent statement to the Police can have no probative value. See also *Holthausen v Roodt 1997 (4) SA 766 (W) at 774 A.* A previous consistent statement may not be used as corroboration of the witnesse's evidence, but may be used only to show that his story is not a recent fabrication, that is if his evidence is so challenged in cross examination.

[12] Khan concedes that when the traffic lights turned green for him he entered the intersection and does not recall looking to his right to see if there were vehicles coming, and that otherwise he would have seen the Minibus approach and enter the intersection in other words, he concedes he should looked to the right before he entered the intersection. This is a hallmark of a candid and truthful witness. Kubheka's version is that when he was about 100 meters away, he for the first time saw the traffic lights being green for him, he had not see when they turned green; he proceeded at the same speed, there was a large tree on his left so he could not see if there were approaching vehicles from his left, and because the traffic lights were green for him, he considered that he was entitled to go right through the intersection at the same speed "in absolute confidence", in spite of the fact that his view was impaired by the large tree. A reasonable driver in the position of Kubheka would in these circumstances have exercised greater caution and as he neared and entered the intersection he would have reduced speed and adjusted his driving to enable him to take appropriate avoiding action as he should have done.

[13] The following dicta from the case of *South British Insurance Company Ltd v Barrable 1952 (3) SA 239 (TPD) at 243 B* are apposite for collisions in robot controlled intersections;

> "…… *I regard it as dangerous for Courts of Law to tell drivers that there are certain circumstances in which they are under no duty to look in certain direct cons. A driver is always under a duty to take due care, according to the circumstances, and I should hesitate to lay down that there are any circumstances in which he is entitled to go right ahead, in absolute confidence, looking neither to the right nor to the left. I would even go further and say that no driver entering an intersection on the green light is entitled to ignore the possibility that there may be other traffic moving across his course which has not yet cleared the intersection."*

[14] The issue of the colour of traffic lights is an important factor, but it need not in the circumstances of this case be decisive. Kubheka saw the robot being green for him when he was 100 metres away. Khan agrees that the robot was red for him when he reached the intersection. There is no evidence of at what stage this state of robots changed, as it must have. Godongwane's testimony is that the robot was green for him as he approached the intersection. But the "independent witness" credibility is considerably weakened by his untruthfulness about his discussions with Kubheka. Khan and the Plaintiff are consistent and unwavering that they stopped for the red robot and moved into the intersection as soon as the robot turned green. No expert evidence was led as to the mathematical sequences of changes of the particular traffic lights. The issue of whether Kubheka was partly to blame for the collision, it seems to me, can be determined without having to rule on which robot

was green or red; and at what stage. Accordingly I do not rule on the issue of the changes of the robots.

[15] As to which of the two drivers was probably under the influence of alcohol or at least smelt strongly of alcohol, I consider that the probabilities are on the side of Khan. He raised the issue of Kubheka being intoxicated immediately first with Kubheka himself and also with the Police when they arrived. Kubheka, on his own evidence did not raise it with Godongwane and the police and not even with his Counsel. It comes across as a recent fabrication, otherwise Khan and Plaintiff would definitely have been challenged on the issue in cross examination.

[16] It is, in my view, evident that the conduct of both Kubheka and Khan deviated from the norm, of a reasonable man. Kubheka did not see the Golf earlier because he did not keep a proper lookout as a reasonable man should have done. His story about the large tree obscuring his vision is rejected as a late fabrication. Khan on his own admission did not look to his right as a reasonable man would have done before entering the intersection. They both did not keep a proper lookout at a very critical moment. The duties of a driver entering an intersection are to keep proper lookout. See *Netherlands Insurance CO of South Africa Ltd v Brummer 1978 (4) (AD)* at head note. Evidently the Golf and the minibus did not enter the intersection on the same split second. The evidence of the speed of either vehicle is at best contradictory and unsatisfactory to found a basis for reliable inferences. Khan and Plaintiff did not observe the minibus until it was upon them; Khubeka similarly did not observe the Golf until it was upon him. Godongwane did not see the Golf until the collision. Khubeka did not reduce speed until the collision. It is not necessary for this

case to determine the degree in which the two drivers were respectively at fault or contributed to the collision. Both drivers are substantially to blame for the collision.

[17] Accordingly I determine that the Defendant is liable for the full proven damages suffered by the Plaintiff in her aforesaid capacities.

QUANTUM OF DAMAGES

[18] The following medico-legal reports and joint minutes of medical and psychological experts have been handed into evidence by consent of the parties:

[18.1] Index of medico-legal reports by plaintiff's experts (Exhibit "C")

(i) Dr Ormond Brown – Neuropsychologist.
(ii) Dr G Marus – Neurosurgeon.
(iii) Ms Linda de Rooster – Educational Psychologist.
(iv) Mr Ben Moodie – Industrial Psychologist.

[18.2] Index of medico-legal reports by defendant's experts (Exhibit "D")

(i) Mr McGill Scott – Educational Psychologist.
(ii) Mr Brian Mallinson – Neuropsychologist.
(iii) Dr Yusuf Osman – Neurosurgeon.
(iv) Ms Anne Jamotte – Industrial Psychologist.

[18.3] Index of joint minutes of experts (Exhibit "E")

(i) Educational Psychologist – Ms De Rooster and Mr McGill Scott.
(ii) Neurosurgeons – Dr Marus and Dr Osman.
(iii) Industrial Psychologists – Mr B Moodie and Ms A Jamotte.

[19] In their joint minutes the neurosurgeons confirm that the minor child (N) who was 4½ years old at the time sustained the following injuries in the collision:

[19.1] A head injury involving a probable mild concussive brain injury;
[19.2] A fractured nasal bone; and
[19.3] A soft tissue injury to the forehead with scalp haematoma.

The neurosurgeons further minute the *sequelae* and after effects of the injuries as follows:

> "*Cognitive dysfunction – the brain injury as noted would usually not be expected to cause long-term cognitive dysfunction. The mother has some concern with the minor child being short-tempered and has intermittent dazed look: no definite evidence of post-traumatic epilepsy, no physical neurological deficits are evident; the child suffers from headaches as a result of the injuries.*"

[20] Dr Marus was called to testify on behalf of the plaintiff. He confirmed the contents of his medico-legal report wherein he expressed his opinion as follows: in paragraph 2 thereof:

> "*It is clear that she sustained trauma to the head. She reports a period of post-traumatic amnesia. One would thus conclude that she sustained a concussive brain injury in the accident in question on the above information.*"

The information available would tend to indicate a more significant concussion, and that normality was not restored within 24 hours. He further testified that in his opinion about 80% of children who sustained this magnitude and type of brain injury do not suffer long term neuropsychological fallout, but that about 20% of them do. This

could be caused by a lower threshold for the injury which could be due to a pre-existing or genetics problem. In the 20% of the cases the child may evidence learning dysfunction and a lack of coping skills and psychological problems.

[21] The educational psychologists are agreed in their joint minute that as a result of the brain injury the minor child has "*significant difficulties pertaining to attention and concentration*" and that she now only "*retains the ability to matriculate and obtain or complete a 1 to 2 year tertiary diploma course at a college, but in a less complex area of study than prior to the accident*" whereas prior to the collision she had the capacity to matriculate and obtain a three year tertiary diploma or possibly a degree.

[22] There is regrettably no joint minute between the neuropsychologists Dr Brown and Mr Mallinson both of whom were called to testify. The opinion of Dr Brown is in all material respects in agreement and consonant with the opinions of the neurosurgeons and the educational psychologists. Mr Mallinson on the other hand maintained that on the basis of the battery of neuropsychological tests that he performed it is his opinion that it is improbable that the mild concussive brain injury sustained by the minor child could result in the neuropsychological deficits presented; rather he ascribes these deficits he ascribes to a pre-existing language disorder which gave rise to mild concentration difficulties. I do not find that these opinions of Mr Mallinson are persuasive. It is the evidence of the plaintiff as mother of the child as well as the opinions of the rest of the medico-legal experts that since the collision the child has signs of neuropsychological fallouts, consisting in mild cognitive dysfunction, attention and concentration difficulties and behavioural and

emotional problems. Her most significant difficulties pertain to the mild concentration and attention disorder. On the undisputed evidence of the plaintiff the minor child had a normal birth and development history with no significant illnesses or injuries prior to the collision. The probabilities favour the view that the minor child is in the 20% category as defined by Dr Marus.

[23] The industrial psychologists are agreed that but for the accident the child could have matriculated and obtained a three year tertiary diploma or degree. In the opinion of Ms Jamotte post-accident the minor child will still matriculate, but may not be able to do additional studies. However, Mr Moodie contends, persuasively in my view, that "*the accident has an influence on her cognitive state and in terms of any potential, one can accept that she would not be able to reach the same income levels than anticipated in the but for scenario*". This opinion is consistent with the opinions of the neurosurgeons in particular Dr Marus and also the educational psychologists. Dr Brown states in his report and in his testimony that it is his overall impression that the minor child did suffer a significant concussive head injury and appears to have been left with permanent residual problems. On the basis of this medico-legal evidence and on his clinical examination of the minor child, the opinion of Mr Moodie is that post-morbid this minor child will still matriculate but will now only at best be able to obtain a one to two years tertiary diploma and Ms Jamotte agrees with this opinion. Accordingly the reduced earning capacity suffered by this child should be on the basis that but for the collision the child would have attained a three year tertiary education diploma which would have enabled her to enter the labour market on the Patterson level A3 and after obtaining the three year diploma she would have progressed to a B3 level and reach a ceiling at Patterson C3/C4 and she

would retire at age 65. Post-morbid she will at best obtain a one to two year tertiary diploma which will enable her to enter the labour market at a Patterson A3 level and progress at intervals of five to six years up to a ceiling of C1.

[24] I have been furnished an actuarial report by the consulting actuary Mr Johan Sauer who has calculated the claim for loss of earning capacity or reduced earning capacity on the basis stated in the preceding paragraph and also on the basis that the life expectancy of the child has not been affected by the injuries. Mr Sauer has applied contingency deductions of 10% on the *but for* scenario and 20% on the having regard scenario and I am in agreement with this approach. On this basis the actuary has calculated the claim for reduced earning capacity at R1 376 952,00 and I consider this amount to be eminently reasonable and fair in the circumstances.

[25] Mr Shepstone for the defendant contends that an amount of R150 000,00 should be awarded in respect of the heading for general damages for pain and suffering, loss of amenities, disablement, shock and discomfort. Plaintiff has claimed in her particulars of claim the sum of R450 000,00 under this heading. Plaintiff has referred me to a matter of *Makupula v The Road Accident Fund* (Eastern Cape High Court, Mthata, Case No. 16305/2007 which is reported in *Quantum of Damages* by Corbett and Honey Volume VI B4-48 where Nhlangulela J awarded an amount of R300 000,00 as general damages for a 5 year old boy who suffered a mild to moderate diffuse axonal concussive brain injury which resulted in neurocognitive deficits associated with attention deficit hyperactivity disorder, memory dysfunction and behavioural problems. I have also had regard to the matter of *Donough v The Road Accident Fund* (South Gauteng High Court, Case No.

8962/06) which is also reported in Volume VI of *Quantum of Damages*. In this matter Mbha J awarded R325 000,00 for a 30 year old plaintiff who sustained a head injury associated with a brain injury which rendered the plaintiff 10% permanent employment disability and orthopaedic injuries. The injuries and *sequelae* in the present case are similar to the *Makupula* (Supra) case. The collision in this matter occurred in 2003 which is over 8 years ago and the child to date still suffers from neurocognitive deficits associated with attention disorder, memory dysfunction, uncooperative and aggressive behaviour and headaches. The child still has to undergo psychological therapy and management of posttraumatic headiches. In addition the child also had a temporary facial palsy which required cortisone treatment before the condition gradually remitted. On a consideration of the extent of the injuries and their *sequaele* and taking into account the awards in recent comparable cases, I consider that a fair and just award under this heading should be R350 000,00. The total amount of the word is therefore:

Reduced Earning Capacity	-	R137 652,00
General Damages	-	R350 000,00
		R1 726 952,00

[26] I am informed that a section 17(4) undertaking will be tendered by the defendant in settlement of the claim for future medical costs. I will accordingly so order.

In the result I give judgment for the plaintiff in her personal capacity and also in her capacity as mother and natural guardian of her minor child N M as follows:

1. (a) Payment of the sum of R1 726 952,00;

   (b) Interest on the said amount of R1726952,00 at the rate of 15.5% per annum calculated 14 days of the date of this judgment to date of payment.

2. The defendant shall provide the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of N M in a hospital or nursing home or treatment or rendering of a service or supplying of goods to her arising out of the injuries sustained in the motor vehicle accident of 25 April 2003, after such costs have been incurred and upon proof thereof (undertaking).

3. In terms of the aforesaid undertaking the defendant shall pay:

   3.1 The reasonable costs of the creation of the Trust (as referred to below) and the appointment of the trustees. Such costs being limited to and determined by section 84(1)(b) of the Administration of Estates Act 66 of 1965 as amended according to the prescribed tariff;

   3.2 The reasonable costs of the furnishing of security by the trustee/s;

   3.3 The costs of the trustee/s in administering the capital amount as determined by Section 84(1)(b) of the Administration of Estates Act, 66 of 1965, as amended, according to the prescribed tariff applicable to curators, as reflected in Government Gazette Notice R1602 of 1 July 1991, specifically paragraphs 3(a) and 3(b) of the schedule thereto;

3.4 The cost of administering the undertaking.

4. The defendant shall pay the taxed or agreed cost of the action to 14 October 2011, including:

4.1 The reasonable preparation expenses and attendance fees (if any) of the plaintiff's experts, Mr D S Ormond-Brown, Dr G Marus, Ms L de Rooster, Mr B Moodie, Mr J Sauer;

4.2 The costs of suit which will include

4.3 The cost of the preparation of heads of argument;

4.4 Any cost attendant upon obtaining payment of the capital amount;

4.5 Any cost upon obtaining the undertaking and of obtaining payment thereunder;

5. If costs are not agreed, the plaintiff's attorney of record shall serve notice of taxation on the defendant's attorney of record and shall allow the defendant 7 court days to make payment.

6. The plaintiff shall take the requisite steps with a view to establish a trust *inter vivos* in accordance with the Trust Proeprty Control Act, 57 of 1988, *inter alia* to administer and/or manage the financial affairs of N M and such trust shall be formed within 4 months of the date of this order ("*the Trust*").

7. The Trust instrument shall provide for the following:

7.1 The separation of the property of the trustee/s from the trust property;

7.2 Ownership of the trust property vests in the trustee/s in their capacity as trustee/s;

7.3 The trustee/s shall provide security to the satisfaction of the Master in terms of section 6(2)(a) of the Trust Property Control Act, 57 of 1988;

7.4 Procedures to resolve any dispute shall be subject to the review of any decision made in accordance therewith by the above Honourable Court;

7.5 Amendment of the Trust instrument shall be subject to the leave of the above Honourable Court;

7.6 The trustee/s is authorised to recover the remuneration of and cost incurred by the trustee/s in administering the undertaking in accordance with the undertaking;

7.7 N M shall be the sole income and capital beneficiary;

7.8 The Trust property is excluded from any community of property in the event of the marriage of N M;

7.9 The Trust shall terminate on the 25th birthday of N M;

7.10 The Trust property and administration thereof is subject to annual reporting by an accountant.

8. The plaintiff's attorney of record shall invest the capital amount, less attorney and client fees and disbursements, in terms of section 78(2)(A) of the Attorneys Act, 53 of 1979, in an interest

bearing trust account ("*the s 78(2)(A) account*") for the benefit of N M, the interest thereon accruing for the benefit of N M, which investment shall be utilised as may be directed by the trustee/s of the Trust, when created.

9. The plaintiff's attorney of record shall render an attorney and client statement of account to the trustee/s in terms of the fee contract entered into with the plaintiff.

10. The cost shall be paid into the trust account of the plaintiff's attorney of record for the benefit of N M. After deduction of the legal cost consultant's fee for drawing the bill and attending to its settlement and/or taxation, the balance shall be paid into the Trust unless same has not yet been created, in which event such balance shall be invested in the s 78(2)(A) account for the benefit of N M, the interest thereon accruing for the benefit of N M, which investment shall be utilised as may be directed by the trustee/s of the Trust, when created.

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G S S MALULEKE
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

Counsel for the Plaintiff : **Advocate Singh**
Instructed by : **Win Krynauw Attorneys**
Tel : (011) 333 7782

Counsel for the Defendant: **Advocate Sheptone**
Instructed by : **Eversheds Attorneys**
Tel : (011) 286 6900