REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2009/27002

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

2012-02-27
DATE

SIGNATURE

In the matter between:

McPHERSON, CAROL Plaintiff

and

DR G TEUWEN First Defendant

NETCARE GAUTENG FOUR LTD t/a OLIVEDALE CLINIC Second Defendant

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J U D G M E N T

KGOMO, J:

INTRODUCTION

[1] The parties herein approached this Court to resolve a dispute whether the matter should proceed on trial today (7 February 2012) or whether the matter should be postponed.

[2] The plaintiff submitted that the matter was ripe for trial and that it should thus proceed as a full-blown trial. On the other hand, the second defendant submitted that the matter is not ripe for trial and should be postponed with a punitive costs order *de bonis propriis* against the plaintiff's attorneys of record.

[3] When counsel approached me in chambers to introduce themselves after the matter was allocated to me, I, after listening to the summaries of the gists of their cases, afforded them another opportunity to go sit with their attorneys and clients and attempt to arrive at a better intelligible agreement on issues to be listened to by a court of law.

[4] After about 45 minutes they returned to my chambers and enunciated that they have partly solved their impasse and requested that we go into court where they will outline the way in which they recommend this matter should be taken forward.

[5] In court the parties confirmed that the liabilities of the first and second defendants have been resolved, and that the only issue remaining for determination by this Court was the issue of quantum. This issue of quantum was to be postponed *sine die*, and the defendants would immediately make an interim payment to the plaintiff for purposes of taking care of the disabled minor child who is the subject of this claim of medical malpractice in the amount of R500 000,00.

[6] In spite of all the above as allegedly agreed, counsel for the plaintiff still insisted on arguing their point that the matter was ready for trial and should indeed proceed on trial immediately.

[7] Counsel for the second defendant submitted that he would argue for the matter to be postponed as it is not ripe for trial. He re-iterated that in the circumstances created by the plaintiff, he would ask that the postponement be accompanied by an order of costs *de bonis proporiis* against the plaintiff's attorney for intransigence and malicious proceedings that are a waste of the court's time and the cause of unnecessary expenses for the defendants.

BRIEF HISTORY AND OVERVIEW

[8] The plaintiff, Carol McPherson, at the time of the institution of these proceedings, an adult female administrative office manager resident at 40 Du Toit Street, Timsrand, Gauteng, instituted proceedings against the two defendants for medical malpractice. The total claim was the amount of R2 404 678,36 under various heads of damages to be paid by the first defendant to the plaintiff, alternatively, by the second defendant, further alternatively, by both the first and second defendants jointly and severally.

[9] The first defendant, Dr G Teuwen, is a neurosurgeon practising at 203 Olive Med, Olivedale Clinic. The second defendant, Netcare Gauteng Four Ltd is a limited liability company duly incorporated in terms of the company laws of

South Africa, trading as Olivedale Clinic, a medical facility operating from 76 Maude Street, cnr West Street, Randburg, Johannesburg ("*Olivedale Clinic*").

[10] The plaintiff's particulars of claim aver that on or about 28 June 2008, at Olivedale Clinic Randburg, the plaintiff and the first defendant entered into an oral, alternatively a tacit agreement in terms of which the first defendant undertook, for remuneration, to provide medical services, care, advice and supervision to the plaintiff. It was a tacit or implied term of this agreement, hereinafter called "*the first agreement*", that the first defendant would at all material times furnish the requisite medical services, care, advice and supervision to the plaintiff with due professional skill, care and diligence as can be reasonably expected from a qualified neurosurgeon. It was within the contemplation and knowledge of the parties in concluding the first agreement that in the event of the first defendant being in breach of the agreement, the plaintiff would suffer damages and the agreement was entered into upon the basis of such knowledge, alternatively, that the first defendant, by accepting the plaintiff as his patient, was under a duty of care to administer medical services, advice, care and supervision to the plaintiff with the professional skill, care, and diligence as can be reasonably expected from a specialist neurosurgeon.

[11] The particulars of claim proceed to aver that on or about the 28 June 2006 the plaintiff presented to the first defendant the symptoms of intermittent episodes of numbness, *paraesthesias* and subjective weakness involving predominantly the left side of the face, the tongue and the arm and to a lesser extent, the leg.

[12] MIR studies or scan showed a slightly prominent right middle cerebral artery on the T2 weighted image and the presence of a small aneurysm was queried. This was followed by an MRI angiogram of the intra cerebral vessels showing the presence of an aneurysm in the first portion of the middle cerebral artery. This was confirmed on a four vessel cerebral angiogram with an aneurysm being noted at the origin of the middle and anterior cerebral arteries.

[13] The first defendant advised the plaintiff to undergo surgery.

[14] It is the plaintiff's further averment that on 6 July 2006, the plaintiff, acting personally, and the second defendant, represented by an unknown person or representative, and at the premises of the second defendant in Randburg, entered into an oral, alternatively, tacit agreement in terms of which the second defendant undertook, for remuneration, to provide nursing services, care, advice and supervision to the plaintiff ("*the second agreement*"). It was a tacit or implied term of the second agreement that the second defendant would at all material times furnish the requisite nursing services, care, advice and supervision with due professional skill, care and diligence as can be reasonably expected of a hospital.

[15] It was within the contemplation and knowledge of the parties, including the first agreement, that in the event of the second defendant being in breach of the agreement, the plaintiff would suffer damages and the agreement was entered into upon the basis of such knowledge, alternatively, the second defendant by accepting the plaintiff as a patient, was under a duty of care to

administer nursing services, advice and supervision to the plaintiff with the professional skill, care and diligence as can be reasonably expected from a hospital.

[16] Pursuant to and in line with the terms and conditions of the first and second agreements, and on 6 July 2006, the first defendant performed a procedure on the plaintiff at or in the Olivedale Clinic, comprising of a right pterional approach for clipping of a Trifacation Aneurysm/Cranioplasty/ Duroplasti and the insertion of a lumber drain.

[17] The surgery encountered complications in the sense of the advent of a large middle cerebral artery stem infarct on the right side which resulted in a dense hemiplegia involving predominantly the face, the arm and to a lesser extent, the leg. It also resulted in a left homonymous heminopia, a left-sided hemi-neglect and a frontal akinetic mental state, a permanent condition. (The sum total of all the symptoms will be referred to hereinafter as "*the brain damage*".)

[18] According to the particulars of claim, the brain damage was caused as a result of the actions, alternatively, failure to act by the first defendant who was in breach of the agreement, alternatively, was negligent in one or more or all of the following respects:

18.1 the surgery was not indicated;

18.2 he made an incorrect diagnosis, alternatively, he operated without making a proper diagnosis;

18.3 he performed the surgery without properly informed consent;

18.4 he failed to properly investigate the transient neurological episodes;

18.5 he performed surgery at a time when there was a spasm of the middle cerebral artery which increases the risk of morbidity;

18.6 he performed the surgery without doing the necessary investigations; and /or

18.7 he did the surgery incorrectly.

[19] It is further alleged that the second defendant breached the second agreement, alternatively, was negligent in not treating the plaintiff's blood pressure correctly subsequent to the surgery; which contributed to the brain damage suffered by the plaintiff.

[20] As a consequence of the brain injury the plaintiff developed the following symptoms:

20.1 she tires easily;

20.2 she has left-sided hemiplegia;

20.3 her effect is blunted;

20.4 she has cognitive damage;

20.5 she has psychological damage; and

20.6 she has become unemployable;

which condition is permanent, its nature and extent uncertain at the present stage and which will only become clear once the plaintiff is subjected to neuro-psychological testing and assessment by experts.

[21] In addition, the particulars of claim allege that the plaintiff, who performed administrative work, made basic mistakes as a result of the operation and has lost her short-term memory.

APPOINTMENT OF A CURATOR

[22] The parties agreed that the plaintiff was incapable of appreciating or understanding the complexities and niceties accompanying litigation of this magnitude. As such they were both in agreement that a curator should be appointed to look after the plaintiff's needs, aspirations and/or requirements.

Adv Anderson of the Johannesburg Bar was recommended and he had consented to such appointment.

[23] I duly appointed Adv Anderson as the curator *(ad litem and bonis)* for the plaintiff.

PLAINTIFF'S AMENDMENT OF THE PARTICULARS OF CLAIM

[24] It has come to pass that the plaintiff has lodged an intention to amend the amounts claimed by adjusting them upwards. This amendment proposal was served and filed on 31 January 2012 – 4 court days before the actual date of trial. It would appear that this amendment may have been precipitated by what happened at a pre-trial conference that was held earlier that day.

[25] The defendants are vehemently opposing the amendment and the court is yet to rule on whether or not the amendment should be allowed.

RIPENESS OF MATTER FOR TRIAL

[26] The central issue that needs to be decided now is whether this matter is ripe for trial. The crucial period that should inform the decision is in my view, the period around 2-3 February 2012 when the defendant objected to the proposed amendment and contemporaneously launched a formal application for a postponement since it had become clear at that stage that the plaintiff was not agreeable to a postponement.

[27] The application to amend the plaintiff's particulars of claim is not preceded by an application for leave to amend. It presupposes, in my view, that there would still have to be a *lis* that should be deliberated on and decided before the trial proper can commence. This is further complicated by the defendant's argument that if the amendment is allowed, the pleadings would become so vague and embarrassing that they would not permit an informed assessment of damages.

[28] It is so that most of the amounts set out in the plaintiff's particulars of claim are estimates, for example paragraph 17.4 thereof, to mention a few. According to the plaintiff's counsel, this aspect was raised at the pre-trial conference for the plaintiff to deal with and as at the start of arguments herein, nothing had been done to correct the situation.

[29] Another difficulty accompanying an amendment to the quantum is that it might require a re-doing of actuarial reports as the underlying *bases* for the new amounts may have changed from the previous ones. The plaintiff's counsel denies this. However, it is my considered view and finding that it may be so that the basis or underlying rationale may not have changed but the defendants cannot be said to be unreasonable in the circumstances to question and object to this. There is a potential prejudice in that course of action and that danger should be eliminated by exchanging the requisite reports and/or correspondence dealing with same.

[30] Furthermore, the defendants complain that they have no information indicating to them who employs or employed the plaintiff, what her earnings were and whether or not she is still employed.

[31] It is so that a litigant may not be occasioned to assume the contents of Rule 36 Notices dealing with expert reports. The plaintiff's counsel for the first time during argument talked about certain reports having been prepared. They are not in the court file. My understanding of his argument and submissions is that they were still going to be served and filed. Surely, that is not what is contemplated by the rules.

[32] It is the duty of a plaintiff's attorney to ensure that all relevant documents, reports and related issues are properly filed before the matter is placed before a judge for hearing. This has not happened in this case. The case file in front of me is also a dishevelled mess of documentation – some duplicated or triplicated.

[33] The case file has not been paginated. My enquiry why this is so has not been favoured with a response that is satisfactory. A litigant cannot claim the case is ready for trial when the file is not paginated.

[34] No bundles for trial have as yet been compiled. This is understandable because the requisite expert reports are not yet filed and other preliminary procedures like the amendment issue have not yet been dealt with.

[35] Plaintiff's particulars for purposes of trial were only delivered on 3 or 4 February 2012. It is not clear from what I could deduce from the unkempt and confusing case file whether discoveries have been done in accordance with the Rules. There are no contemporaneous documents vouching for the plaintiff's earnings despite the fact that it is clear that she is the sole heir in and executrix to the estate of her late husband, having taken over all personal and business affairs of their estate, yet she seems unable to provide relevant and necessary documentation required for the defendant to prepare informedly for trial.

[36] Defendant's counsel also submitted that the neurosurgeon's (Dr Edeling's) report was only received a few days ago. He said a day or two ago. This was not gainsaid. No Rule 36(9) Notice requesting leave to use this expert has not been filed of record.

[37] Practice has taught us that after receipt of expert reports, a pre-trial conference would be necessary to deal with issues arising therefrom so as to delimit issues for trial. This has not yet happened. Counsel for the plaintiff submitted that several joint meetings of experts took place. Nothing is on file to corroborate this. Even counsel for the defendant showed surprise when this was mentioned.

[38] Talk is also made of the existence of a pre-trial minute following on the pre-trial conference held on 31 January 2012. There is no such minute on file.

There is also talk that it is available but not yet signed. This, in my view, points to the matter still not being ready for a full trial.

[39] All of the above should be seen against the backdrop of the merits herein having been settled as far back as October 2010, and a notice setting this matter down for trial in this Court for 7 February 2012 having been served and filed in January 2011.

[40] Dr Edeling's neurological report was allegedly given to the defendants' attorneys on 6 February 2012. The plaintiff's psychiatrist's report was only, also allegedly – because it is not on the court file, shown to the defendants' legal representatives today (i.e. 7 February 2012). No neuro-psychiatrist's report(s) have been filed. The actuary's report was only served on the defendants on 6 February 2012. No explanations were given why things happened as set out above. Incidentally, even the application for a curator was made or hinted on 6 February 2012. It means invariably, that a mentally challenged litigant was to handle a trial on her own. Surely she did not have *locus standi* until after I have appointed Adv Anderson.

[41] The plaintiff's salary or earnings are also problematic. The actuary worked on a monthly salary of R16 000,00. The neuro-psycholgist worked on R9 600,00. The particulars of claim mentioned R10 500,00. Certainty had to be worked on on this aspect before the matter can be ready for trial.

READINESS FOR TRIAL

[42] From all that has been set out above, it is clear that this matter is not ready for trial. During preliminary proceedings even the plaintiff's counsel agreed that a postponement of this matter *sine die* would be an appropriate ruling.

[43] Yet, inexplicably, in my view, he (plaintiff's counsel) still proceeded to argue fully for the matter to be proceeded with in a full-blown trial. This in my considered view, was a contradiction in itself. The question this Court is asking itself is whether the arguments were necessary or whether they were unnecessary.

[44] As I have already alluded to above, most of what ought to have done before this matter can go to trial has not been done. Even the court file is not yet paginated. The requisite bundles are not yet compiled as the requisite expert reports are not yet at hand or have not yet been handed to the other side. What is certain is that they are not part of the case file. There is talk of a duplicate file having had to be prepared. However, it is my considered view and finding that even if a temporary file had to be prepared, it should have been paginated in terms of the Rules of Court by the plaintiff's attorney.

[45] I repeat, the court file before me was in a deplorable state, unkempt, confused and confusing. The plaintiff's attorneys of record have shirked their duties and responsibilities big time.

[46] All said and done, this case has to be postponed. The second defendant consequently succeeds in its application to have the matter postponed *sine die.*

COSTS

[47] Counsel for the defendants has argued for an order of costs on a scale as between attorney and client *de bonis propriis* to be paid by the plaintiff's attorneys Messrs Ronald Bobroff & Partners of 37 Ashford Road, Rosebank, Johannesburg or the responsible attorney there, Ms V Valente or by both. His motivation herefore is that the proceedings were unnecessary and plainly a waste of time and resources. The attorneys were very slack and did not care to follow the Rules of Court in a manner that to him was pre-medidated and done with an I-don't-care-attitude.

[48] The plaintiff's counsel argued and submitted that in the event of the court ruling that a postponement was justified, the costs order should be that costs be and are reserved.

[49] The general rule when postponements are sought is that he who asks for an indulgence must pay or tender the costs for such a postponement.

[50] In this case, it is my considered view and finding, that although the application for postponement was asked for by the second defendant, the postponement was in fact occasioned by the omissions and neglects perpetrated by the plaintiff's attorneys as set out above. Furthermore, the plaintiff's counsel, duly instructed by the former's attorney present at his side in court, in my view embarked on an exercise in futility when he proceeded to argue in full that the case be allowed to proceed on trial, in spite of the obvious and glaring inadequacies that were there in the pleadings.

[51] It is thus my finding that the defendant is liable for the costs that were occasioned by the insistence to proceed to seek a trial when good sense and even common sense dictated that the matter be postponed. The next question to be answered is what the scale should be of the costs to be awarded.

[52] I have carefully listened to all arguments and submissions in the court and have also taken the trouble of rumbling and ruffling through the mess and mass of paperwork placed in front of me in the form of the court file. It is my considered view and finding that an appropriate costs order commensurate with what had happened in this matter at this stage is that of costs on a scale as between attorney and client.

[53] It is so that when awarding costs, a court has a discretion which it must exercise judiciously and after a due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.

See: *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055F-G.

Jonker v Schultz 2002 (2) SA 360 (O) at 364A-H.

[54] The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the court. No hard and fast rules have been set for compliance and conformity by the court unless there are special circumstances.

See: *Fripp v Gibbon & Co* 1913 AD 354 at 364.

[55] Attorney and client costs are those costs which a litigant or attorney is entitled to recover on behalf of or from a client in respect of disbursements made on behalf of the client and for professional services rendered by him to and for his client. They are normally payable by the client whenever and whatever the outcome of the case. This is in contradistinction to or with party and party costs whose purpose of granting was clearly set out in *Die Voorsitter van die Dorpsraad van Schweizer-Reneke v Van Zyl* 1968 (1) SA 344 (T) at 345 as follows:

> "*As uitgangspunt is dit nodig om in gedagte te hou dat ons te doen het met 'n kosterekening tussen party en party en dat in die algemeen gesproke die breë opset van so 'n kosterekening is om die party aan wie koste toegestaan is ten volle te vergoed vir kostes en uitgawes*

redelikerwys deur hom aangegaan en volgens die oordeel van die Takseermeester nodig en gepas was om reg te laat geskied of om die regte van die party te beskerm."

[56] There are rules of practice that have evolved over the years which courts follow in exercising their discretions in the award of costs, namely:

56.1 The general rule is that the successful party is entitled to his costs.

56.2 Where a successful application is made for the grant of an indulgence the general rule is that costs may not necessarily follow the event.

56.3 In determining who is the successful party the court looks to or at the substance of the judgment and not merely its form;

56.4 The court has the power to deprive a successful party of a portion of or all of his costs and, in a proper case, can order him to pay a portion or all of the costs of the unsuccessful party.

56.5 The court may order the losing party to pay the costs of the successful party on an attorney and client scale.

56.6 The court may order an unsuccessful party, suing or being sued in a representative capacity, to pay costs *de bonis propriis*.

See: *Mbekeni v Jika* 1995 (1) SA 423 (Tk).

[57] Attorney and client costs are mostly only awarded under extraordinary circumstances or where they are part of the parties' agreement. For a party to be saddled with an order of costs on attorney and client scale, such a party would most probably have acted or conducted itself *mala fide* and/or misconducted itself in one way or another during the litigation process. Normally, such a party would have been capricious, brazen and/or cowboyish in its approach to the litigious process and not have cared what the consequences of its acts or actions would be on the legal process and/or the other side.

[58] Ordinarily, courts are reluctant to make an award of costs on the very punitive attorney and own client scale.

See: *Sentrachem Ltd v Prinsloo* 1997 (2) SA 1 (AA) at 22.

[59] There are exceptions where courts can refuse to grant attorney and client costs, for e.g., where even though there was some evidence from which fraud or recklessness might be inferred, nevertheless the court was satisfied that the party acted *bona fide.*

See: *Van Wyk v Millington* 1948 (1) SA 532 (W).

Bosch v Hofman & Co 1953 (1) SA 502 (T).

[60] Where a party took or followed an incorrect method or action but there was no *mala fides* the court also refuses to grant them.

See: *Koetzier v SA Council of Town & Regional Planners* 1987 (4) SA 735 (W).

[61] Normally an attorney and client costs order is made by courts only where there is a special prayer therefor or when notice had been given that the order will be asked for. However, the absence of such a notice is not necessarily fatal.

See: *Sopher v Sopher* 1957 (1) SA 598 (W) at 600E-G.

[62] The parties may have agreed on such a costs order but the court has a discretion to refuse to sanction such an agreement in certain circumstances.

See: *Neuhoff v York Timbers Ltd* 1981 (4) SA 666 (T) at 684A-H.

Santambank Bpk v Kellerman 1978 (1) SA 1159 (C).

[63] The court has the power and discretion, in appropriate circumstances, to award costs *de bonis propriis* against an attorney.

See: *David v Naggyah* 1961 (3) SA 4 (N).

Jenkins v FJJ de Souza & Co (Pvt) Ltd 1968 (4) SA 559 (R).

Waar v Louw 1977 (3) SA 297 (O).

Khunou v M Fihrer & Son (Pty) Ltd 1982 (3) SA 353 (W) at 363C-D.

[64] In *Webb v Botha* 1980 (3) SA 666 (N) at 673D-F, an attorney was saddled with an order to pay costs *de bonis propriis* for obstructing the interests of justice, and have occasioned unnecessary costs to be incurred by all the parties to an appeal and delayed the final determination of the action resulting in a situation which was seen as being potentially prejudicial.

[65] In *Khan v Mzovuyo Investments (Pty) Ltd* 1991 (3) SA 47 (Tk), especially at 48G-I, an order to pay wasted costs *de bonis propriis* against the plaintiff's attorney was granted where his conduct was unreasonable and negligent, and his handling of his client's case was slack and apparently characterised by a lack of concern.

[66] Generally speaking, costs *de bonis propriis* will be ordered against an attorney only in reasonably serious cases, for e.g., flagrant and gross disregard or non-observance of the Rules Court:

Darries v Sheriff, Magistrates Corut, Wynberg 1998 (3) SA 34 (SCA).

[67] The court ruled among others as follows in the *Darries v Sheriff* case above:

> "*While appellant is obliged, insofar as the court and the respondents are concerned, to shoulder the burden of his attorney's gross neglect of his duties, as between attorney and his client, the appellant, there is no reason why the main offender, the attorney, should not bear an appropriate share of the costs. It is an appropriate case for an order that the attorney pay the costs of the application for condonation de bonis propriis.*"

[68] In *Salviati & Santori (Pty) Ltd v Primesite Outdoor Advertising* 2001 (3) SA 766 (SCA) Streicher JA put it as follows at 774-775:

> "... *It should have been clear to the respondent's attorney, from previous warnings in this regard in judgments of the Supreme Court of Appeal, that he was, notwithstanding the agreement in respect of the status of the documents in the agreed bundle, required to apply his mind to the matter in order to determine which of the documents in the agreed bundle were relevant to the appeal. He failed to do so. In the result many documents were included in the appeal record although they had not been referred to in the Court a quo, could not have been expected to be referred to in the appeal, were not referred to in the appeal and were in fact not relevant to the appeal. Having been referred to previous warnings by this Court that it was his duty to ensure that no unnecessary documents be included in the appeal record, the inference is irresistible that the respondent's attorney wilfully failed to comply with his duty to apply his mind to the question which documents should be included in the appeal record. In the circumstances this is a case in which a punitive costs order should be made against the respondent's attorney. I consider it appropriate that the respondent's attorney be ordered to pay, de bonis propriis, 50% of the costs incurred by the appellant in respect of the inclusion of the agreed bundle in the appeal record. In addition it should be ordered that the respondent's attorney may not recover from the respondent any fees on appeal in respect of 50% of the agreed bundle.*"

[69] In *Government of the Republic of South Africa v Maskam Boukontrakteurs (Edms) Bpk* 1984 (1) SA 680 (A) Corbett JA put this aspect among others as follows (only what is relevant to our case):

> "... *In my opinion, it is the duty of attorneys responsible for the preparation and lodging of ... records to ensure that, if possible, ... obviate the incurring of unnecessary costs. Failure to perform this duty could amount to a breach of the duty of care owed by the attorney to his client. The time may come when this court may consider it appropriate in such cases to order that such unnecessary costs be paid by the attorney concerned de bonis propriis.*"

[70] This Court has the power and discretion, in appropriate circumstances, to award costs against an attorney *de bonis propriis*.

Government of the Republic of South Africa v Maskam (*supra*).

I can also award costs against an attorney *de bonis propriis* on an attorney and client scale.

Webb v Botha (supra).

Napier v Tsaperas 1995 (2) SA 665 (A) at 671F-672C.

[71] As already pointed out hereinbefore, the plaintiff's attorneys acted in a manner that can be characterised as unreasonable and negligent, and the manner in which they handled the purported trial preparations herein was slack and characterised by a lack of concern. This Court cannot understand why, after the parties had agreed in principle that the matter should be postponed *sine die*, plaintiff's counsel, with the attorney seated next to him, still proceeded to argue against such a postponement. Worse still, the paper work was not in order, the file unpaginated and expert notices not yet sent out or filed. No bundles had been compiled. It was an unnecessary escalation of expenses.

[72] This, in my view and finding that this is an appropriate case for an order that the attorneys of record of the plaintiff and/or the specific attorney dealing with this matter thereat pay the costs of the proceedings on 7 February 2012 *de bonis propriis*.

ORDER

[73] The following order is made:

73.1 This matter is postponed *sine die*.

73.2 Adv Anderson is hereby appointed to act as curator for and on behalf of the plaintiff in terms of prayers 1, 2 and 3 of the Notice of Application for the appointment of curator.

73.3 The following costs, on attorney and client scale, to be paid *de bonis propriis* by the plaintiff's attorneys of record and/or Ms V Valente:

73.3.1 The costs of the application for postponement;

73.3.2 The wasted costs occasioned by the postponement of the trial on 7 February 2012, which costs are to include the costs attendant upon:

73.3.2.1 the employment of senior counsel; if any; and

73.3.2.2 the reservation and preparation of:

(a) Dr G Marus;

(b) Dr D M Van der Merwe; and

(c) Mr T Reynolds.

N G KGOMO
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

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DATE OF ARGUMENT/HEARING	7 FEBRUARY 2012
DATE OF JUDGMENT	27 FEBRUARY 2012