IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 36075/2018
REPORTABLE:NO
OF INTEREST TO OTHER JUDGES:NO
REVISED
DATE:26/03/2021

In the matter between:

Adv. APJ Bouwer obo M G[…] Plaintiff

and

The Road Accident Fund Defendant

JUDGMENT

VAN DER WESTHUIZEN, J

[1] The plaintiff, *nomine officio,* is the appointed *curator ad litem* for one, M G[…], who was a minor when a collision occurred on 14 March 2014. At the time of the incident, the minor was a passenger in a motor vehicle driven by her great grandmother, E J M G[…] (Mrs G[…]). The vehicle in which the two were driving, collided with another vehicle that had skipped a stop street whilst the G[…] were in the intersection that was controlled by traffic signs. As a result of the collision, the minor sustained bodily injuries that resulted in certain *sequelae* thereof. A claim against the defendant, the Road Accident Fund, was instituted in respect of damages suffered by the minor as a result of the injuries

sustained by the minor during the said collision. At the time of the incident, the minor was in Grade 1. Mrs Greyling instituted a separate claim in respect of the damages suffered by her as a result of the injuries she sustained in the said collision,

[2] The minor sustained the following injuries that are common cause:

(a) Head injury;

(b) C6 bony vertebra compression fracture with C5/6 flexion instability;

(c) Soft tissue injury of the skull;

(d) Soft tissue injury of the right leg.

[3] The issue of liability on the part of the defendant for damages suffered as a result of the said collision, remained in issue until 17 August 2017 when the defendant conceded liability in the matter between Mrs G[…] and the defendant. An order in that matter was granted by agreement between Mrs G[…] and the defendant in terms of which the defendant conceded a 100% liability for any damages that may be proven or agreed upon by Mrs G[…].

[4] However, inexplicably the issue of liability in respect of the minor remained in issue. That issue was only finalised shortly before this matter came to trial before me on 26 January 2021. The defendant, and rightly so, conceded 100% liability for damages suffered by the minor as a result of the said collision that may be proven or agreed upon. The defendant further provided an undertaking in respect of future medical expenses that the minor may incur in respect of the injuries sustained. The issue of General Damages was to be postponed, liability for such damages had been denied and refused by

the defendant. The only issue before me was that of loss of future earnings or earning capacity of the minor.

[5] In view thereof, as has become the custom, the defendant did not file any expert reports and only those provided by the plaintiff were to be considered.

[6] Mr Fourie, who appeared on behalf of the plaintiff, submitted that the relevant expert reports clearly established a need for an award of damages. He further submitted what a reasonable and equitable amount of loss of future earnings would be. The issue of contingencies to be applied in respect of the amount to be awarded is reasonable and well explained. I accept the percentages to be applied as reasonable and fair. I further accept his submissions in that regard and agree therewith.

[7] Mr Bouwer, who was the appointed *curator ad litem*, filed a thorough report for which he is thanked. His oral submissions were of further assistance to me. He indicated his acceptance of the reasonableness of the amount of the award requested.

[8] In further assistance to the court, Mr Fourie prepared a draft order relating *inter alia* to the amount to be awarded. That draft order also encapsulates the protection to be offered in respect of the quantum of the damages to be awarded. In that regard, a trust is to be established and a proposed trust deed was attached. The incumbent trustee also indicated the acceptance of such appointment and that acceptance was attached to the *curator ad litem* report.

[9] I agree with the proposed order, but for one issue. That issue relates to contingency fee agreements that were entered into by Mrs G[…] on the minor's behalf. I requested additional written submissions to be filed by counsel. Consequently, I reserved judgment.

[10] Contingency fee agreements between clients and their respective attorneys are usually entered into where the client is either indigent or does not have the resources to finance litigation entered into by them and would thus be denied access to justice.[1] There is much merit for such procedure and it is regulated by Statute, namely the Contingency Fee Agreement Act, No. 66 of 1997.

[11] In terms of such contingency fee agreement, the client agrees and undertakes to pay his or her attorney a so-called success fee from the capital received from the claim instituted by the client. The attorney would in such event "fund" the litigation and recoup a "success fee" if the litigation is finalised in his or her client's favour. At the base of such "success fee" agreement, lies the sweetener of such arrangement in favour of the attorney to charge a higher fee than normal. There is however a proviso: not more than a 100% of the normal fees may be recovered and it may not exceed 25% (inclusive of VAT) of any capital amount awarded to the client and only the lesser of the two amounts may be so recovered. The true purpose of such arrangement lies in the uncertainty of the possible outcome of litigation and the risks involved in such litigation entered into by the client.

[12] In the present matter, two contingency fee agreements were entered into on behalf of the minor. The minor was represented in both instances by her great grandmother, Mrs G[…]. The first contingency fee agreement was entered into on 28 June 2016 with Attorney Christo Botha from Christo Botha Attorneys. When Mr Botha passed away, this matter was taken over by Messrs Gouse van Aarde INC, the present attorneys of record. A second contingency fee agreement was entered into with this firm of attorneys on 5 May 2017.

[13] Mr Bouwer indicated that he had considered the agreements and has ratified those in so far as that might be required. Mr Bouwer submitted

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[1] Bradfield G B, *Christie's Law of Contract,* 2016, p 411-413.

that he was satisfied with the concluding of the two agreements in view thereof that the minor was represented by her great grandmother in whose care the minor was at the time.

[14] It was submitted by Mr Fourie that he was satisfied with Mrs G[…] representing the minor as she, Mrs G[…], was the *de facto* guardian of the minor at all relevant times. The minor was resident with Mrs G[…] prior to, at the time of the incident, and at the time that the two agreements were entered into. It was only recently that the minor returned to her biological mother and resided with her. It appears that the minor endured a troubled time since her birth and for the greater part thereafter, until she took up residence with her biological mother very recently.

[15] Mr Fourie, in his oral submissions, further indicated that he was aware of the concluding of one of the contingency fee agreements which he considered with reference to the prescribed requirements for such an agreement. He had one concern. It related to a specific paragraph therein that appeared to be ambiguous or confusing. More recently, Mr Fourie became aware of the existence of a second contingency fee agreement which he subsequently considered. He further submitted that as *de facto* guardian of the minor, Mrs G[…] was acceptable at representing the minor in concluding the said agreements on the minor's behalf. That was also the submission of Mr Bouwer.

[16] In his oral submissions that Mrs G[…], as *de facto* guardian, was legally qualified to sign contingency fee agreements on behalf of the minor, Mr Fourie referred to the unreported judgment in this Division in the matter of *Constant Wilsnach N.O. v Thabo Motaung et al* (Case No. 22553/2019 dated 16 November 2020). However, he drew my attention to paragraph [54] thereof. That paragraph dealt with the issue whether South African Law would recognise a *de facto* adoption with specific reference by the court to a reported judgment in the Western Cape High Court, namely *Flynn v Farr NO et al* 2009(1) SA 584 (C). Both

those matters concerned adoption and the effect on intestate succession. Those judgments are of no real assistance in the present matter.

[17] My attention has further been drawn to a judgment in this Division that is yet to be reported. It is a judgment by Tuchten, J.[2] That matter related to *ex parte* applications for the appointment of a *curator ad litem* to act on behalf of minors who have instituted actions against the defendant for the recovery of damages suffered, as provided for in the Road Accident Fund Act, No.56 of 1996. The gist of that judgment relates to whether it is necessary for the appointment of a *curator ad litem* to act on behalf of minors in matters against the defendant for the recovery of damages suffered as provided for in the Road Accident Fund Act. It was held in that judgment that the appointment of a *curator ad litem* would depend on the merits of each matter. That judgment does not assist in determining the vexed question in the present matter, namely that of guardianship of a minor and the concluding of a contingency fee agreement on behalf of a minor.

[18] Although the *Molantoa*-matter is not in point, I find useful directions in that judgment. Those relate to the right of minors to have assistance in vindicating their constitutional rights in court.[3] In that regard, the function of a *curator ad litem* in protecting the interests of a minor would be the same as those undertaken by a good and prudent parent. The essential purpose of such appointment of a *curator ad litem* is to avoid any conflict of interest.[4] The intention being to act in the best interest of the child/minor.

[19] The present matter relates to the issue of guardians and in particular the content of the term “guardianship” and the scope thereof in the context of concluding a contract on behalf of the minor.

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[2] *Ex parte Thithi Rebecca Molantoa et al* (Case No. 3198/18 dated 26/9/2018).
[3] See section 14 of the Children’s Act read with section 28 of the Constitution.
[4] *Martin NO v Road Accident Fund* 2000(2) SA1023 (W) at 1034I-1037I.

[20] The common law recognised guardianship in a broad sense. The concept "guardianship", has as content the lawful authority or, traditionally, parental power which the parent or guardian has over the person and/or the property of the child or ward who was a minor.[5] Traditionally, the term "minor" included *infantes* who were under the age of 7 and *pupilli* who were between the ages of 7 and 21, and once the Children's Act came into force, 18 years. In terms of the Children's Act, the age of majority, traditionally 21 years, has been lowered to 18 years.

[21] Once the Children's Act came into force, it acknowledged the common law concept of guardianship, traditionally that of parental authority or power, as a component of parental responsibilities and rights.[6]

[22] In South African Law there are five kinds of guardians:[7]

(a) Natural guardians – these include the biological and adoptive parents who have full parental responsibilities and rights of their children under the age of majority;

(b) Testamentary guardian – where both parents (natural or adoptive) have guardianship over the minor, the first dying cannot deprive the surviving spouse of guardianship of the minor in the former's will. A parent who has sole guardianship or care of the minor is entitled to appoint by will a fit and proper person as guardian upon his or her death;

(c) Assigned guardian – a High Court may on application by any person who has an interest in the well-being, care and

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[5] Du Bois F (ed.), *Wille's Principles of South African Law,* 2007, VI Parental Responsibilities and Rights, p 204.
[6] *Ibid.*
[7] *Wille*, pp 208 - 211

development of a minor, appoint a person as a guardian of the minor;

(d) Testamentary *tutor* – a sole guardian of a minor may appoint or nominate a *tutor* by will or other deed to administer and manage the estate. The *tutor*'s responsibilities are limited to administering and managing the minor's property and does not have any parental responsibilities and rights as in the case of a testamentary appointed guardian;

(e) *Tutor dative* – under the common law, where a minor has no natural guardian or testamentary *tutor*, a *tutor* may under certain circumstances be appointed by the Court or the Master of the High Court.

[23] From the foregoing, there are three types of guardianship that relate to the parental responsibilities and rights of a minor, namely, natural, testamentary and assigned guardians. The latter are those appointed by the court.

[24] It is against this background that the provisions of the Children's Act in respect of the content of parental responsibilities and rights of minors are to be considered.

[25] On a purposive reading of the Children's Act, and in particular Chapter 3 thereof, it deals with the parental responsibilities and rights in respect of children (minors). In the broad sense, the aforementioned types of guardians acknowledged in South African Law, are dealt with and their rights and responsibilities are stipulated.[8]

[26] Mr Fourie, at my request, submitted further written submissions in respect of the concluding of the said contingency fee agreements. In

[8] Sections 18 – 41, in particular sections 19, 20, 24 and 27; see also Clark B (ed.), *Family Law Service*, E37-E43

those, he made submissions with reference to the general types of guardians under the common law and in that regard he referred to the passage in Wille.[9] He submitted that under the common law, the term "guardianship" had both a narrow and a broader content and context.[10] He further referred to provisions in the Children's Act, 38 of 2005, dealing with the guardianship of a minor.[11] Mr Fourie further submitted that in respect of the definition in the Children's Act of the word "guardianship", a broad interpretation should be afforded to the phrase "guardianship".

[27] The Children's Act defines the word "guardian" as follows:

"'*Guardian' means a parent or other person who has guardianship of a child"*

The word guardianship is defined as:

"'*Guardianship', in relation to a child, means guardianship as contemplated in section 18.,"*

[28] In general, section 18 of the Children's Act relates to parental responsibilities and rights. Section 18(1) clearly provides that a person may have either full or specific parental responsibilities and rights in respect of a child. It is stipulated in section 18(2) that the parental responsibilities and rights that a person may have in respect of a child include certain responsibilities and rights:

(a) To care for the child;

(b) To maintain contact with the child;

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[9] *Wille,* pp 208-211.
[10] See the discussion under section 18 of the Children's Act in Davel C J *et* Skelton A M, *Commentary on the Children's Act*, p 3-5.
[11] Section 18(3).

(c) To act as guardian of the child; and

(d) To contribute to the maintenance of the child.

[29] Furthermore, section 18(3) stipulates the duty of the guardian. That section reads as follows:

> *"(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must –*
>
> *(a) administer and safeguard the child's property and property interests;*
>
> *(b) assist or represent the child in administrative, contractual and other legal matters; or*
>
> *(c) give or refuse any consent required by law in respect of the child, including –*
>
> > *(i) consent to the child's marriage;*
> >
> > *(ii) consent to the child's adoption;*
> >
> > *(iii) consent to the child's departure or removal from the Republic;*
> >
> > *(iv) consent of the child's application for a passport; and*
> >
> > *(v) consent to the alienation or incumbrance of any immovable property of a child."*

[30] Subsections (4) and (5) of section 18 provide for specific instances where more than one person has guardianship of a child. Those are not of any relevance in the present instance.

[31] With reference to the above quoted section 18(3) of the Children's Act, Mr Fourie submitted that the phrase "*other person who acts as guardian of a child"*, as contained in that section should be *"afforded a broad interpretation"*. In furtherance of his submission, Mr Fourie submitted that the said phrase would include a person that is indeed not "legally" a guardian. Thus, and so submitted Mr Fourie, the said phrase includes a so-called *de facto* guardian. There is no merit in those submissions for what follows.

[32] It is trite that when interpreting a statute, like any other document, the context is important.[12] Not only is a word or phrase to be construed in the particular sentence or section or paragraph, but also the context thereof within the whole Act.

[33] The definition of the word "guardian" in section 1 of the Children's Act is clear and unambiguous. The content and context of that word is to be understood within the ambit of the South African Law as recorded above. There are specific types or kinds of guardians. The concept of "guardianship" as defined in section 1 of the Children's Act is to be understood against the context and content of the concept "guardian".

[34] The phrase, "*other person who acts as guardian of a child",* has as antecedent the provisions of section 18(2), read with section 18(1) of the Children's Act. It is derived from the "parental responsibilities and rights that a person may have in respect of a child. Those are defined in the provisions of the whole section 18 of the Children's Act. The phrase is further to be considered within the context of the whole of Chapter 3 of Children's Act, i.e. sections 19 through to 41 thereof.

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[12] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012(4) SA 593 (SCA)

[35] So considered, section 18(3) of the Children's Act does not create a further kind or type of guardian, the so-called *de facto* guardian. At best, the so-called *de facto* guardian would be a person that is contemplated in section 23 of the Children's Act. In terms of the provisions of that section, no guardianship is awarded to such a person,[13] only specific responsibilities and rights can be afforded to such person on application to the court. Such responsibilities and rights do not merely befall such a person. Those are awarded by the court, who is obliged to consider various factors as contained in that section.

[36] Section 24 of the Children's Act provides specifically for an award of guardianship on application. That section stipulates who may so apply and the factors that are to be considered in respect of such application. That section echoes the common-law court-appointed guardian as recorded above.

[37] The testamentary appointed guardian acknowledged in the common law is contemplated in the provisions of section 27 of the Children's Act.

[38] The true position of Mrs G[…] *vis-à-vis* the minor at that time, is contemplated in the provisions of section 32 of the Children's Act. That section clearly and unambiguously does not grant any guardianship to the person contemplated therein.[14] Mrs G[…], furthermore, never applied to court for an assignment of guardianship over the minor. At best, she was an informal care-giver to the minor due to the particular circumstances existing at the time.

[39] It is common cause that the minor's biological mother is still alive. She has the parental responsibilities and rights as provided in sections 18 and 19 of the Children's Act. She is obliged to act in the best interests

[13] Boezaart T (ed.), *Child Law in South Africa*, 2017, p 197
[14] See *Family Law Service*, *supra,* at E46-E54

of the child/minor. She did not participate in these proceedings. No explanation was provided.

[40] At the time that either of the two contingency fee agreements were concluded, Mrs G[…] had no authority, nor any court, or otherwise awarded rights, to act on behalf of the minor in that regard. In particular, Mrs G[…] could not usurp the rights contemplated in section 18(3)(b) of the Children's Act.

[41] There is a further reason why Mrs G[…] could not conclude the said contingency fee agreements on the minor's behalf. The clear and unambiguous intention of the Children's Act has at its core the best interests of the child. The concluding of an onerous agreement to the estate of a child, can never be in the best interests of a child. A contingency fee agreement can never be in the best interests of a child. The content of such agreement is in the best interests of the legal practitioner who is to represent the child. It is for that reason that strict requirements are stipulated in the Contingency Fee Agreement Act as to its content and purpose.

[42] When considering a contingency fee agreement, an important factor concerns the risks involved in entering into potential litigation on behalf of a client. Where the risk is minimal, or so far removed that the necessity of concluding a contingency fee agreement with a client is questionable, it may not muster the test.

[43] Mr Fourie further submitted that, in the present instance, the issue of liability was only settled by the court long after the concluding of the second contingency fee agreement on behalf of the minor. Thus, Mr Fourie submitted that the risk of not proving liability on the part of the defendant remained in issue. Hence, it was in the best interests of the minor to conclude a contingency fee agreement on behalf of the minor. There is no merit in that submission.

[44] In the present instance, the minor was barely 7 years old. She was a passenger in a motor vehicle involved in a collision and thus no contributory negligence could befall the minor. It is the so-called 1% matter to prove liability for damages successfully. There was, and there could be, no risk in claiming damages that arose from the collision from the defendant. The concluding of a contingency fee agreement was not required, nor necessary.

[45] In my opinion, the concluding of either of the two contingency fee agreements on behalf of the minor was a voidable transaction, if not void.[15] Neither of the two contingency fee agreements can be accepted. The mere fact that the *curator ad litem* appeared to have ratified the concluding of the two contingency fee agreements, is of no consequence. There is no valid agreement to ratify and furthermore, it is not in the minor's best interests to slice away a sizable portion of the award to be allowed.

[46] It follows that the draft order provided by Mr Fourie cannot be granted in its entirety.

[47] The proposed Trust Deed appears to be acceptable, but for one issue. In paragraph [6] thereof, it is stipulated that the Trust would endure until the minor attains the age of 21 years. There is no magic in attaining that age. In my view, a person of 21 years of age is not necessarily sufficiently mature to be capable of handling a large amount sensibly. In contrast, a person who has attained the age of 25 years would, due to life experiences, be more mature and capable of handling a large amount sensibly. I would amend the *pro forma* Trust Deed to read 25 years.

I grant the following order:

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[15] See in general, *Breytenbach v Frankel et al* 1913 AD 390.

1. The Defendant is causably liable for 100% of the plaintiff's proven or agreed damages.

2. The Defendant is ordered to pay the amount of **R 3 531 486-00 (THREE MILLION FIVE HUNDRED AND THIRTY-ONE THOUSAND FOUR HUNDRED AND EIGHTY-SIX RAND)** in respect of loss of earnings to the Plaintiff into the following trust cheque bank account of **GOUSE VAN AARDE INCORPORATED:**

GOUSE VAN AARDE INGELYF
ABSA BANK
BRANCH CODE : 632 005
TRUST ACCOUNT : […]
REF NO : ALG/5683

who will hold the said funds in trust for a trust to be created in terms of clause 6 of this order.

2.1 Should the Defendant fail to pay the above-mentioned amount on/or before 14 days from date of this court order the Defendant will be liable to pay interest on the said amount at the rate of 7% per annum calculated from date of this order to date of payment.

3. **UNDERTAKING IN TERMS OF RULE 17(4)(a) OF ACT 56 OF 1996**

3.1 The Defendant is ordered to furnish an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, in respect of 100% of the future accommodation in a hospital or nursing home or treatment of/or rendering of a service or the supply of goods to M G[…] ("the minor child"), arising from injuries sustained in a motor vehicle collision which occurred on 14 March 2014.

3.2 The aforesaid undertaking will include:

(a) The costs of the trustee who is to be appointed in terms of paragraph 6 hereof and which costs will be limited to the fees

prescribed in respect of a *curator* appointed in terms of the Administration of Estates Act, 66 of 1965 (as amended);

(b) The costs in respect of the furnishing of security by the trustee of the trust to be created as aforesaid and the annual administration costs;

4. The Defendant will pay the Plaintiff's taxed or agreed party and party costs on a High Court scale, subject to the discretion of the Taxing Master, including reasonable costs of all consultations with the Plaintiff to consider the offer made by the Defendant, the costs incurred to accept the offer and to obtain payment of the amount and/or the undertaking mentioned above as well as any costs reserved.

5. The costs referred to herein above in paragraph 4 shall also include the Plaintiff's costs and expenses as far as experts and counsel are concerned, including the following:

5.1 The fees of Senior-Junior Counsel on the High Court Scale, inclusive but not limited to Counsel's full, reasonable day fee and fees for preparation;

5.2 The reasonable fees for the *Curator ad Litem*;

5.3 The costs of the trial day of 26 January 2021;

5.4 The reasonable, taxable costs of obtaining all medico-legal / expert reports including RAF4 Serious Injury Assessment and actuarial reports from the Plaintiff's experts which were furnished to the Defendant, specifically in respect of the following experts:

5.4.1 Dr MM Malan (RAF4);
5.4.2 Dr MM Malan (Medico-legal Report);
5.4.3 Dr AM Pillay
5.4.4 Madelien Mills

5.4.5 Mr. Pieter Marais

5.4.6 Dr U Kunzmann

5.4.7 Dr C Visser

5.4.8 Ingrid Kleynhans;

5.4.9 Lise van Gass; and

5.4.10 Johan Sauer.

5.5 The reasonable consultation, preparation, qualification, travelling and reservation fees, if any, of the experts of whom notice have been given, in terms of rule 36;

5.6 The costs of all consultations between the Plaintiff, her attorney and/or counsel in preparation for hearing of the action to discuss the terms of this order;

5.7 The costs related to the creation of the trust referred to in paragraph 6 of this order.

5.8 The reasonable, taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred on behalf of or by the Plaintiff in attending medico-legal consultations with the parties' experts, consultations with the Plaintiff's legal representatives and the court proceedings, subject to the discretion of the Taxing Master;

6. **CREATION OF A TRUST:**

6.1 The Plaintiff's attorneys, **GOUSE VAN AARDE INCORPORATED** (hereinafter referred to as "the Plaintiff's attorneys") shall attend to the creation of a trust, which trust:

(a) Will incorporate in its trust deed the provisions more fully set out in the draft trust deed annexed hereto as annexure "A";

(b) Will as its main aim administer the capital amount on behalf of M G[…].

6.2 The trustee of the trust so created shall furnish security to the satisfaction of the Master of the High Court.

6.3 The undertaking issued in terms of the provisions of section 17(4)(a) of the Road Accident Act, 56 of 1996, as set out in paragraph 2 above, will be administered by the trustee, and the trustees will be entitled to the prescribed remuneration for the administration of the undertaking.

6.4 The Plaintiff's attorneys shall keep the monies received as set out in clause 1 of this order in an interest bearing trust account for the benefit of M G[…] in terms of the provisions of section 86(4) Legal Practice Act 28 of 2014 (as amended) and shall pay such monies over to the trustees of the trust to be created in terms of clause 4.1 of this order, immediately once the Master of the High Court has issued the trustees with the necessary letters of authority and immediately after the trustees have informed the Plaintiff's attorneys that a bank account for the trust has been opened.

6.5 The Plaintiff's attorneys are, however, authorized to pay all disbursements reasonably incurred in respect of this action on behalf of the Plaintiff from the aforementioned funds held in trust and shall submit to the trustees to be appointed a complete schedule of such disbursements paid as well as proof of payment thereof.

6.6 The Plaintiff's attorneys are further authorized to pay from the aforementioned funds held in trust, the costs of provision of security to the Master of the High Court by the trustees of the trust to be created, which costs in turn must be refunded by the Defendant to the Plaintiff.

6.7 The Plaintiff's aforementioned attorneys shall submit an attorney and own client bill of costs to the said trustees to be appointed who shall

authorize payment thereof. After such authorization the Plaintiff's attorneys shall be entitled to subtract their fees and disbursements in terms of such attorney and own client bill of costs from the funds referred to in clause 2 above, alternatively and in the event of such funds having been paid to the trustees by the Plaintiff's attorneys, the trustees shall make payment of such amount to the Plaintiff's attorneys. In the event of a dispute in respect of the said bill of costs, same will be submitted for taxation.

7. The Plaintiff agrees to the following:

7.1 In the event that the costs referred to above are not agreed upon, the Plaintiff agrees to serve a notice of taxation on the Defendant's attorneys of record;

7.2 The Plaintiff shall allow the Defendant 14 court days to make payment of the taxed costs from date of settlement of taxation thereof.

8. The trustee is authorized to pay the reasonable costs in respect of the formation of the trust from the capital amount aforesaid.

9. The trustee shall furnish security to the satisfaction of the Master of the High Court.

10. Should the trust not be formed within six months from date hereof, the Plaintiff is ordered to approach this Honourable Court within six months thereafter, to obtain instructions in respect of the manner in which the capital amount should be dealt with for the benefit of M G[…].

11. The costs referred to above shall be paid into the aforementioned trust account of **GOUSE VAN AARDE INCORPORATED.**

12. All amounts shall bear interest at a rate of 7% per annum from the date that they are due and payable.

13. It is declared that the contingency fee agreements signed respectively on 27 June 2016 and 5 May 2017 are invalid.

_____
C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Date of Hearing:	26 January 2021
On behalf of Applicant:	M J Fourie
Instructed by:	Gouse van Aarde Inc.
On behalf of Respondent:	No representation
Instructed by:	
Judgment delivered:	26 March 2021