THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 628/13
Reportable

In the matter between:

FRANCOIS BARNARD	**FIRST APPELLANT**
THABO PANDLETON MABETA	**SECOND APPELLANT**
BISNATH (JAY) SINGH	**THIRD APPELLANT**
GAVIN JOHN GRIFFEN	**FOURTH APPELLANT**
MICHAEL WRIGHT	**FIFTH APPELLANT**
MARK DAWSON	**SIXTH APPELLANT**
AMELIA HOLLAND	**SEVENTH APPELLANT**
EBEN LOFTY VAN WYK	**EIGHTH APPELLANT**
PETRUS JOHANNES KRIEL	**NINTH APPELLANT**
FRANCOIS ALBERT PIETERSE	**TENTH APPELLANT**

and

THE REGISTRAR OF MEDICAL SCHEMES	**RESPONDENT**

Neutral citation:	*Barnard & others v The Registrar of Medical Schemes* (628/13) [2014] ZASCA 111 (16 September 2014)
Coram:	Mpati P, Lewis, Pillay JJA, Schoeman and Fourie AJJA
Heard:	20 August 2014
Delivered:	16 September 2014

Summary: Medical scheme – Placing under curatorship – Medical Schemes Act 131 of 1998 – Financial Institutions (Protection of Funds) Act 28 of 2001 – Test – Material irregularities justifying appointment of curator in the interest of the beneficiaries of the scheme – No preferable alternative available.

ORDER

On appeal from: North Gauteng High Court, Pretoria (Murphy J) sitting as court of first instance:

The appeal is dismissed with costs, including the costs of two counsel, where employed.

JUDGMENT

Fourie AJA (Mpati P, Lewis, Pillay JJA and Schoeman AJA concurring):

[1] The appellants (the trustees) are the elected trustees constituting the Board of Trustees (the BOT) of Medshield Medical Scheme (the scheme), registered as such in terms of the Medical Schemes Act 131 of 1998 (the MS Act). The respondent is the Registrar of Medical Schemes (the registrar), appointed as such in terms of s 18(2) of the MS Act to manage the affairs of the Council for Medical Schemes (the council).

[2] The council, established in terms of s 3 of the MS Act, controls and co-ordinates the functioning of medical schemes, with the registrar as its chief executive officer. The scheme is registered as an open medical scheme, which means that it is open to any member of the public. It is the fourth largest medical scheme in South Africa, with approximately 207 000 beneficiaries.

[3] On 2 October 2012, the registrar approached the North Gauteng High Court, Pretoria, on an urgent basis, ex parte and in camera, for an order placing the scheme under provisional curatorship. An order was granted by Van Der Merwe DJP, appointing a provisional curator, with a *rule nisi* calling upon the scheme and other interested parties to show cause why a final order of curatorship should not be granted.

[4] The trustees anticipated the return day of the *rule nisi* and filed opposing papers. Prior to the hearing of the application, the provisional curator filed an interim report in which he raised concerns regarding the administration and governance of the scheme. This prompted the registrar, in his replying affidavit, to extend the grounds in support of the application for the appointment of a final curator to the scheme. Upon being authorised to do so, the trustees filed supplementary affidavits, in which they dealt with the new matter raised by the registrar in reply.

[5] The return day of the *rule nisi* was extended to 15 November 2012, when the matter was heard by Murphy J. After hearing argument, the learned judge confirmed the *rule nisi* and granted a final order of curatorship. The trustees, as intervening parties, were ordered to pay the costs of the application, jointly and severally, on the scale as between attorney and client.

[6] The trustees appeal, with the leave of the court below, against the whole of the judgment and the orders made. For that reason Murphy J revived and extended the orders made by Van Der Merwe DJP, pending the final outcome of the appeal.

[7] The registrar brought the application in the high court, with the concurrence of the council, in terms of s 56 of the MS Act and under s 5(1) and (2) of the Financial Institutions (Protection of Funds) Act 28 of 2001 (the FI Act).

[8] The circumstances in which the registrar may apply for the appointment of a curator to a medical scheme pursuant to the provisions of the MS Act, are stated as follows in s 56(1):

‘(1) ‘The Registrar may, notwithstanding the provisions of section 52 and 53, if he or she is of the opinion that it is in the interest of beneficiaries or that it is desirable to do so, because material irregularities have come to his or her notice, or because a medical scheme is not in sound financial condition or as a result of an inspection of the affairs of a medical scheme, apply, with the concurrence of the Council, to the High Court, for the appointment of a curator to take control of and to manage the business of that medical scheme.’

[9] Sections 52 and 53 of the MS Act deal with judicial management and winding up of medical schemes and do not find application in the instant matter. I should also

add that it is common cause that the scheme has at all relevant times been, and still is, in a sound financial condition.

[10] In terms of s 5(1) and (2) of the FI Act, the 'registrar' may, on good cause shown, apply to the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution. In s 1 the 'registrar' is defined as including the registrar of medical schemes, referred to in s 1 of the MS Act. Section 1 of the FI Act further defines an 'institution' for purposes of s 5, as including, *inter alia*, a 'financial institution' which is, in turn, defined as including any medical scheme contemplated in s 1 of the MS Act.

[11] It follows from the above, that the registrar is empowered to bring an application such as the present, both in terms of s 56(1) of the MS Act or in terms of s 5(1) of the FI Act. I am in agreement with the approach of the high court, in construing the registrar's application as seeking relief in the alternative. That he was doing so is made plain in the papers before the court. Therefore, a curator should be appointed to the scheme if either the pre-conditions of s 56(1) of the MS Act are established, or good cause, as contemplated in s 5(1) of the FI Act, is shown.

[12] The test under s 56(1) of the MS Act is the opinion held by the registrar that it is in the interest of the beneficiaries of the scheme that a curator be appointed to the scheme, or that it is desirable to do so, because of material irregularities that have come to his or her notice or because the medical scheme is not in sound financial condition. As was correctly submitted on behalf of the registrar, the opinion is the subjective opinion of the registrar which must be held on objective grounds.

[13] The test under the FI Act is different. In *Executive Officer FSB v Dynamic Wealth Ltd and others* 2012 (1) SA 453 (SCA) para 4, this court stated the test under s 5(1) of the FI Act, as follows:

'The registrar must therefore satisfy the court that there is good cause to appoint a curator…that means that the court must be satisfied on the basis of the evidence placed before it that it is desirable to appoint a curator. Something is desirable if it is "worth having, or wishing for". The court must assess whether curatorship is required in order to address identified problems in the business of the financial institution…It must determine whether

appointing a curator will address those problems and have beneficial consequences for investors. It must also consider whether there are preferable alternatives to resolve the problems. Ultimately what will constitute good cause in any particular case will depend on the facts of that case.'

[14] In this matter, as I shall show, the respective statutory tests are both satisfied. The various grounds relied upon by the registrar for the appointment of a curator to the scheme are dealt with comprehensively and exhaustively in the judgment of the court *a quo*. There is no need to repeat this extensive exercise and I shall concentrate on the following main grounds relied upon by the registrar, as identified in the judgment of the court below.

The trustees' disregard of the provisions of the MS Act and the rules of the scheme

Broker management and marketing agreements

[15] In and during 2008, the scheme concluded a broker management agreement with Medshield Broker (Pty) Ltd (MB). This agreement came about as the scheme did not directly contract with brokers rendering services to members of the scheme, but rather interposed MB as an intermediary to manage its relationship with the brokers. This resulted in substantial amounts being paid to MB, which it either retained or paid to individuals who were not accredited brokers under the MS Act. It constituted a contravention of s 65(6) of the MS Act, which provides that a broker may not be directly or indirectly compensated for providing broker services by any person other than a medical scheme, or a member of a medical scheme or employer of such member or a broker employing such broker.

[16] The agreement with MB did not only result in unlawful payments being made to unaccredited brokers, but also caused the scheme to relinquish control over the brokers in favour of MB. All of this was not disputed by the BOT. On the contrary, in response to written directives addressed to it by the council, the BOT terminated the contract with MB.

[17] Apart from the contractual arrangement with MB, the scheme had also concluded a contract with Traffic Integrated Marketing CC (TIM) during 2008,

appointing TIM as its marketing agency. This contract made provision for integrated advertising and marketing services in the form of business strategy, public relations, media liaison, research and the like, to be provided by TIM. The contentious feature of this contractual arrangement was the payment of 'research fees' by the scheme via TIM, through a second entity, Medshield Distribution Services (Pty) Ltd (MDS), to brokers.

[18] The research fees were ostensibly to serve as the consideration to brokers for research performed by them on potential members. TIM did not have direct access to brokers and therefore contracted MDS to use its network of brokers to collect the research data. Although the scheme did not pay the brokers, it paid TIM which paid MDS which, in turn, paid the brokers. The BOT maintained that the scheme benefited by this 'research', but the registrar was of the opinion that the payments were simply a ruse to pay brokers more than their prescribed limited fees, in order to motivate them to sign up young members with a more favourable risk profile.

[19] The payment of the research fees resulted in brokers being compensated in excess of the permissible maximum fee of R65 per member per month, prescribed in terms of the regulations promulgated under s 65(2) of the MS Act. It is common cause that research fees of some R28 million were paid to brokers in this fashion. As it is common cause that the scheme did not make use of the research, the registrar justifiably contended that this was unlawful wasted expenditure incurred by the scheme.

[20] Upon being directed by the council to terminate the contract with TIM, the BOT advised that the research would no longer be pursued and that no more research fees were to be paid to TIM. The BOT also undertook to take action to recover the research fees paid to brokers, where it would prove legally competent to do so. However, the BOT was reluctant to, and did in fact not cancel the contract with TIM, as TIM had also contracted to provide other services to the scheme. In essence, therefore, the BOT failed to comply with this directive of the council.

Membership of the BOT and transgression of governance principles

[21] This brings me to the alleged disregard of the rules of the scheme by the BOT. Firstly, the registrar pointed to the fact that Mr Mabeta (Mabeta), the chairperson of the BOT, was not a member of the scheme at the time he was first elected to the BOT in June 2008. This constituted a transgression of scheme rule 18.1.1, which provides for the election of board members by the members of the scheme at the annual general meeting, from amongst their number.

[22] The BOT conceded that Mabeta was not a member of the scheme in June 2008, as he had only become a member in November 2008. However, it contended that, in terms of the then existing rules, it was permissible for Mabeta to be elected as a trustee in his capacity as an employer-nominated representative. Strangely enough, the deponent to the opposing affidavit of the BOT, Mr PJ Barnard (Barnard), failed to identify the employer Mabeta supposedly represented. Mabeta deposed to an affidavit, confirming the content of Barnard's affidavit insofar as it referred to him. However, Mabeta also failed to identify the employer he allegedly represented.

[23] In a report annexed to the founding papers a council-appointed inspector, Mr Mahlangu (Mahlangu), recorded that Mabeta informed him that he (Mabeta) was not a member of the scheme when he was appointed trustee and was not nominated as an employer representative. The registrar referred to this aspect in his replying affidavit, but in the supplementary duplicating affidavit, Barnard (and not Mabeta) denied that Mabeta advised Mahlangu that he was not nominated as an employer representative. Curiously, however, at no stage was any attempt made to identify the alleged employer. No documentation was annexed to the affidavit, nor was counsel during argument in the court below able to shed any light on the identity of the alleged employer.

[24] In view of this, I cannot fault the conclusion of the court below, that, on the probabilities, the rules of the scheme were indeed disregarded and Mabeta was appointed to the BOT while he was not eligible for election. He therefore served on the BOT unlawfully from June 2008 until his re-election in 2011.

[25] Apart from the aforesaid, the BOT appointed Mabeta as the chief executive officer (CEO) of the scheme for the period September 2011 to February 2012 at a monthly salary of R99 290.00, for a three-day workweek. The registrar convincingly contended that the dual roles of chairperson of the BOT and CEO of the scheme are incompatible from a governance perspective. The industry practice is for the principal officer of a medical scheme to be its CEO. This practice is underscored by scheme rule 21.2, which provides that the principal officer is the executive officer of the scheme. Section 29(1) of the MS Act requires the appointment of a principal officer by the BOT prior to the registration of a medical scheme. Scheme rule 18.8.4 provides that the principal officer is disqualified from serving as a trustee. The court *a quo* correctly concluded that the appointment of Mabeta as CEO was *ultra vires* the scheme rules and therefore null and void.

The MDS and Sapling contracts

[26] MDS and the scheme concluded an agreement, which commenced on 1 January 2009, for a period of three years. This was a distribution agreement in terms of which MDS undertook to render distribution services to the scheme, which included the provision of office facilities and services with regard to broker management, regional support, scheme requirements and scheme reporting. In return for the rendering of the agreed services, MDS was remunerated by the scheme at the rate of R45 per member per month. It was established by Mahlangu that, during the period July 2009 to October 2011, MDS received a total remuneration of some R105 million.

[27] Mahlangu concluded that the services rendered by MDS pursuant to its contract with the scheme did not add value to the scheme, as the services could either have been rendered by the brokers or in terms of existing contracts, or could have been fulfilled by the scheme or its administrator. This led to the registrar taking the view that the contract with MDS ought to be terminated. On 17 January 2012, the scheme's attorneys advised the registrar that the contract with MDS had, in any event, upon its expiry on 31 December 2011, been replaced by a contract between the scheme and Sapling Trade and Invest 41 (Pty) Ltd (Sapling), which would expire on 31 December 2014.

[28] The services rendered by Sapling in terms of this agreement, are essentially the same distribution services previously performed by MDS. Sapling effectively stepped into the shoes of MDS and even has the same chief executive officer that MDS had, namely Mr J le Roux. During the period January to June 2012, Sapling earned R22 million for distribution services rendered in terms of this contract. Sapling's interest in the continued existence of this contract is thus in the order of some R44 million per year (R132 million over the three year term of the contract).

[29] Mahlangu and the registrar were concerned that the services rendered by Sapling, are not of any real value to the scheme and therefore not in the interest of the beneficiaries. This concern was compounded by the fact that, in its affidavits, the BOT was rather vague about the actual nature and extent of the services rendered in terms of the MDS and Sapling agreements. The court a quo justifiably concluded that the BOT failed adequately to address the essential criticism that these agreements amount to a duplication of services, because such services are already rendered by others or can be provided more cost effectively.

[30] In view of these concerns, the registrar issued a directive on 15 June 2012, requiring the scheme, inter alia, to terminate its contractual relationship with Sapling. The registrar's concern was that the funds of the scheme were utilised for the improper advantage of Sapling and its shareholders, to the prejudice of scheme beneficiaries. Fuel was added to the fire by the Mahlangu report pointing out that there were a number of interlocking directorships on the boards of MDS, MB and Sapling. The scheme refused to comply with the registrar's directive of 15 June 2012, to terminate the Sapling contract and, instead, lodged an appeal in terms of s 49(1) of the MS Act, against the decision of the registrar to issue this directive. The appeal did not proceed as the registrar then decided to bring the application for the appointment of a provisional curator to the scheme.

The election of trustees on 28 June 2012

[31] The provisional curator, Mr T Langa, appointed pursuant to the *rule nisi* issued by the court a quo, filed a report on 29 October 2012, in which he raised concerns regarding the election of trustees to the BOT at the annual general meeting of the scheme (the AGM), held on 28 June 2012.

[32] At the AGM (which was held less than two weeks after the registrar's directive to terminate the Sapling contract), five trustees were elected to the BOT by means of a large number of proxies held by Le Roux (the CEO of Sapling) and three other representatives of Sapling. They utilised these proxies to vote for the first, seventh, eighth, ninth and tenth appellants (the Sapling trustees). The AGM was attended by only 38 members of the scheme in person, while 1, 354 proxies were in favour of the four Sapling representatives. The Sapling trustees received between 1,166 and 1,419 votes each, which shows that the Sapling representatives used their proxies *en masse* to vote for the Sapling trustees.

[33] The provisional curator and the registrar have expressed their concern regarding the legitimacy of this election, and in respect of the validity of the proxies obtained by the Sapling representatives. These are issues which require further investigation and no final answer can be given at this stage. However, what is abundantly clear, is that the election process had been successfully orchestrated by the Sapling representatives to ensure the selection of the Sapling trustees to the BOT. This gives rise to the perception that Sapling had thereby acquired indirect control of the BOT for the purpose of advancing its own interests.

[34] The perception is strengthened by the fact that the five Sapling trustees had only joined the scheme shortly before the AGM. The ninth appellant became a member on 1 May 2012, while the remaining four Sapling trustees joined the scheme as late as 1 June 2012. There is no logical explanation why all of them would suddenly decide to join the scheme shortly before the election of the trustees, particularly where they had been members of other medical schemes for several years. And, but for one of them, their dependants remained members of their former medical schemes.

[35] There is also no acceptable explanation as to why the five Sapling trustees decided, soon after joining the scheme, to make themselves available for appointment as trustees of a medical scheme to which they had not previously belonged. Unconvincing explanations were tendered by two of the Sapling trustees, namely that they were made aware of the election by friends, while the rest proffered

no explanation at all. The first appellant's allegation that he made himself available for election as a trustee of this medical scheme, in which he had no interest, because, as an attorney, his legal experience and management skills would be of benefit to the scheme and its members, is not only unconvincing, but highly improbable.

[36] Another disconcerting feature, that became known subsequently, is that Sapling has indemnified the trustees (the nine appellants) against any costs or liability to be incurred by them in opposing the application brought by the registrar. It is certainly strange that Sapling, a service provider of the scheme, would see fit to accept responsibility for the trustees' legal costs. At the very least, it strengthens the registrar's perception that the BOT is compromised and beholden to Sapling. Viewed objectively, it is difficult to see how the compromised trustees will, in these circumstances, be able to avoid a conflict of interest particularly with regard to the Sapling contract, as they are required to do in terms of s 57(6) of the MS Act. As submitted on behalf of the registrar, a reasonable inference may justifiably be drawn that the Sapling trustees will do Sapling's bidding and not act in the best interests of the scheme.

Failure to comply with regulatory demands

[37] The evidence shows that, during the period of regulatory interaction, the relationship between the registrar and the BOT was strained. They blame each other for this state of affairs, but if the undisputed evidence is viewed objectively, there is no doubt that Murphy J was correct in concluding that 'viewed across the entire period of the regulatory interaction, I am persuaded that the scheme was unwilling to acquiesce properly to regulatory intervention and scrutinising, and instead resorted to posturing, with the result firstly of frustrating the investigation and later of delaying it'.

[38] In particular, during an inspection ordered by the registrar in terms of the provisions of the MS Act, the BOT adopted a confrontational stance by refusing the inspectors access to the premises; failing to furnish them with documentation and denying them the opportunity to consult with employees of the scheme. The chairperson of the BOT insisted on the right to dictate the terms of reference of the

inspection and sought political interference to put a stop to the inspection. Although the BOT may be correct in accusing the registrar of sometimes acting in a rather high-handed manner in dealing with the scheme, it remains a concern that the conduct of the BOT, and in particular that of its chairperson, portrayed a degree of unwillingness to comply with the regulatory requirements of the MS Act. In this regard, one should bear in mind the warning sounded in *Dynamic Wealth*, para 6, that the inability or unwillingness of a financial institution to comply with regulatory requirements applicable to protected funds, normally will provide a reason for appointing a curator.

[39] In addition, the scheme has persisted in its refusal to terminate the Sapling contract and has failed to take adequate steps to recover payments which were made to unaccredited brokers. In fact, the BOT has made it clear that they do not wish to co-operate with the registrar in resolving the governance issues which have given rise to this litigation. In argument, counsel for appellants suggested that the registrar has an ulterior motive in bringing the application for the appointment of a curator and that his actions constitute an abuse of power. In the duplicating affidavit deposed to by Barnard, the following is said with regard to the report of the provisional curator:

'The true purpose of the report is obvious, namely to provide the applicant [the registrar] with a further straw to clutch at in its attempt to discredit the trustees, and thereby simultaneously increasing the prospect of him being finally appointed. I respectfully submit that the provisional curator's report simply constitutes a further witch-hunt against the trustees.'

[40] If regard is had to the facts underlying the application, it is clear that there is no justification for allegations of this nature to be levelled against the registrar and the provisional curator. The relevant facts, discussed above, raise serious concerns regarding the well-being of the scheme and its members and the registrar would be shirking his statutory duties if he merely ignored these concerns.

[41] What ultimately has to be decided is whether the aforesaid grounds, viewed objectively, constitute material irregularities justifying, in the interest of the beneficiaries, the appointment of a curator to the scheme. Put differently, it has to be determined whether these grounds show that it is desirable to appoint a curator to

address these concerns for the benefit of the members of the scheme. It also has to be considered whether there are preferable alternatives to resolve the concerns.

[42] In my view, the grounds of concern raised by the registrar, particularly when viewed cumulatively, constitute material irregularities which have to be addressed urgently, to avoid possible prejudice to the members of the scheme. The evidence paints an alarming picture of contracts being concluded which do not appear to add value to the scheme, but rather benefit third parties. The contractual arrangements with MB, TIM, MDS and Sapling bear testimony to this. Millions of rand have been diverted to these third parties, to the financial detriment of the beneficiaries of the scheme. In the process, provisions of the MS Act were breached.

[43] Particularly disconcerting is the current contract with Sapling, in terms of which Sapling stands to gain R132 million over the three year life of the contract. The registrar's directive to terminate this contract has fallen on deaf ears. The way in which the Sapling trustees have been elected to the BOT, and the fact that Sapling has undertaken to pay the trustees' legal costs, leave scant hope that the BOT will be able objectively to deal with the Sapling contract and its consequences in an unbiased manner. In this regard, I share the concern of the registrar that the BOT has been compromised and will be unable to execute its statutory mandate in terms of s 57(6) of the MS Act, to ensure that the interests of the beneficiaries are protected at all times; to act in good faith and to take all reasonable steps to avoid conflicts of interest.

Less intrusive steps

[44] It was submitted on behalf of the trustees, that the registrar ought to have taken less intrusive steps to allay his concerns regarding the well-being of the scheme. It was argued that it ought to have been found that there were insufficient grounds for the appointment of a curator, both at the hearing of the ex parte application and when the *rule nisi* was confirmed. In this regard the appellants' counsel pointed to an exchange of correspondence between the scheme and the registrar, which, in their submission, supported the view that the scheme had done its best to co-operate with the registrar.

[45] The only alternative remedy suggested by the appellants' counsel is the procedure for the removal of a member of the BOT under s 46 of the MS Act. This section provides that the council may, by notice in writing, remove from office a member of the BOT if it has sufficient reason to believe that the person concerned is not a fit and proper person to hold the office concerned. The procedure prescribed provides for the council to furnish the person with full details of all the information concerning his or her alleged unfitness to be a member of the BOT, whereupon the person is allowed a period of 30 days to comment on the allegations. The decision of the council in this regard is appealable by the person concerned in terms of s 50(3) of the MS Act, within a period of 60 days after the date on which such decision is given.

[46] It is clear from this, that it is a time-consuming process, which is aimed at the removal of an individual member of the BOT. It does not provide an effective alternative remedy in a case, such as the present, where all the members of the BOT are implicated. Not only does it not provide for swift action to be taken to safeguard the interest of the beneficiaries of the scheme, but if this procedure were to be utilised to remove all the members of the BOT, it would leave the scheme rudderless and unable to manage its affairs, to the detriment of the beneficiaries. An immediate problem which would present itself if all the trustees were to be removed in terms of s 46, is that there would be no BOT to oversee the election of a new BOT, as required by the rules of the scheme. The day to day business of the scheme would grind to a halt.

[47] It has to be reiterated that the interest of the beneficiaries of the scheme is paramount when considering whether a curator should be appointed to the scheme. And it must be borne in mind that the aspects raised in the report of the provisional curator do not only paint an alarming picture with regard to the conduct of the business of the scheme by the BOT, but show that there are various matters that should be investigated without delay. The only practical solution that presents itself is the appointment of a curator to the scheme.

[48] In view of the above, I am satisfied that there were sufficient grounds for the appointment of a curator to the scheme, both at the hearing of the ex parte

application and when the *rule nisi* was confirmed. With regard to the ex parte procedure followed by the registrar in launching the application, it should be borne in mind that s 5(1) of the FI Act permits this course to be followed. In any event, no prejudice resulted to the trustees who had more than ample opportunity, which they utilised, to file opposing affidavits.

[49] I should add that I have paid particular attention to the exchange of correspondence to which we have been referred by appellants' counsel, but my reading thereof rather strengthens the view that the BOT was not only unwilling to allow a proper investigation of the affairs of the scheme, but unjustifiably regarded the attempts of the council in relation thereto with suspicion and distrust.

[50] I therefore conclude that, in view of the material irregularities detailed above, it is in the interest of the beneficiaries of the scheme and desirable to appoint a curator to the scheme. The registrar has also shown that he has objective grounds to believe that it is desirable to appoint a curator. In the result Murphy J correctly exercised his discretion in confirming the *rule nisi* and granting a final order of curatorship.

[51] As far as the costs of the appeal are concerned, this is a matter which justified the employment of two counsel.

[52] The following order is made:
The appeal is dismissed with costs, including the costs of two counsel, where employed.

_____
P B Fourie
Acting Judge of Appeal

APPEARANCES:

For the Appellant: R du Plessis SC (with him K Grundlingh)
Instructed by:
Geyser Van Rooyen Attorneys, Pretoria
Webbers, Bloemfontein

For the Respondent: M C Maritz SC
Instructed by:
Savage Jooste & Adams Inc, Pretoria
Phatsoane Henney Attorneys, Bloemfontein