

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE No: 13037/2009**

**In the matter between:**

**DEIDRE FREDELINE RACHEL SEPTEMBER**

**Applicant**

And

**LORENZO ANTHONY HARRISON**

**Respondent**

**In re the application for a *curator ad litem* for:-**

**J-C J**

**("the minor")**

**JUDGMENT DELIVERED ON 07 JUNE 2011**

**MANTAME, AJ:**

[1] This is an application for a *curator ad litem*. This ex-parte application was filed on the 30 June 2009 by applicant, who is acting herein in the best interest of the minor child, herein referred to as J-C J.

[2] Applicant is represented herein by Ms. Nel and Respondent is herein represented by Mr. Webster.

[3] It is common cause that Applicant is the minor's grandmother and primary

caregiver. The grandmother took over this responsibility after the death of her daughter. Adri Eugeny Jaftha in a motor car collision that took place on the 15 December 2007.

[4] At the time of the deceased's death, the Respondent and the deceased were involved in a relationship and had a five month old child called J-C J.

[5] At the time of the accident, the Respondent, deceased and the minor child were all travelling together. It is worth noting that though Respondent and the deceased were staying together at the Applicant's home, they were never married.

[6] Respondent and the minor child sustained injuries and the deceased died as a result of the accident.

[7] Further, it is common cause that Applicant and Respondent consulted an attorney, and in this case, the firm of Mr. Webster to institute Road Accident Fund claim for the funeral expenses, personal injury claim and loss of support

[8] A claim for funeral expenses were settled and it later came to the attention of the Applicant that Respondent also received an award from the Road Accident Fund, on behalf of the minor, for the minor's personal injury claim. The award was paid to the Respondent, on or about November 2008. This has not been disputed by the Respondent

[9] As the Applicant was and is the primary caregiver of the minor child, she has not been advised as to how this award would be managed, and further how is Respondent going to contribute to the well-being of the minor child.

[10] This court, has only been advised that some clothes and a bicycle was sent to the Applicant's house sometime in 2009 for the minor child. There has not been any structural maintenance of the child by the Respondent who claimed his *bona fides* towards the minor child. In the eyes of this court, it is not enough for the Respondent to allege that "some of the money has been put in the bank account."

[11] Ms Nel contended that, what fuelled this application is that Respondent has not been acting in the best interest of the minor child. It is the Applicants intention that the minor's rights have to be protected at all times.

[12] Further, in principle, Applicant and Respondent are in agreement on the appointment of a *curator ad litem*, but his mandate should be confirmed only to the compilation of a report in terms of Rule 57 (5) at (ii) in order to report on whether he is capable of managing his son's affairs and, if a *curator bonis* should be appointed.

[13] On the other hand. Applicant contends that exceptional circumstances exist for the appointment of a *curator ad litem* as the previous behaviour displayed by Respondent, in taking monies due to the minor child and not handing over those monies to the minor, or investing them, nor giving proper accounting of where such

funds may be, raises some concern.

[14] There is still further claim/s that still needs to be prosecuted or are in the process of prosecution with the Road Accident Fund, and if an award is made, the best interest of the child needs to be taken care of.

[15] This court, as the upper guardian of all minors has to exercise its discretion judicially in making sure that the minors interests are protected at all costs.

[16] Mr. Webster constantly argued the rights that the Respondent is vested with in terms of Section 21 of the Children's Act. Those rights are not disputed by this court whatsoever. He has not at all taken this court into confidence and in proving that Respondent's *bona fides* are not questionable towards the minor child.

[17] This court has considered all the reports filed herewith, making some recommendations on this application. The final report of the family advocate after evaluating the needs of the minor child support the appointment of a *curator ad litem*.

[18] Consequently, given the history of the Applicant and Respondent, this court is convinced that a third person in the form of a *curator ad litem* should be appointed in order to safeguard the interest of the minor child. This court cannot loose sight of the fact that we are dealing with a toddler who is 3 and a half years old, who has lost one of his parents, and now leaving with the grandparent. The role of the surviving

biological parent is not clear towards his welfare and upbringing.

[19] At this stage, I will not deal with issues of contact, care and custody, as they are not before this court

[20] As such there will be no order against the Road Accident Fund, as the Road Accident Fund is not before this court either.

[21] On the issue that was taken by Mr. Webster about the affidavit annexed to the notice of motion, and that it has not been properly commissioned, I agree with him in as far as that is concerned. At the same time, there has been no application to strike out its contents. This court has a discretion to condone such errors, and I hereby condone this error

[22] After considering the arguments by the parties. I therefore make the following order:

(1) Adv. ALLAN LANGE is appointed as *curator ad litem* to the minor to:-

1.1 assist and represent the minor child's in matters of litigation,  
including the Road Accident Fund claim or any other claim that may  
arise as a result of the accident in which the minor child was injured  
and in which the minor child's mother was deceased on the 15  
December 2007;

1.2 the *curator ad litem* is authorized to take all steps necessary on the  
minor child's behalf to lodge, demand, ratify, institute / prosecute, pursue,

defend and / or settle the minor's claim as aforesaid;

1.3. to investigate and report on the claim paid out to the Respondent on or about November 2008, for the claim for the minor child's personal injuries sustained in the aforesaid collision, and to investigate where the proceeds of such claim are and to ratify and take all steps necessary to establish the validity of the settlement of the minor's claim:

1.4. to investigate and report on the necessity and / or desirability of appointing a *curator bonis* to assist the minor child in the administration of any monies received in respect of the aforesaid claims.

2. The costs of this application be paid by the Respondent on an attorney and client scale
3. The costs of the *curator ad litem* shall be paid out of the minor child's estate, without prejudice to any claim for their recovery against the Road Accident Fund or any other person arising from the aforementioned contemplated claims.

**MANTAME, AJ**