



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

Case No: A31/2023

In the matter between:

LEON JANSEN VAN RENSBURG N.O.

Appellant

and

CANDICE CORNELIUS

Respondent

Date of hearing: 18 July 2023

Date of judgment: 7 August 2023

Coram: Le Grange ADJP, Cloete and Savage JJ

JUDGMENT

SAVAGE J (Le Grange ADJP and Cloete J concurring):

Introduction

- [1] This appeal, with leave granted on petition by the Supreme Court of Appeal, is against the judgment and orders of the Court *a quo* per Nyathi AJ on 17 February 2022 in terms of which it was declared that Ms Carmelita Cornelius (“the patient”) is not of unsound mind and is capable of managing her affairs and is released from curatorship. The Master of this Court was consequently directed to retract the letters of curatorship issued in favour of the appellant, Mr Leon Jansen van Rensburg N.O., as curator bonis, following receipt of his final accounts which were to be furnished within 14 days. It was ordered further that the funds held in trust by the appellant were to be transferred to the patient’s bank account within 14 days, with each party ordered to pay their own costs.
- [2] The patient was seriously injured in a motor vehicle accident on 2 August 2008. On 13 February 2017, following the appointment on 3 December 2014 of Mr Brendan Atkins, a practising advocate, as curator ad litem, the patient succeeded in a claim for general damages against the Road Accident Fund in the amount of R2,28 million.
- [3] On 13 October 2017 Andrews AJ declared the patient incapable of managing her affairs and the appellant was appointed curator bonis to the property of the patient. This followed the recommendation of the curator ad litem that the patient was unable to manage her own affairs and that the interests of justice required the appointment of a curator bonis. In recommending as much, the curator ad litem noted that a curatorship need not be a permanent feature of the patient’s life as she was not of unsound mind and may in due course become financially literate.
- [4] In support of the appointment of a curator bonis, reliance was placed by the curator ad litem on the report of Dr Cora de Villiers, a neuropsychologist who examined the patient, who supported the

appointment of a curator bonis to the patient's property. Dr De Villiers found that the patient's functional illiteracy was unrelated to the motor vehicle accident of 2008 and that her composite score for orientation, attention and working memory fell within the second percentile, while her score for conceptual reasoning was "profoundly low" at under the first percentile. In a second assessment by Dr De Villiers, it was reported that the patient would struggle with financial agreements and contracts.

- [5] The curator ad litem also relied upon the findings of Dr Chris George, a psychiatrist who had examined the patient and also supported the appointment of a curator bonis to the property of the patient. Dr George reported that the patient was partially literate and distinguished between the patient's ability to manage small and large amounts of money. In a second assessment undertaken, Dr George noted that the patient would need assistance to manage large amounts of money and evaluate financial advice, and that she would probably not be able to resist giving away her money to family members. The patient, in an affidavit signed on 3 October 2017, supported the appointment of a curator bonis over her estate, recording that her affidavit could be used in support of such application.

In the Court a quo

- [6] The respondent, the patient's daughter, was the applicant in proceedings before the Court a quo. Although Andrews AJ did not find the patient to have been of unsound mind, the respondent approached the Court seeking a declaration that the patient is "*no longer of unsound mind and incapable of managing her own affairs*". Orders were further sought that the patient be released from curatorship; that the appointment of the appellant as curator bonis be set aside, with the Master directed to terminate and retract the letters of curatorship granted in favour of the appellant; and that the amount held in trust by

the appellant be transferred to the trust account of the applicant's attorneys of record.

- [7] In her founding affidavit the respondent set out that the application was brought in terms of Uniform 57(14) on the basis that as the patient's daughter she is "*sufficiently close to the patient and [has] a real concern for her welfare as well as a legally recognised interest in her ability to manage her own affairs*". She recorded that the patient had consulted with a specialist psychiatrist, Dr Naz Daniels, "*who confirmed that she has sufficiently recovered from the accident to effectively take charge of her own affairs*". In addition, the respondent recorded that the patient "*is against the continuation of the curatorship in general as she is sufficiently functional mentally and physically to properly coordinate and conduct her personal and financial affairs*". It was stated that "*the patient has consistently complained that the curatorship negatively affects her life, status and dignity as she is treated like an imbecile. This is also evident in the letters she wrote to the curator bonis complaining about a variety of issues relating to the limitations imposed on her, occasioned by the curatorship.*" The report of Dr Daniels was filed in support of the application. In it, Dr Daniels recorded that the patient had "*sufficiently recovered...to effectively take charge of her own affairs*" and the patient's release from curatorship was supported.
- [8] The patient was not a party to the application, apparently on the basis of legal advice received that she could not launch such proceedings given that she had been placed under curatorship. She nevertheless deposed to a confirmatory affidavit in which she confirmed her support for the relief sought in the application.
- [9] On 18 January 2021, by agreement between the parties, Mr Atkins was once again appointed as curator ad litem to furnish a report concerning the respondent's application for the release of the patient from curatorship. In his report of 11 March 2021 the curator ad litem noted that the patient remained vulnerable and recommended that she be

reassessed by a suitably qualified clinical neuropsychologist to give guidance on whether the patient's "*present socio-economic/financial position/level of literacy/level of education/potential vulnerability meets the requirements*" for release from curatorship. He noted that this view was supported by all relevant parties, including the patient and Dr Daniels. The curator ad litem recorded that if the patient refused to be reassessed, he recommended it to be in the interests of justice and in the patient's best interests that she remain under the curatorship of the appellant, or any other person the Court may deem appropriate.

[10] The appellant opposed the respondent's application before the Court *a quo* on the basis that there had been no material change in the reasons which had justified the curatorship imposed, that the patient had not become financially literate and remained incapable of managing her own affairs. The appellant indicated that there would be no material benefit for the patient if the curatorship were to be terminated and that she would be placed at risk if this occurred. The appellant made reference to the report and recommendations of the curator ad litem in which it was indicated, *inter alia* that the patient was unable to read, understand or interpret financial advice and that she had stated that she intended to give away more than R1 million of her funds to family and friends, without any understanding of the concept of donations tax. Furthermore, that she intended to invest R1.2 million for herself and her minor child but was unable to explain how she would do so when the third party she indicated she would rely on for advice in this regard was deceased. The curator ad litem had also noted that, when he asked the patient about documents that she had brought to him, she became upset and incontinent.

[11] The appellant took issue with the report of Dr Daniels on the basis that Dr Daniels had failed to advance any reasons which supported her view that the patient be released from curatorship and had not determined that the patient would be able to evaluate financial advice and invest a large sum of money. In addition, a number of errors were

identified in Dr Daniels' report, which included that the patient had not sustained a head injury in the 2008 motor vehicle accident when both Dr George and Dr De Villiers, supported by the medical records, had indicated the contrary. In addition, Dr Daniels recorded that the patient had purchased a new home for herself with the proceeds she had received from her motor vehicle accident claim when the patient had been unable to negotiate or conclude such agreement and it was the appellant who had done so on her behalf. Similarly, the patient had not managed expenses relating to her daughter's schooling, which were paid by the appellant, and the appellant had taken legal action to enforce the terms of a lease agreement entered into in respect of the patient's immovable property.

[12] The appellant noted that the patient was left unhappy because he had refused her desired level of financial contribution to her mother's funeral when there was clear evidence that the patient had been pressured by family members to incur large expenses. This was so, stated the appellant, in that the patient, with other people who were unknown to the appellant, demanded of him that he pay R50 000,00 from the patient's funds towards the funeral, in respect of which a family member was acting as undertaker and the coffin was said to cost R35 000,00. Given the Master's policy to allow a contribution of R10 000 towards funeral costs of close family members, the appellant paid out R10 000,00 from the patient's funds towards such funeral. The appellant denied that the patient had requested that funds be made available to purchase a laptop for her daughter and indicated that had such a request been made, he would have supported it.

[13] The appellant stated that the patient remains a vulnerable person and that she will remain vulnerable if the curatorship is terminated. He therefore supported the recommendation of the curator ad litem in his second report that the patient be assessed by a neuropsychologist to advise if her circumstances had changed. Pending such reassessment, the appellant contended that the patient should remain under

curatorship, although he accepted that his relationship with the patient had become strained and that he would support his removal as curator *bonis* upon the appointment of a new curator *bonis*.

Judgment of Court a quo

[14] The Court a quo found, in relation to the appellant's challenge to the locus standi of the respondent to launch the application, that the respondent, as the adult daughter of the patient, has always been involved in the advancement of the welfare of the patient since the accident, has her best interests at heart and therefore held the necessary legal standing to bring the application.

[15] The Court took account of the fact that the patient had taken an informed decision that she did not want the curatorship to continue and asked whether it was "*fair to disregard her wishes and continue to subject the patient to the standards and expectations of people who are better educated or have higher levels of intelligence*" than her. The Court considered it "*unpalatable*" to require the patient to undergo a psychiatric test to determine her "*sophistication level*". It was found to be her right as an adult not to accept the benefits of the curatorship when she is of sound mind and there is no evidence that she is unable to manage a large estate and wishes to "*take the risk*" of managing such estate. The Court found that:

'41. ...To continue subjecting the patient to curatorship ... would be tantamount to endorsing the unfortunate and unfounded belief that only those who are sufficiently schooled in the Western ways of doing things have an inherent right and can be trusted to properly manage large estates. In our country Africa, where people have a culture of living communally, it would not be fair to condone this kind of attitude. A cultural misplacement should neither be allowed nor promoted.

42. The courts must be alive and adept enough to put a halt on pure commercial tendencies from undermining the working and established practices of people who do not conform to the popular Western expectations.'

[16] Criticism was levelled against both the appellant and the Master for their "*failure to be creative*" in guiding the patient and for failing to adopt "*less foreign ways of addressing their concerns about the patient's perceived inability to manage a large estate*", as opposed to "*castigating her as someone who will never be able to understand the management of her newly found riches according to the Western paradigm*". The Court found that the appellant was uncompromising in his approach, that it was his "*way or the highway*", that he rejected the patient's way of doing things and forced her to learn "*Western ways*" without any attempt to find middle ground. This, when reliance on the concept of ubuntu would have provided the appellant and the Master with some "*middle way*" as a solution. The Court stated that the patient wished to give her family an offering of gratitude from her award capital and that there was no evidence that the family was "*cunning*" or that the appellant was required to intervene.

[17] The Court found that to keep the patient under curatorship would inter alia amount to a grave affront to her dignity, freedom of choice and right to equality. A coffin costing R35 000 would have amounted to a lasting token of her appreciation for her mother and the patient had the right to make such choice. The Court was not persuaded that nothing has changed in the patient's circumstances since she had been placed under curatorship when she had matured age-wise and in life experience, she had a track record of efficiently managing her finances, owns two houses, appreciates the value of living a better quality of life and has a track record raising her daughter to adulthood. It was therefore found that any further medical assessment of the patient will be of no assistance to the determination of the matter when the patient's levels of intelligence and formal education would not change

and were unrelated to the road accident. The challenges facing the patient were found to be social in nature. For all of these reasons, the Court *a quo* found that the application must succeed, with the appellant removed as curator bonis, the patient's funds to be paid into her banking account and each party to pay their own costs.

Evaluation

Locus standi

[18] The appellant raised a challenge to the locus standi of the respondent in the Court *a quo* on the basis that Rule 57(14) requires that the application be brought by the patient herself:

'Every person who has been declared by a court to be of unsound mind and incapable of managing his affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that he is no longer of unsound mind and incapable of managing his affairs or for release from such curatorship, as the case may be, shall give 15 days' notice of such application to such curator and to the Master.'

[19] Although the patient was not a party to the application, the Court *a quo* found that the respondent, as the patient's adult daughter, had the necessary locus standi to bring the application as she –

'...took care of the patient while the latter was unable to sufficiently take care of herself. She has always been involved in the advancement of the welfare of the Patient since the accident. The [respondent] clearly has the best interests of the Patient at heart.'

[20] *Locus standi in iudicio* is an access mechanism controlled by the court,¹ with the party instituting proceedings required to prove that they

¹ *Firm-O-Seal CC v Prinsloo & Van Eeden Inc and Another* [2023] ZASCA 107 at para 6 with reference to *Watt v Sea Plant Products Bpk* [1998] 4 All SA 109 (C) at 113H.

have the requisite *locus standi* to approach the court. Generally, the requirements for *locus standi* are that a litigant must have an adequate or direct interest, one that is actual and current and not abstract, remote, academic or hypothetical, in the subject matter of the litigation and the relief sought.² Standing is not just a procedural question, but also one of substance as to the sufficiency of a litigant's interest in the proceeding having regard to the particular facts,³ with the real enquiry being whether the events complained of constitute a wrong as against the litigant.⁴

[21] In finding that the respondent held the requisite *locus standi* to bring the application, the Court *a quo* not only failed to have regard to Rule 57(14), apparently accepting that the patient had not brought the application herself on the basis of advice received that she could not do so given that she had been placed under curatorship, but omitted to find that the patient was unable to litigate on her own behalf or find that she required the assistance to do so. While a family member may, in certain circumstances be found to hold a direct and substantial interest in proceedings and the requisite *locus standi* to act on behalf of a relative, this is a matter for careful consideration by a Court, more so where vulnerable individuals are concerned. In determining the issue, the Court *a quo* failed to have regard to trite legal principles.⁵ As indicated above, it did not determine that the patient could not act in her own name which was an important prerequisite to a determination that any other person was entitled to act on her behalf.⁶ Nor did the Court determine the basis on which the respondent had a “*direct and substantial interest*” in the matter.

² *Four Wheel Drive CC v Leshni Rattan NO* [2018] ZASCA 124 para 7.

³ *Jacobs en 'n Ander v Waks en Andere* [1991] ZASCA 152; 1992 (1) SA 521 (A) at 534D); *Gross and Others v Pentz* 1996 (4) SA 617 (A) 632 B-D.

⁴ *Muller v De Wet NO & Others* 2001(2) SA 489 (W).

⁵ *Maluleke v MEC, Health and Welfare, NP* 1999 (4) SA 367 (T) at 374A-C

⁶ *Ibid.*

[22] As was made clear by a full-bench judgment of this division in *Thiessen v Botha*,⁷ confirming the decision in *Ex parte Futter*:⁸

[8] Dealing firstly with the question of locus standi, it is a well established principle of our law that a litigant who claims relief must show that he has an interest in the subject matter of the litigation which is recognised at law as sufficient to give him legal standing (See *Gross and others v Pentz* 1996(4) SA 617 (A) at 632C-D and *Jacobs en 'n Ander v Waks en Andere* 1992(1) SA 521 (A) at 534C-E) ... The general rule is that it is for the party instituting proceedings to not only allege, but also to prove that he has locus standi. The onus of establishing locus standi in application proceedings therefore rests on the applicant.... and it is an onus in the true sense....

[9] By way of introduction to the issue of locus standi, the general position in our law is that whatever moral duty any person may think or believe he has, there is no legal duty on anyone to prevent harm or to look after the affairs of another (See *Swinburne v Newbee Investments* 2010 (5) SA 296 (KZD) at 302G.) Although significantly eroded over the years, particularly by legislation, the principle of individual freedom which has as one of its components the duty to look after one's own interests and the concomitant right to insist that others mind their own business, is recognized in the many principles forming part of our legal tradition.”

[23] In *Minister of Finance v Afribusines NPC*⁹ the Constitutional Court made clear that:

⁷ *Thiessen and Another v Botha and Another* (A243/2016) [2017] ZAWCHC 59.

⁸ *Ex Parte Futter: In re Walter v Road Accident Fund and Another* [2012] ZAECPEHC 52.

⁹ 2022 (4) SA 362 (CC) at para 23.

‘A person is regarded as having a direct and substantial interest in an order if that order would directly affect that person’s rights or interests.’³³ The interest must generally be a *legal* interest in the subject matter of the litigation and not merely a financial interest.³⁴ In this matter, the prejudice being suffered by Fidelity and SANSEA is a financial interest and does not relate to a right or legal interest.’³⁵

- [24] The Court *a quo* erred in finding, without more, that the respondent held the requisite *locus standi* in the matter on the basis of her relationship with the patient and that she held the patient’s best interests at heart. This was so despite the patient’s support for the application brought by the respondent. It follows, for the reasons set out above, that the Court erred in finding that the respondent held the requisite *locus standi* in the matter and that on appeal such finding cannot be sustained.

Merits

- [25] Even if it were so that the respondent held the requisite *locus standi* in the matter, to find that a case had been made out that the patient was now capable of managing her own affairs such as to warrant her release from curatorship required the Court *a quo* to carefully consider the evidence before it. Clear evidence was required that the patient’s circumstances had changed such as to warrant an order releasing her from curatorship. The Court *a quo*’s finding that there was no evidence that the patient was unable to manage a large estate, that “*there is no reasonable doubt that she can manage her own affairs*” having matured and given her life experience and that she had an “*established a track Cape Town (CPT) record of efficiently managing her finances*” was simply not borne out by the material before the Court.
- [26] Dr Daniels was not placed in possession of all reports relevant to the matter when arriving at her initial recommendation supporting the termination of the curatorship. She subsequently accepted as much in

her engagements with the curator ad litem and supported his recommendation that the patient be assessed further by a clinical neuropsychologist. Dr Daniels also recognised that the patient risked being exploited by those around her and could be at financial risk in managing large amounts of money, that her low literacy levels could impact on her management of large sums and that her understanding of financial advice was lacking. Given the nature of these concerns, and in light of her support for a further assessment of the patient by a neuropsychologist, Dr Daniels was unable to persist with a recommendation that the curatorship be terminated and it was noted that she did not suggest that the appellant had acted in any manner contrary to the patient's best interests. In ignoring the recommendation of the curator ad litem that a further neuropsychological report was required, and the support for such recommendation from *inter alia* Dr Daniels, the Court a quo erred. The Court a quo's statement that retaining the curatorship was "*tantamount to endorsing the unfortunate and unfounded belief that only those who are sufficiently schooled in the Western ways of doing things have an inherent right and can be trusted to properly manage large estates*" was unfounded. There are compelling reasons why appropriate protections are put in place by courts to protect and preserve both the dignity and interests of vulnerable people from all walks of life, where this is necessary, in relation to their personal or proprietary affairs, not only in this country but in jurisdictions around the world. The suggestions made by the Court a quo that such protections reflect the imposition of "*Western ways*" imposed on "*people who do not conform to the popular Western expectations*" are without merit. It follows that the appeal against the judgment and orders of the Court must be upheld.

- [27] The patient remains entitled to obtain a further neuropsychological report, as recommended by the curator ad litem and supported by Dr Daniels, and, if supportive of her release from curatorship, to seek an order to this effect from the Court in due course. In the interim and

given that it is apparent that the appellant's relationship with the patient has become strained, there is merit in the proposal made by the appellant that he be removed as curator bonis and replaced by another person able to perform such function diligently. That process may proceed by agreement between the parties and there is no reason why this Court should make any order on appeal in this regard.

[28] Despite the respondent's opposition, the interests of justice dictate that the appellant's costs be paid from the estate of the patient.

Order

[29] In the result, an order is proposed in the following terms:

1. The appeal succeeds. The appellant's costs on the party and party scale shall be borne by the estate of the patient, Ms Carmelita Cornelius and the respondent shall pay her own costs.
2. The order of the Court *a quo* is set aside and substituted as follows:

'The application is dismissed. The applicant shall pay her own costs and the respondent's costs shall be borne by the estate of the patient, Ms Carmelita Cornelius on the party and party scale.'

SAVAGE J

I agree and it is so ordered.

LE GRANGE ADJP

I agree.

CLOETE J

APPEARANCES:

APPELLANT: P A Corbett SC

Instructed by Van Rensburg & Co

RESPONDENT: D Nyathi

Instructed by Roscoe Howard Korkie Attorneys
