

## 57 Appointment of Curators in Respect of Persons under Disability and Release from Curatorship

RS 22, 2023, D1 Rule 57-1

(1) Any person desirous of making an application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and consequently incapable of managing his or her own affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) An application referred to in subrule (1) shall be brought *ex parte* and shall set forth fully —

- (a) the grounds upon which the applicant claims *locus standi* to make such application;
- (b) the grounds upon which the court is alleged to have jurisdiction;
- (c) the patient's age and sex, full particulars of the patient's means, and information as to the patient's general state of physical health;
- (d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);
- (e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his or her affairs;
- (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

(3) The application shall, as far as possible, be supported by —

- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in the affidavit; and
- (b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be a psychiatrist or other medical practitioner with appropriate expertise, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon the patient's mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his or her affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without a personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in subrule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as it deems fit and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

RS 22, 2023, D1 Rule 57-2

(5) Upon appointment of the curator *ad litem* (who shall if practicable be an advocate, or failing such, an attorney), the curator shall without delay interview the patient, and shall also inform the patient of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph (b) of subrule (3) the curator is satisfied that this would be detrimental to the patient's health. The curator shall further make such inquiries as the case appears to require and shall thereafter prepare and file with the registrar, a report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In the report, the curator shall set forth such further facts (if any) as the curator has ascertained in regard to the patient's mental condition, means and circumstances and shall draw attention to any consideration which in the curator's view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the report, together with copies of the documents referred to in subrules (2) and (3), to the Master of the High Court having jurisdiction, for consideration and report to the court.

(7) In such report the Master shall, as far as possible, comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and the Master shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to require. The curator *ad litem* shall be furnished with a copy of the said report.

(8) After receipt of the report of the Master, the applicant may, on notice to the curator *ad litem* (who shall if considered advisable inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his or her affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At the hearing, the court may require the attendance of the applicant, the patient, and such other persons as it may think fit, to give evidence orally or to furnish information which the court may require.

(10) Upon consideration of the application, the reports of the curator *ad litem* and the Master and such further information or evidence (if any) as has been orally adduced, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his or her own affairs and may appoint a suitable person as curator to the patient's person or property or both, on such terms as it deems fit, or it may dismiss the application or generally make such order (including an order that the costs of the proceedings be defrayed from the assets of the patient) as it deems fit.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his or her own affairs.

(12) . . .

RS 22, 2023, D1 Rule 57-3

(13) Save to the extent that the court may on application otherwise direct, the provisions of subrules (1) to (11) shall, with the necessary changes required by the context, apply to every application for the appointment of a curator *bonis* to any person on the ground that such person is by reason of some disability, mental or physical, incapable of managing his or her own affairs.

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

(15) Upon receipt of the notice referred to in subrule (14) and after due consideration of the application and the information available, the Master shall, without delay, report thereon to the court, and shall at the same time comment upon any aspect of the matter to which, in the Master's view, the attention of the court should be drawn.

(16) . . .

(17) Upon the hearing of any application referred to in subrule (14) the court may declare the applicant as not being of unsound mind and as being capable of managing his or her affairs, order the applicant's release from curatorship, or dismiss the application, or of its own accord appoint a curator *ad litem* to make any inquiries as it considers desirable and to report to it, or call for further evidence as it considers desirable and postpone the further hearing of the matter to permit the production of such report, affidavit or evidence, as the case may be, or postpone the matter indefinitely and make such order as to costs or otherwise as it deems fit.

[Rule 57 amended by GN R1262 of 30 May 1991 and by GN R2410 of 30 September 1991, and substituted by GN R1603 of 17 December 2021.]

### Commentary

**General.** This rule provides for the various steps that must be taken in an application for the appointment of a curator to the person or property of a person. <sup>1</sup>

The provisions of the rule are peremptory and, other than in the circumstances provided for in subrule (4), the failure to observe the provisions of the rule renders an application defective to the extent that such application cannot and should not be entertained at all. <sup>2</sup>

**Subrule (1): 'Any person desirous of making an application.'** The appointment of a *curator ad litem* should be sought at the earliest moment after it has become clear that the patient may be incapable of managing his own affairs. <sup>3</sup>

**'Declaring another person . . . to be of unsound mind.'** Though this subrule speaks of an order declaring a person 'to be of

unsound mind', in practice an order declaring the patient to be of unsound mind is not usually sought. This is recognized in subrule (13) in terms of

RS 22, 2023, D1 Rule 57-4

which the provisions of the rule apply *mutatis mutandis* to applications for the appointment of a *curator bonis* to a person on the ground that he is by reason of some disability, mental or physical, incapable of managing his own affairs. <sup>4</sup>

In *Ex parte Van der Linde* <sup>5</sup> it was held that in an application under this rule there must be a prayer that the patient be declared of unsound mind and as such incapable of managing his own affairs. However, where the application for the appointment of a *curator bonis* is brought under subrule (13), a declaration of unsoundness of mind is not required.

It has been held that the preferable practice is that a patient who suffers from a mental disability resulting in the inability to manage all or some of his own affairs should be declared to be unable to do so. Such an order would protect the patient and those who interact with him and form the basis upon which the appointment of a *curator bonis* or a curator to the person is justified in law. <sup>6</sup>

**'Curator to the person.'** The appointment of a curator to the person involves serious encroachments upon the liberty of the patient and should be made only when a real need for it has been shown. <sup>7</sup> If the appointment of a *curator bonis* is sufficient a curator to the person will not be appointed as well. <sup>8</sup> A curator to the person will be appointed in a case where consent to perform an operation on the patient is necessary, but such an appointment may be limited to the sole function of deciding whether or not the operation should be performed. <sup>9</sup> A wife may be appointed curatrix to the person of her husband. <sup>10</sup>

**'Curator ad litem.'** A *curator ad litem* fulfils a very important function. It is, therefore, essential that the conditions set out in subrules (1), (2) and (3) are met before such a curator is appointed. <sup>11</sup>

**'In the first instance apply . . . for the appointment of a curator ad litem to such patient.'** It is customary to include a prayer catering for the situation contemplated in subrule (8) i.e. to the effect that the matter may again be placed on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind, etc and, accordingly, to postpone the proceedings *sine die* for that purpose.

**Subrule (2): 'Shall be brought ex parte.'** It is submitted that where the costs of the application for the appointment of a *curator bonis* are to be claimed as part of the award in an action for damages for bodily injuries which have necessitated the appointment of a *curator bonis* to the injured party, <sup>12</sup> notice of the application for the appointment of a *curator bonis* should be served on the insurance company concerned.

RS 22, 2023, D1 Rule 57-5

**Subrule (2)(a): 'The applicant claims locus standi.'** The application is usually brought by one of the patient's next-of-kin, but where the patient has no relatives in the Republic, the application may be brought by any person with a sufficient interest in the person of the patient, such as a friend or even a partner or business associate. <sup>13</sup> In *Ex parte Knight* <sup>14</sup> a *curator bonis* was appointed on the application of an assistant welfare officer in the then Department of Social Welfare.

**Subrule (2)(b): 'The court is alleged to have jurisdiction.'** In *Ex parte Berry: In re Berry* <sup>15</sup> it was held, on a comprehensive review of the authorities, that any division of the Supreme Court (i.e. the High Court) has jurisdiction to declare incapable of managing his affairs and place under curatorship any person who is domiciled within its area of jurisdiction or whose assets are within such area, notwithstanding that he himself is not within the area. This decision was confirmed in *Ex parte De Villiers*, <sup>16</sup> in which it was held that s 60(1) of the (now repealed) Mental Health Act 18 of 1973 specifically preserved such common-law jurisdiction as a court might have to declare a person to be of unsound mind and to appoint a *curator bonis*.

**Subrule (2)(c): 'Information as to his general state of physical health.'** It is submitted that such information must fall within the personal knowledge of the deponent to the founding affidavit. If not, supporting affidavits to prove the patient's general state of physical health must be filed. In addition, the affidavits by the medical practitioners contemplated in subrule (3)(b) must, as far as possible, be filed in support of the application.

**Subrule (2)(e): 'To show that the patient is of unsound mind and incapable of managing his or her affairs.'** It is submitted that such facts and circumstances must fall within the personal knowledge of the deponent to the founding affidavit. If not, supporting affidavits to prove the patient's mental condition must be filed. In addition, the affidavits by the medical practitioners contemplated in subrule (3)(b) must, as far as possible, be filed in support of the application.

**Subrule (2)(f): 'Statement that . . . they would be able and willing to act.'** Consents to act as *curator ad litem* and *curator bonis* if appointed by the court should be annexed to the application.

A *curator ad litem* must be of sufficient experience, proven expertise and good standing to ensure that the interests of the patient are best served. It is important that the *curator ad litem* is professionally independent. <sup>17</sup> See further the notes to subrule (5) s v 'Who shall if practicable be an advocate' below.

**Subrule (3): 'As far as possible, be supported.'** It is not an absolute requirement that the application be supported by the affidavits contemplated in this subrule. The subrule requires that the application shall 'as far as possible' be supported by the affidavits. It is submitted that all reasonable attempts should be made to obtain the affidavits and that in the absence of obtaining them, the attempts made should be disclosed to the court in the founding affidavit or a supporting affidavit to the application.

RS 22, 2023, D1 Rule 57-6

**Subrule (4): 'May appoint . . . as curator ad litem.'** It has often been held that the court will not dispense with the appointment of a *curator ad litem* even if it is clear that a *curator bonis* will have to be appointed. <sup>18</sup> The present rule, it is submitted, contemplates that as a normal rule a *curator ad litem* will be appointed though the court has power, under this subrule, to dispense with such an appointment on the grounds of urgency, other special circumstances or otherwise. <sup>19</sup> The appointment of a *curator ad litem* may be dispensed with if there is reason to believe that the person concerned understands the nature or effect of the proceedings. <sup>20</sup> The appointment of a *curator ad litem* is usually dispensed with in applications for the appointment of a *curator bonis* to a prodigal, there being in such cases no declaration as to unsoundness of mind. <sup>21</sup>

As to the extent to which lack of finance will be regarded as a special circumstance, see *Ex parte Griesel*. <sup>22</sup> The mere fact that the patient consents is insufficient reason for dispensing with the appointment of a *curator ad litem*. <sup>23</sup>

**'By reason of urgency, special circumstances or otherwise.'** The court may as a matter of urgency appoint a curator for a specific purpose, for example, to decide whether or not an operation on the patient should be performed <sup>24</sup> or to assist a person at a meeting. <sup>25</sup>

**'Dispense with any of the requirements of this rule.'** The court has a wide discretion to dispense with the requirements of

the rule. [26](#)

**Subrule (5): 'Who shall if practicable be an advocate.'** It has been held that 'doenlik' ('practicable') in this context means 'prakties uitvoerbaar'. [27](#) If the patient lives far from the seat of the court, the saving in travelling expenses achieved by the appointment of a local attorney as *curator ad litem* is cancelled out by the fact that the *curator ad litem* might have to attend court when the application is heard. [28](#) The appointment of an advocate as *curator ad litem* has been termed ' 'n gesonde praktyk'; [29](#) indeed in some, if not most cases, it is preferable that the *curator ad litem* be someone completely independent and outside the range of local influence. [30](#)

RS 22, 2023, D1 Rule 57-7

In *Ex parte Mallach* [31](#) Mason J stated:

'... in ordinary applications for the appointment of a *curator ad litem* to the property of any person found to be of unsound mind the Court always requires that some independent person acting as *curator ad litem* on behalf of the person supposed to be insane, should independently investigate the matter.'

In *Modiba: In re Ruca v Road Accident Fund* [32](#) Bertelsmann J stated:

'It follows that a *curator ad litem* must be (ordinarily) an advocate of sufficient experience, proven expertise and good standing to ensure that the patient receives optimal forensic advice and service; see *Soller NO v G & Another* [2003 \(5\) SA 430 \(W\)](#) at 436B-437A. Advocates are — as members of a referral profession practising individually — generally regarded as being professionally independent as they are not beholden to clients other than in respect of the particular brief that has been entrusted to them. One non-negotiable quality of an advocate (or attorney) acting as *curator* must be indisputable independence to ensure the integrity of the professional service that must be rendered to the patient.'

**'Or failing such, an attorney.'** The *curator ad litem* should preferably be a person who is directly answerable to the court. [33](#) In special circumstances a magistrate may be appointed; but this power will be sparingly exercised and the relevant facts which might justify such an appointment must be fully stated in the application. [34](#)

**'The curator . . . shall.'** The position of a *curator ad litem* is one of considerable responsibility and the court is greatly dependent upon the proper exercise of a curator's duties in arriving at a just decision in any particular case. [35](#) It is the duty of the *curator ad litem*, by making such enquiries as he deems necessary, [36](#) to see that the existence and extent of the patient's mental illness are properly investigated, and to ensure that the proprietary and other interests of the patient are adequately protected by the terms of the order made by the court. [37](#)

The *curator ad litem* is entitled to receive the fullest information from the applicant regarding any reasonable enquiry he may raise: in practice the applicant's attorneys should at once place before the *curator ad litem* all the information at their disposal. [38](#) In exceptional circumstances application may be made for the appointment of an independent attorney or advocate to assist the *curator ad litem*. [39](#)

**'Prepare and file . . . a report.'** This subrule requires the *curator ad litem* to set forth in his report such further facts as he may have ascertained regarding the patient's mental condition, means and circumstances, and to draw attention to any consideration which might influence the court in regard to the order sought. Though a *curator ad litem* may in certain

RS 22, 2023, D1 Rule 57-8

circumstances function rather as an *amicus curiae*, [40](#) his primary function in the present context is to ensure that the proprietary and other interests of the patient are adequately protected. [41](#)

**Subrule (6): 'The applicant shall submit . . . to the Master of the High Court having jurisdiction.'** The jurisdiction of the Master is determined by the Administration of Estates [Act 66 of 1965](#) and is quite distinguishable from the jurisdiction of the court, which, in general, is determined by the Superior Courts [Act 10 of 2013](#) and the common law. [42](#) Under [s 4\(2\)-\(4\)](#) of the Administration of Estates [Act 66 of 1965](#) the jurisdiction of a Master in respect of property belonging to a person under curatorship or to be placed under curatorship lies, for purposes of this subrule and subrule (7) —

- (a) in the case of any such person who is ordinarily resident within the area of jurisdiction of a division of a High Court, with the Master appointed in respect of that area;
- (b) in the case of any such person who is not so resident, with the Master appointed in respect of any such area in which is situate the greater or greatest portion of the property of that person.

It has been held that the provisions of [s 4\(2\)\(b\)](#) of the Administration of Estates [Act 66 of 1965](#) apply only in respect of the property of a person under curatorship or to be placed under curatorship if such person is not ordinarily resident within the area of jurisdiction of a High Court, [43](#) and that the provisions apply in respect of the local property of an affected person who is not ordinarily resident in the Republic, but who owns property that is held or situated here. [44](#) The provisions of [s 4\(2\)\(b\)](#) of the Administration of Estates [Act 66 of 1965](#) might also apply in respect of a person who has no fixed place of residence in the Republic, but constantly moves about the country staying at different places from time to time, consequently not being 'ordinarily resident' anywhere in the country. [45](#)

**Subrule (7): 'In such report the Master shall.'** The provisions of this subrule are peremptory. [46](#)

**'The furnishing of security.'** The court has the power to grant exemption to a *curator bonis* from furnishing security and will exercise such discretion when exceptional circumstances exist. [47](#)

**Subrule (9): 'At the hearing, the court may require the attendance.'** The *curator ad litem* ordinarily appears at the hearing. [48](#)

**'To give evidence orally or to furnish information which the court may require.'** Formerly all the evidence, including the medical evidence, was placed before the court *viva voce*. [49](#) Today

RS 22, 2023, D1 Rule 57-9

the evidence is usually placed before the court by way of affidavit, but it is submitted that the court may either of its own motion or at the request of the *curator ad litem* or any other party direct that *viva voce* evidence should be produced.

**Subrule (10): 'Declare the patient to be of unsound mind and incapable of managing his or her own affairs.'** See the notes to subrule (1) *s v* 'Declaring another person . . . to be of unsound mind' above.

If the application for the appointment of a *curator bonis* is brought under subrule (13), a declaration of unsoundness of mind is not required.

**'Appoint a suitable person as curator to the patient's person or property or both.'** As to the appointment of a curator to the person, see the notes to subrule (1) *s v* 'Curator to the person' above. A court will not appoint a *curator bonis* until it is absolutely satisfied that the patient has to be protected against loss which would be caused because the patient is unable to

manage his affairs. [50](#)

**'On such terms as it deems fit.'** While the Administration of Estates [Act 66 of 1965](#) to some extent defines the powers and duties of all curators, it is desirable that any order of court appointing a curator should specify the powers conferred upon the curator. [51](#) See, for example, [52](#) the orders of court in *Ex parte Van Hasselt*; [53](#) *Ex parte Du Toit: In re Curatorship Estate Schwab*; [54](#) *Ex parte Hulett*; [55](#) *Meyer v Thompson NO*; [56](#) *Reyneke NO v Mutual & Federal Insurance Co Ltd*; [57](#) *Ex parte Ewing NO: In re Sheridan*; [58](#) and see the amplification to the original order granted in *Ex parte Wagner NO: In re De Bie*. [59](#)

It is advisable to obtain the court's sanction for any remuneration that may be payable to the curator. Remuneration is generally allowed where the estate is complex and the curator is a professional man or a representative of a bank or trust company. It is not usually — although it may be — claimed where the curator is a relative of the patient.

As to the furnishing of security by a *curator bonis*, see the notes to subrule (7) s v 'The furnishing of security' above.

**'Dismiss the application.'** While each case must be decided on its own facts, it can be said that in general the court will not appoint a curator where the person concerned is *compos mentis* and actively opposes any such appointment. [60](#)

**'That the costs of the proceedings be defrayed from the assets of the patient.'** The usual order is that the costs of the application, as between attorney and client, including the costs of the application for the appointment and the fees of the *curator ad litem*, be paid out of the estate of the patient. [61](#) Where the court dismisses an application it will apply the usual rule

RS 22, 2023, D1 Rule 57-10

and do so with costs, which costs are to include the costs of the *curator ad litem*. [62](#)

In an action for damages for bodily injuries which have necessitated the appointment of a *curator bonis* to the injured party, the costs of the application for the appointment of a *curator bonis* are quantified and included in the total award of damages. [63](#)

**Subrule (13): 'By reason of some disability, mental or physical, incapable of managing his or her own affairs.'** In terms of this subrule a *curator bonis* may be appointed to a person who is incapable of managing his own affairs by reason of some mental or physical disability. [64](#) In an application for the appointment of a *curator bonis* brought under the subrule, the court need not, as is required by subrule (10), declare the patient to be of unsound mind.

See further the notes to subrule (1) s v 'Declaring another person . . . to be of unsound mind' above.

**Subrule (17): 'Order the applicant's release from curatorship.'** The High Court has jurisdiction to order a person's release from curatorship if the person is domiciled within its area of jurisdiction and his assets are within the area. [65](#)

The ordinary practice is that the applicant must bear the costs of the application, [66](#) but in appropriate circumstances the court may order the costs of the application to be borne by the patient's estate. [67](#)

The court will on application and on good cause shown release a *curator bonis* from his curatorship. The curator will not be released until he has filed accounts to the satisfaction of the Master. [68](#)

[1](#) The requirements of the rule were carefully considered and applied in *Scott v Scott* [2021 \(2\) SA 274 \(KZD\)](#).

[2](#) *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 33. See also M Letzler & V Vergano 'Appointing a curator ad litem — Are we applying the law correctly?' 2014 (June) *De Rebus* 30.

[3](#) *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 46.

[4](#) See *Van den Berg v Van den Berg* 1939 WLD 228.

[5](#) [1970 \(2\) SA 718 \(O\)](#) at 720E–H. In the particular circumstances of that case, the omission to do so was held not to be fatal.

[6](#) *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 45.

[7](#) *Martinson v Brown*; *Gray NO v Armstrong* [1961 \(4\) SA 107 \(C\)](#); and see *Ex parte Hill* [1970 \(3\) SA 411 \(C\)](#); *Road Accident Fund v Mdeyide (Minister of Transport Intervening)* [2008 \(1\) SA 535 \(CC\)](#) at 548G–549A; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 45 and the cases referred to therein.

[8](#) *Ex parte Hill* [1970 \(3\) SA 411 \(C\)](#).

[9](#) *Ex parte Dixie* [1950 \(4\) SA 748 \(W\)](#).

[10](#) *Ex parte Powrie* [1963 \(1\) SA 299 \(W\)](#).

[11](#) *Ex parte Kloppe: In re Kloppe* [1961 \(3\) SA 803 \(T\)](#) at 805E–H; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 37.

[12](#) See *Reyneke NO v Mutual & Federal Insurance Co Ltd* [1992 \(2\) SA 417 \(T\)](#) at 419H–J; and see *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014).

[13](#) See, for example, *Ex parte Reid: In re M MacGuiness* (unreported, WLD dated 9 August 1960); *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 47.

[14](#) [1976 \(2\) SA 903 \(R\)](#).

[15](#) [1961 \(4\) SA 79 \(N\)](#); and see *Ex parte Evans: In re Reid* [1969 \(1\) SA 311 \(W\)](#). In *Ex parte Beukes* [2011 \(5\) SA 521 \(WCC\)](#) the court remarked (at 526H–527D), without deciding the question, that it prima facie seems to have concurrent jurisdiction with the Northern Cape High Court to appoint a *curator bonis* for the patient under circumstances where the greatest part of the patient's assets were held within the territorial jurisdiction of the court but the patient resided within the area of jurisdiction of the Northern Cape High Court.

[16](#) [1976 \(4\) SA 576 \(O\)](#). See also *Ex parte Powrie* [1963 \(1\) SA 299 \(W\)](#) at 303C; *Ex parte Hill* [1970 \(3\) SA 411 \(C\)](#) at 412D.

[17](#) *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 35 and the authorities referred to therein.

[18](#) See, for example, *Ex parte Hartzenberg* 1928 CPD 385; *Ex parte Herzberg* [1950 \(2\) SA 62 \(C\)](#); *Ex parte Kotze* [1955 \(1\) SA 665 \(C\)](#); *Ex parte Van der Merwe* [1956 \(2\) SA 113 \(C\)](#); *Ex parte Underhay* [1963 \(1\) SA 22 \(O\)](#). In *Ex parte Horwood* [1960 \(4\) SA 757 \(T\)](#) the court held that it might dispense with a *curator ad litem* if it was satisfied that nothing further could be gained from such an appointment, but on the facts the court declined to do so.

[19](#) See *Ex parte Tod* [1965 \(1\) SA 262 \(D\)](#); *Reyneke NO v Mutual & Federal Insurance Co Ltd* [1992 \(2\) SA 417 \(T\)](#) at 418J–419B.

[20](#) *Ex parte Papendorp* 1932 CPD 167; *Ex parte McLinden* 1945 OPD 96; *Ex parte Estate Van Rensburg* [1948 \(2\) SA 753 \(O\)](#) at 754; *Delius v Delius* [1960 \(1\) SA 270 \(N\)](#) at 273D; *Ex parte Van der Linde* [1970 \(2\) SA 718 \(O\)](#) at 720C.

[21](#) *Ex parte Papendorp* 1932 CPD 167; *Lockwood v Lockwood* 1935 EDL 1; *Ex parte McLinden* 1945 OPD 96; *Delius v Delius* [1960 \(1\) SA 270 \(N\)](#).

[22](#) [1948 \(2\) SA 219 \(O\)](#).

[23](#) *Ex parte Groenewald* [1963 \(3\) SA 588 \(C\)](#).

[24](#) *Ex parte Dixie* [1950 \(4\) SA 748 \(W\)](#).

[25](#) *McArthur v Marshall* [1979 \(2\) SA 574 \(C\)](#).

[26](#) *Judin v Wedgwood* [2003 \(5\) SA 472 \(W\)](#) at 461I–477D–E; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 32 and the authorities there referred to; *H In re: Taute In re: H v H* (unreported, GJ case no 34770/2018 dated 18 August 2022) at paragraphs [30] and [42].

[27](#) *Ex parte Hendrikse: In re Louw* [1990 \(3\) SA 227 \(C\)](#) at 229B.



- [28](#) *Ex parte Maritz; Ex parte De Klerk* [1968 \(4\) SA 130 \(C\)](#) at 134H; *Ex parte Hendrikse: In re Louw* [1990 \(3\) SA 227 \(C\)](#) at 229.
- [29](#) *Ex parte Hendrikse: In re Louw* [1990 \(3\) SA 227 \(C\)](#) at 229G. See also *Ex parte Griesel* [1948 \(2\) SA 219 \(O\)](#) at 220; *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252A.
- [30](#) *Ex parte Maritz; Ex parte De Klerk* [1968 \(4\) SA 130 \(C\)](#) at 134H.
- [31](#) 1921 TPD 514 at 516.
- [32](#) Unreported, GP case no 73012/13 dated 27 January 2014 at paragraph 35.
- [33](#) *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252A.
- [34](#) *Ex parte Griesel* [1948 \(2\) SA 219 \(O\)](#) at 221; *Ex parte Estate Van Rensburg* [1948 \(2\) SA 753 \(O\)](#); *Ex parte Van der Linde* [1970 \(2\) SA 718 \(O\)](#) at 721G; and see *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252A.
- [35](#) *Ex parte Glendale Sugar Millers (Pty) Ltd* [1973 \(2\) SA 653 \(N\)](#) at 659H; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 37.
- [36](#) See, for example, *In re Bathgate* (1858) 3 Searle 187; *Ex parte Mallach* 1921 TPD 514 at 516; *Ex parte Ventham* 1931 WLD 47; *Ex parte Comins* [1951 \(2\) SA 249 \(C\)](#); *Ex parte Colborne* [1954 \(4\) SA 198 \(SR\)](#).
- [37](#) *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252C.
- [38](#) *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252D.
- [39](#) *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252E; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 48.
- [40](#) See *Steyn v Steyn* [1972 \(4\) SA 151 \(NC\)](#) at 152F.
- [41](#) *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252C; and see *Du Plessis NO v Strauss* [1988 \(2\) SA 105 \(A\)](#) at 145H–146D.
- [42](#) *Ex parte Beukes* [2011 \(5\) SA 521 \(WCC\)](#) at 526E–F; *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 39.
- [43](#) *Ex parte Beukes* [2011 \(5\) SA 521 \(WCC\)](#) at 525D.
- [44](#) *Ex parte Beukes* [2011 \(5\) SA 521 \(WCC\)](#) at 525D–E.
- [45](#) *Ex parte Beukes* [2011 \(5\) SA 521 \(WCC\)](#) at 525E.
- [46](#) *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 40.
- [47](#) *Ex parte Davidson* [1981 \(3\) SA 575 \(D\)](#); *Ex parte Smit: In re Boedel Smit* [1983 \(3\) SA 438 \(T\)](#). It should, however, be kept in mind that the purpose of furnishing security is to protect the interests of the *de cuius* (see *Bouwer NO v Saambou Bank Bpk* [1993 \(4\) SA 492 \(T\)](#) at 497H–J).
- [48](#) See *Ex parte Campher* [1951 \(3\) SA 248 \(C\)](#) at 252F; *Ex parte Maritz; Ex parte De Klerk* [1968 \(4\) SA 130 \(C\)](#) at 134; *Ex parte Hendrikse: In re Louw* [1990 \(3\) SA 227 \(C\)](#) at 229C.
- [49](#) See *Ex parte Comins* [1951 \(2\) SA 249 \(C\)](#) in which the court laid down as a new rule of practice that such evidence may, by leave of the court, be adduced on affidavit.
- [50](#) *Ex parte Kloppe: In re Kloppe* [1961 \(3\) SA 803 \(T\)](#) at 805E–H. See also *Modiba: In re Ruca v Road Accident Fund* (unreported, GP case no 73012/13 dated 27 January 2014) at paragraph 37.
- [51](#) *Ex parte Hulett* [1968 \(4\) SA 172 \(D\)](#) at 174D.
- [52](#) Other cases to which reference may be made are *Ex parte Powrie* [1963 \(1\) SA 299 \(W\)](#); *Ex parte Kelly NO: In re Curatorship Estate Rosenfeld* [1972 \(2\) SA 561 \(T\)](#); *Nyathi v Nyathi* [1976 \(4\) SA 43 \(R\)](#); *Ex parte Ganga* [1979 \(1\) SA 586 \(N\)](#).
- [53](#) [1965 \(3\) SA 553 \(W\)](#) at 557.
- [54](#) [1968 \(1\) SA 33 \(T\)](#) at 37–8.
- [55](#) [1968 \(4\) SA 172 \(D\)](#) at 175–6.
- [56](#) [1971 \(3\) SA 376 \(D\)](#) at 379–81.
- [57](#) [1992 \(2\) SA 417 \(T\)](#) at 422.
- [58](#) [1995 \(4\) SA 101 \(D\)](#).
- [59](#) [1988 \(1\) SA 790 \(C\)](#).
- [60](#) *Ex parte Wilson: In re Morison* [1991 \(4\) SA 774 \(T\)](#) at 779J–780A.
- [61](#) See, for example, the order as to costs in *Ex parte Hulett* [1968 \(4\) SA 172 \(D\)](#) at 176C. See also *Ex parte Du Toit: In re Curatorship Estate Schwab* [1968 \(1\) SA 33 \(T\)](#) at 38; *Ex parte Wagner NO: In re De Bie* [1988 \(1\) SA 790 \(C\)](#) at 791E.
- [62](#) See the order as to costs in *Ex parte Wilson: In re Morison* [1991 \(4\) SA 774 \(T\)](#) at 780C.
- [63](#) *Reyneke NO v Mutual & Federal Insurance Co Ltd* [1992 \(2\) SA 417 \(T\)](#) at 419H–J. Included in the award of damages would also be the costs of the administration by the *curator bonis* of the injured party's affairs and the curator's remuneration.
- [64](#) See *Van den Berg v Van den Berg* 1939 WLD 228.
- [65](#) *Ex parte Quigly* [1957 \(4\) SA 169 \(N\)](#). Though in this case the patient was also resident within the court's area, this would not seem to be a requirement in view of the decision in *Ex parte Berry: In re Berry* [1961 \(4\) SA 79 \(N\)](#) in which it was held that any division of the Supreme Court (i.e. the High Court) has jurisdiction to declare incapable of managing his affairs and place under curatorship any person who is domiciled within its area of jurisdiction or whose assets are within such area, notwithstanding that he himself is not within the area.
- [66](#) *Ex parte Bate* 1928 CPD 186.
- [67](#) *Ex parte Place* 1930 EDL 149; *Ex parte Smuts* 1935 TPD 23; *Ex parte African Board of Executors and Trust Co Ltd* 1939 TPD 37; *The Master v White* 1946 CPD 24; *Ex parte Frost* [1956 \(4\) SA 797 \(T\)](#).
- [68](#) *Ex parte Mann* 1941 EDL 159; *Ex parte Bowie* 1842 EDL 5.