



THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA7/2025

In a matter between:

BONGANI PRINCE MAKHUBELA

APPLICANT

and

**HEINEKEN BEVERAGES (SOUTH AFRICA)
(PTY) LTD**

FIRST RESPONDENT

THE PENSION FUND ADJUDICATOR

SECOND RESPONDENT

DISTELL PROVIDENT FUND

THIRD RESPONDENT

**FUNDS AT WORK UMBRELLA PROVIDENT
FUND**

FOURTH RESPONDENT

RISE

FIFTH RESPONDENT

TRIBUNAL PANEL: Judge J Francis, KD Magano & P Maseko

Appearance for the applicant: K J Mogofe Attorneys

Appearance for the first respondent: No appearance

Appearance for the second respondent: No appearance

Appearance for the third respondent: No appearance

Appearance for the fourth respondent: No appearance

Date of hearing: 29 August 2025

Date of Decision: 10 September 2025

Summary: *Application for reconsideration of the Pension Funds Adjudicator's decision to dismiss the applicant's complaint. Withholding of pension fund benefit following allegations of misconduct and financial loss to employer. Application for reconsideration dismissed.*

DECISION

INTRODUCTION

1. This is an application for the reconsideration of a decision by the Pension Funds Adjudicator (PFA), dated 12 December 2024. The PFA dismissed a complaint by the Applicant, Bongani Prince Makhubela ("*Makhubela*"), against Distell Provident Fund's ("*the Fund*") decision to withhold his pension fund benefit.
2. The application is brought in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.
3. Makhubela was an employee of the First Respondent, Heineken Beverages South Africa (Pty) Ltd ("*Heineken*"). As an employee, he was a member of the Fund.

4. The Second Respondent is the Pension Funds Adjudicator (*“PFA”*).
5. The third, fourth, and fifth respondents are all involved in administering the pension benefits.

FACTUAL BACKGROUND

6. Makhubela was dismissed from his position at Heineken on 11 March 2021. The dismissal was a direct result of allegations of misconduct made against him by Heineken. The misconduct that led to his dismissal involved a series of dishonest acts resulting in a financial loss for Heineken.
7. According to a forensic investigation, Makhubela used his position as a sales representative to fraudulently acquire liquor products for his personal use. Specifically, he was accused of taking products from two of Heineken's customers, Liquor Legends Klipfontein and Blue Bottle Liquor, without paying for them.
8. To facilitate this, Makhubela misrepresented to the customers that Heineken would enter into credit agreements with them and pass credits for the products. Makhubela's conduct caused Heineken a financial loss.
9. In response to the alleged financial loss, Heineken instituted a civil claim on 7 June 2024 against Makhubela in the Mpumalanga High Court, Middelburg, under case number 2778/24, to recover the sum of R647,863.27, plus interest and legal costs. The total amount of R647,863.27 claimed is comprised of two parts: R414,518.30 for liquor products allegedly taken from Liquor Legends Klipfontein, and R233,344.97 for products taken from Blue Bottle Liquor. In

addition to this amount, Heineken also seeks interest and legal costs. Makhubela is opposing the aforementioned action; consequently, the High Court civil claim remains pending.

10. Heineken also reported the matter to the South African Police Services (SAPS) for criminal prosecution, citing case number CAS 38/05/2024.
11. On 30 September 2024, Heineken formally requested that the Distell Provident Fund withhold Makhubela's provident fund benefit. The request was made in terms of Section 37D(1)(b) of the Pension Funds Act 24 of 1956 (the Act), which allows a fund to deduct amounts owed by a member to their employer in cases of theft, dishonesty, fraud, or misconduct.
12. Upon receiving Heineken's request, the Distell Provident Fund exercised its discretion in accordance with its fiduciary duties and the principles of the Act. The Fund determined that there was sufficient reason to provisionally withhold Makhubela's pension benefits. This decision was made to protect the employer's interests while awaiting the outcome of the civil proceedings that Heineken had instituted against Makhubela for the recovery of the alleged financial loss.

i. The Complaint

13. Makhubela lodged a complaint and sought the PFA's assistance for the immediate release of his withdrawal benefit. His grounds of complaint are summarised as follows:

13.1. The withholding of his provident fund benefits was unlawful.

- 13.2. There was no valid proof that he owed his former employer, Heineken, any money.
- 13.3. The allegations of misconduct were described as "personal attacks" by his former manager.
- 13.4. Makhubela contended that the employer was wrongly relying on a signed admission of debt that he signed with Klipfontein Liquor Legend and not with Heineken to justify the withholding of his funds.
14. Makhubela also argued that he would suffer prejudice if his pension benefits were withheld. He explained that he had been unemployed for nearly eight months, which caused him severe financial hardship. To illustrate this, he mentioned that his daughter was at risk of being expelled from school due to unpaid fees. He attached a letter from the school as evidence of the imminent expulsion of his daughter. He requested the release of his funds because the ongoing delay was unfairly prejudicing him and hindering his ability to cover legal expenses to defend himself against the civil claim.

ii. **The PFA's Determination**

15. The PFA found that the Fund had acted with due care and properly exercised its discretion, as required by law. This Determination was based on the finding that the Fund's decision to withhold benefits was lawful, since it fell within the exceptions permitted by the Act.

16. According to the PFA, Heineken had taken the required steps to pursue a claim against Makhubela by initiating a civil case in the High Court and reporting the matter to the SAPS for criminal investigation. This satisfied the PFA that the employer's claim was genuine and that the Fund's protective measure was justified under Section 37D of the Act.
17. The PFA was also satisfied that the Fund informed Makhubela of Heineken's allegations and provided him with an opportunity to make representations before making its decision. This process ensured that the principle of *audi alteram partem* was observed. The PFA concluded that the fund had fulfilled its fiduciary duties by considering the views of both parties in a balanced manner.
18. In the PFA's determination, it was noted that Makhubela's fund credit as of July 2024 was R394,076.63, an amount less than the R647,863.27 claimed by the employer. The PFA concluded that the amount claimed by the employer exceeded the value of Makhubela's benefits.
19. Ultimately, the PFA's Determination rested on the balance of competing interests. Makhubela's claim of financial hardship was acknowledged. The PFA noted that he had attached a letter from his daughter's school about outstanding fees. However, the conclusion was that Makhubela's complaint lacked sufficient evidence to outweigh the employer's claim. According to the Determination, Makhubela failed to adequately defend himself against the specific allegations of fraud and misconduct. Therefore, the balance of convenience favoured the

employer, as it was considered more reasonable to protect Heineken's potential claim for a significant financial loss.

iii. **The reconsideration application**

20. Unhappy with this decision, Makhubela, through his legal representatives, applied for the reconsideration of the PFA's Determination with the Financial Services Tribunal.
21. The grounds for reconsideration allege that the PFA's decision was biased and procedurally flawed. Makhubela contends that the PFA failed to investigate the matter adequately, did not afford him a proper hearing, and did not properly balance the prejudice he would suffer against the employer's potential loss.
22. Makhubela further argues that the employer's civil claim is weak and that Heineken lacks the legal standing to bring a claim on behalf of the customers without a valid cession agreement.
23. The central issue for the Tribunal to determine is whether there is a legal basis to interfere with the PFA's decision to dismiss Makhubela's complaint.

LEGAL PRINCIPLES

24. Section 37D(1)(b)(ii)(bb) of the Act creates a statutory right in favour of an employer to recover damages caused by theft or fraud by its employee.
25. The said provision provides as follows:

“(1) *A registered fund may:*

- (a) ...
- (b) *deduct any amount due by a member to his employer on the date of his retirement, on which he ceases to be a member of the fund in respect of -*
- (ii) *compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which-*
- (bb) *judgement has been obtained against the member in any court, including a magistrate's court,*
- from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;”*

26. The Supreme Court of Appeal's ruling in **Highveld Steel v Oosthuizen**¹ laid down key principles regarding the Fund's discretion when an employer seeks an interim measure to protect its claim.
27. According to the **Highveld Steel** case, a narrow interpretation of this section that excludes situations where a case is pending before the High Court would render the protection offered to the employer "meaningless." Such an outcome could not have been the legislature's intent. To fulfil the section's "manifest purpose," the court concluded that it should be interpreted to include the authority to withhold payment of a member's benefit while liability is being determined or acknowledged.

¹ 2009 (4) SA 1 (SCA).

28. The court clarified that the purpose of withholding benefits is to act as a protective measure. It ensures that if an employee is later found liable for damages caused by theft, fraud, or misconduct, the employer has a means to recover those losses from the member's pension fund credit. This prevents a potential court order from being rendered useless by the premature payment of the benefit.
29. Furthermore, the court emphasised the important need to balance competing interests. The fund must carefully consider the employer's right to recover losses against the potential prejudice to the employee. An employee may face serious hardship if their benefits are withheld, especially if they are unemployed and ultimately proven innocent. The court recognised that while the fund's discretion is essential, it must not be exercised unfairly towards the member.
30. Finally, the judgment established that pension funds must exercise their discretion with care. This is not a passive or administrative function. The fund's board of trustees must apply its mind to the specifics of each case, considering factors such as the strength of the employer's claim, the risk of undue delay in the legal proceedings, and the member's circumstances. The court even suggested that funds could impose conditions on the withholding of benefits to ensure fairness to all parties.
31. The amount withheld must be reasonable and should not exceed the amount of the employer's claim. If the employer's claim is for a specific amount and the member's benefits are far greater, it would be considered unreasonable to withhold the entire benefit.

TRIBUNAL'S FINDING AND CONCLUSION

32. The Tribunal finds that the purpose of withholding the benefits is legitimate and aligns with the principles outlined in the Highveld Steel case. Heineken's claim of a financial loss amounting to R647,863.27, combined with a pending civil claim, highlights a clear necessity for a protective measure. Withholding the pension, valued at R394,076.63, is a prudent interim step to prevent a final civil judgment in the employer's favour from being undermined by a premature disbursement of funds.
33. In assessing the balancing of competing interests, the Tribunal upholds the PFA's determination. While Makhubela's claims of unemployment and financial hardship are acknowledged, the PFA correctly noted that he provided no substantial evidence of prejudice or a direct rebuttal to the employer's specific allegations of fraud. Conversely, Heineken presented a compelling *prima facie* case supported by concrete legal actions. The balance of convenience, therefore, favours withholding the benefits to protect the employer's potential claim, as the risk of loss to the company is demonstrated, whilst the applicant's alleged prejudice lacks sufficient supporting documentation.
34. The most critical finding relates to the exercise of discretion and the procedural fairness of the process. The PFA's Determination that the Fund acted lawfully by giving Makhubela an opportunity to make representations remains valid. The Fund considered the views of both parties before reaching its decision. The applicant's

grounds for reconsideration, which challenge the impartiality and thoroughness of the process, do not provide sufficient evidence to overturn the PFA's conclusion.

35. The Tribunal finds no evidence that the Fund's discretion was just a rubber-stamp of the employer's request. Instead, it was a reasonable and documented response based on the information supplied by all parties involved. Therefore, the Tribunal upholds the PFA's decision.

ORDER

36. As a result, the following order is made:

36.1. The application for reconsideration is dismissed.

36.2. The PFA's Determination is upheld.

Signed on behalf of the Tribunal panel.

___Sgd Adv KD Magano___

KD MAGANO