

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA64/2024

In the matter between:

BOIKANO SIPHIWE SIBANDA

APPLICANT

and

OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LTD

FIRST RESPONDENT

THE OFFICE OF THE PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

SACCAWU NATIONAL PROVIDENT FUND

THIRD RESPONDENT

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DECISION

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1. The applicant applies for a reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ('the FSR Act') relating to the decision of the second respondent ("the PFA") regarding the non-payment of a death benefit.
2. The parties have agreed that the Tribunal decide the application on the papers filed of record.
3. The applicant's complaint before the PFA related to a non-payment of a death benefit from his late mother ("the deceased").

4. The deceased was employed with Pick 'n Pay Retailers (Pty) Ltd, and she was a member of the third respondent since 01 April 2006.
5. Upon her death on 5 January 2008, a death benefit became due to the deceased two dependents being the applicant and his grandmother (the deceased mother). The applicant who was a minor at the time was due to receive 90% of the death benefit and his grandmother the remaining 10%.
6. According to a resolution passed by the Trustees of the first respondent on 11 August 2009, the first respondent resolved to pay 90% of the death benefit due to the applicant to the Guardian Trust. Later, in communication addressed to the applicant's grandmother, it was confirmed that the applicant's grandmother would receive the full death benefit which included the applicant's portion of the benefit.
7. The applicant contends that the payment of the full death benefit to his grandmother was without any basis and needs to be set aside. The PFA disagreed with this and dismissed the applicant's complaint in a decision dated 02 August 2024.
8. The applicant seeks a reconsideration of the PFA'S decision, wherein it found that the applicant's complaint had been delayed and had therefore prescribed and furthermore the finding by the PFA that it had no jurisdiction to deal with the applicant's complaint.
9. The applicant contends:
  - 9.1. On 15 November 2023, he lodged a complaint with the PFA. On 16 November 2023, his complaint was acknowledged and he was requested to complete a complaint form. This communication serves as proof that his complaint was

received by the second respondent prior to 26 November 2023, the date on which the matter would have been time-barred.

9.2. In terms of section 12(2) of the Prescription Act, if the debtor has wilfully prevented the creditor from knowing the debt, prescription will commence to run when the creditor becomes aware of the debt.

9.3. The third respondent wilfully prevented the applicant from knowing about the debt. After several failed attempts by the applicant to obtain information from the third respondent, he was forced to approach the High Court to obtain an order on 2 May 2023.

9.4. On 29 November 2023, the third respondent provided the applicant with the details of the benefit payout, including the resolution passed by the Trustees. This is when the applicant became aware of the debt.

10. The PFA contends that:

10.1. The applicant's complaint was lodged more than three years after the applicant ought to have been aware of the first respondent's failure to pay 90% of the death benefit to him.

10.2. The second respondent received the applicant's complaint on 09 January 2024. By this date, the applicant's complaint was already time -bared.

10.3. The applicant has failed to provide a copy of a formal complaint lodged on 15 November 2023.

10.4. Accordingly, in terms of section 3(1) of the Prescription Act No. 68 of 1969 and section 30I(1) of Pension Funds Act 24, of 1956, the applicant's complaint has prescribed.

10.5. Furthermore, the second respondent was precluded from investigating the complaint in terms of section 30H(2) of the Pension Funds Act. The applicant lodged a complaint on 09 January 2024, regarding the same matter before the High Court. Thus, according to the second respondent, the matter lodged before the High Court constituted the same matter before the PFA and it was therefore precluded from investigating the applicant's complaint.

11. *In terms of section 3(1) and 12(2) of the Pension Funds Act 24 of 1956:*

### ***3 Completion of prescription postponed in certain circumstances***

*(1) If-*

*(a) the person against whom the prescription is running is a minor or is insane, or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or*

*[Para. (a) substituted by s. 22 of Act 132 of 1993.]...*

*the period of prescription shall not be completed before the expiration of a period of three years after the day referred to in paragraph (c).*

## **12 When prescription begins to run**

*(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.*

*[Sub-s. (1) substituted by [s. 68](#) of [Act 32 of 2007](#).]*

*(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.”*

12. In terms of section 30H and 30I of the Pension Funds Act 24 of 1956:

### **“30H Jurisdiction and prescription**

*(1) The Adjudicator shall, subject to section 30I, investigate a complaint notwithstanding that the complaint relates to a matter which arose prior to the commencement of the Pension Funds Amendment Act, 1995.*

*(2) The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation.*

*(3) Receipt of a complaint by the Adjudicator shall interrupt any running of prescription in terms of the Prescription Act, 1969 ([Act 68 of 1969](#)), or the rules of the fund in question.*

*(4) The Adjudicator shall not have jurisdiction over complaints in connection with a scheme for the apportionment of surplus in terms of section 15B which relate to the decisions taken by the board or any stakeholder in the fund or any specialist tribunal convened in terms of section 15K.*

### **30I Time limit for lodging of complaints**

*(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.*

*(2) The provisions of the Prescription Act, 1969 ([Act 68 of 1969](#)), relating to a debt apply in respect of the calculation of the three-year period referred to in subsection (1).*

*[Sub-s. (2) substituted by s. 21 (a) of [Act 11 of 2007](#) (wef 13 September 2007).]*

*(3) .....*

13. The PFA correctly found that the applicable prescription period on applicant's complaint would have only started running when he attained the age of majority, being 26 November 2020.
14. There is no proof provided to the Tribunal in the record that the applicant lodged his complaint with the PFA prior to the expiry of the 3-year period being before 26 November 2023.
15. The fact that the applicant only lodged the complaint on 09 January 2024 is confirmation that it was out of time and thus he was time-barred from lodging the complaint in terms of both the Prescription Act and the Pension Funds Act. Accordingly, the Tribunal agrees with the PFA on the issue of prescription and thus the applicant was out of time when he lodged the complaint.
16. Insofar as the jurisdiction to deal with the complaint is concerned, it is common cause that the applicant approached the High Court in May 2023, wherein an order was granted *inter alia* that the third respondent (the respondent in those

proceedings) is to “*pay the applicant any available benefit which is due and payable.*” According to the PFA, it would have thus been precluded from dealing with the applicant’s complaint.

17. The Tribunal finds that the PFA correctly found that it had no jurisdiction to pronounce on the matter as the High Court matter had been instituted prior to the complaint being instituted by the applicant with the PFA. The High Court had made an order in May 2023 which related to the same subject matter of the applicant’s complaint and accordingly the Tribunal agrees that the PFA would have been precluded from dealing with the complaint, even if it were lodged timeously.

18. Based on above it is clear that the PFA was correct in its finding on both the aspect of prescription and jurisdiction.

19. For all the above reasons, the application for reconsideration must be dismissed.  
We accordingly grant the following order:

19.1. The application for reconsideration is dismissed.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS THE 4<sup>th</sup> DAY OF MARCH 2025.

A Saldulker

Adv A Saldulker

For self and on behalf of LTC Harms (Chair)