

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO: PFA68/2024**

In the matter between:

**CECANI RAYMOND BALOYI**

Applicant

and

**DIVERSIFIED UMBRELLA RETIREMENT FUND**

First Respondent

**PENSION FUNDS ADJUDICATOR**

Second Respondent

Decision on Papers

Date of Decision: 19 February 2025

Summary: Application for Reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 against determination of Pension Funds Adjudicator not to investigate due to lack of jurisdiction as the complaint is time-barred as envisaged in section 30I of the Pension Funds Act 24 of 1956.

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**DECISION**

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**A. INTRODUCTION**

1. The Applicant applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") for the reconsideration of a decision taken by the Second Respondent, the Pension Funds Adjudicator ("the Adjudicator"), dated 19 September 2024. The Adjudicator declined to investigate the Applicant's complaint regarding the quantum of the benefit paid by the First Respondent, the Diversified Umbrella Retirement Fund ("the Fund"), citing a lack of jurisdiction due to the complaint being time-barred as envisaged in section 30I of the Act.

2. The Applicant is the father of the late Amos Chris Baloyi (“the deceased”), who passed away on 12 August 2019).
3. The Fund is administered by Tennant Administration Services (“the Administrator”).
4. The Second Respondent is the Office of the Pension Funds Adjudicator.
5. The parties waived their rights to a formal hearing.
6. The application for reconsideration raises the question whether the Applicant’s complaint is time-barred as envisaged in section 30I of the Act. If so, this would result in the Adjudicator lacking jurisdiction to investigate the matter.

**B. RELEVANT BACKGROUND FACTS**

7. The deceased was employed at SA Contracting (Pty) Ltd as an Engineering Assistant Level 1 SF. His employment was terminated on 30 June 2019. By virtue of his employment, he became a member of the Fund, which he had joined on 1 January 2017. The Fund received its last contribution on behalf of the deceased for June 2019.
8. As previously stated, the deceased passed away on 12 August 2019, triggering the payment of a death benefit to the deceased’s dependants. Upon being notified of the deceased’s passing, the Fund conducted a section 37C investigation. In the Fund’s Final Distribution Resolution dated 26 October 2020, it awarded 100% of the deceased’s death benefit to the Applicant.
9. On 17 November 2020, the Fund made a full and final settlement payment of R5 514.58 to the Applicant, which comprised as follows:

Share of Fund Benefit:	R5 507.30
Plus, interest to date of payment:	R 7.28
Less tax:	R 0.00
Benefit paid:	<u>R5 514.58</u>

10. Aggrieved by the payment, the Applicant’s legal representative lodged a complaint with the Fund on 22 November 2022, disputing the amount paid. Citing the Fund’s Benefit Statement

as of 1 June 2019, the Applicant argued that the total death benefit due was R53 042.51. However, the Fund only paid R5 514.58 in full and final settlement, excluding the lump sum of R47 466.00, which remains outstanding.

11. On 13 March 2020, the Administrator acknowledged receipt of certain documents via email and requested additional documentation from the Applicant's legal representative.
12. According to the Applicant's legal representative he followed up with the Fund and/or its Administrator but received no response. On 31 January 2024, the Applicant's attorney followed up with the Fund via email regarding its response to the Applicant's letter dated 22 November 2022.
13. On 1 February 2024, the Administrator responded to the Applicant's complaint, stating:
  - 13.1 The employer reported on 12 February 2020 that the deceased absconded in May 2019, with the last contribution paid on behalf of the deceased in June 2019.
  - 13.2 Due to the abscondment, the deceased's membership became Paid-Up in terms of the Default Regulation from June 2019, terminating any insured benefits as no further contributions were made. The deceased's employment was also terminated.
  - 13.3 Under Rule 23.3.2 of the Fund a Paid-Up member is not covered by group life cover, as no premiums are paid and only the member's total share of fund is payable. This amount was paid to the Applicant.
14. The response included the Fund's Board Final Distribution Resolution and relevant Fund Rules. The Applicant was advised to lodge a complaint with the Adjudicator if he wished to pursue the matter further.
15. The Applicant, dissatisfied with the Fund response, lodged a complaint with the Adjudicator on 20 March 2024. The complaint largely mirrored his initial grievance with the Fund. Additionally, the Applicant asserted that the deceased had not absconded from work but had been declared medically unfit. As evidence, he submitted a Certificate of Fitness to Perform Risk Work on Mines (dated 27 May 2019), a Certificate of Fitness (dated 12 June 2019)

confirming unfitness from 7 June 2019 to 7 July 2019, and a doctor's letter (dated 9 July 2019) stating the deceased was unfit to resume his duties. The Applicant claimed these documents had been provided to the employer.

16. The complaint was forwarded to the Fund, which filed its response on 10 April 2024, reiterating its earlier stance from 1 February 2024.
17. On 19 September 2024, the Adjudicator declined to investigate, ruling the complaint time-barred under section 30I of the Act. The Adjudicator determined that the cause of action arose on 17 November 2020, when the Fund paid the Applicant's benefit. Since the complaint was lodged only on 27 March 2024 – more than three years later – it fell outside the prescribed period. The Adjudicator also noted that the Applicant should have acted sooner, filing a complaint by 17 November 2023 if the Fund was delaying its response.
18. Aggrieved by the decision, the Applicant filed a reconsideration application on 21 October 2024.

#### **C. APPLICANT'S GROUNDS FOR RECONSIDERATION**

19. The Applicant's grounds for reconsideration align with his previous complaints and are incorporated by reference. Additionally, the Applicant argued that the complaint to the Adjudicator was lodged within the prescribed period, counting from when his attorneys received the Fund's response on 1 February 2024 to 21 October 2024 – 49 days in total. He maintained that filing before receiving the Fund's response would have been premature and that time-barring should not apply given the circumstances.

#### **D. FUND'S RESPONSE TO THE APPLICANT'S RECONSIDERATION APPLICATION**

20. On 30 October 2024, the Fund submitted its response to the Applicant's reconsideration application as follows:

- 20.1 The Participating Employer in the Fund is Structural Applications Contracting.
- 20.2 The deceased joined the Fund in January 2017.
- 20.3 Contributions continued until January 2020.

- 20.4 On 12 February 2020 the employer informed the Fund that the deceased had absconded in May 2019.
- 20.5 Contributions were mistakenly paid on behalf of the deceased from June 2019 to January 2020 – the Fund refunded these overpayments to the employer.
- 20.6 As of 31 May 2019 the deceased was classified as a Paid-up member per the Default Regulations, terminating his insured benefits in line with the reinsurance policy.
- 20.7 On 13 March 2020, the Applicant's attorneys inquired about the deceased's death benefit. The employer confirmed that the deceased had absconded in May 2019 without completing a withdrawal form and they had not been contracted by the attorneys.
- 20.8 Since the deceased was a Paid-Up member from 31 May 2019, he was not entitled to any risk benefits under the Fund's Rules.
- 20.9 The deceased passed away on 12 August 2019.
- 20.10 The Death Benefit was the deceased's Share of Fund as of date of death, amounting to R5 507.30. Although contributions had been erroneously paid for eight months and later refunded to the employer, the Fund opted not to adjust the Share of Fund value downward.
- 20.11 The deceased's Benefit Statement as of 1 June 2019 accurately reflected the Death Benefit, with a disclaimer clarifying that the insured portion was subject to policy terms and conditions, requiring potential medical evidence for eligibility. Furthermore, the existence of a value for this benefit in the statement does not confirm or guarantee the lump sum benefit portion. The lump sum portion of the death benefit is an insured portion.
- 20.12 Benefit statements are auto generated after a Fund audit. The employer's overpayment was only reported in February 2020, after the statements had been issued. The statement explicitly noted that the insured portion was not guaranteed.
- 20.13 Following notification of the deceased's passing, a section 37C investigation was conducted, and the full benefit (R5 514.58) was paid to the Applicant on 17 November 2020.
- 20.14 Rule 23.4, cited in the Applicant's complaint, pertains to the maximum period a member may be insured while on unpaid leave. The deceased was not on unpaid leave.

20.15 The Fund's Administrator acknowledges receipt of the Applicant's query dated 22 November 2022 and apologizes for its oversight.

#### **E. TRIBUNAL'S ANALYSIS AND DECISION**

21. The Adjudicator's decision to decline further investigation of the Applicant's complaint is based on section 30I of the Act, which provides:

*“(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, 68 of 1969, relating to the calculation of a debt's prescription period, apply to the computation of the three-years period referred to in subsection(1).”*

22. Section 30I(3) of the Act was repealed by the Pension Funds Amendment Act, 11 of 2007. This subsection previously allowed the Adjudicator to condone non-compliance with time limits for lodging complaints. With its repeal, the Adjudicator no longer has the discretion to extend or condone delays beyond the prescribed three-year period for filing of complaints (See: *Brinant Security Services (Pty) Ltd v Private Security Sector Provident Fund and Others [2023] ZAGPPHC 1113* – “The Adjudicator does not possess the discretion to condone nor extend the time bar as was provided for in the unamended section 30I in subsection (3). Subsection (3) has been deleted by the 2007 amendment to the Act.”)

23. This means that complaints must be lodged within three years from the date of the act or omission, and this period is calculated in accordance with the Prescription Act.

24. The relevant background facts have been set out above and will not be repeated for brevity's sake but are incorporated herein by reference.

25. The Adjudicator declined to investigate the Applicant's complaint, citing lack of jurisdiction under section 30I(1) of the Act, as the complaint was time-barred. The “act” to which the complaint relates occurred more than three years before the date on which the complaint

was received in writing by the Adjudicator – the relevant “act” – the Fund’s payment of the deceased’s benefit on 17 November 2020, which occurred more than three years before the complaint was lodged on 27 March 2024. The Adjudicator noted that the Applicant should have filed by 17 November 2023 if the Fund had delayed its response.

26. The Tribunal has considered the evidence and agrees with the Adjudicator’s determination for the following reasons:

26.1 The three-year time bar under section 30I of the Act is a jurisdiction fact/requirement, and if not met, the Adjudicator has no jurisdiction to investigate the complaint.

26.2 The reference in section 30I of the Act pertains solely to the calculation of the three-year period and does not incorporate the Prescription Act in its entirety. The Adjudicator deals with “*complaints*” as defined in section 1 of the Act, which are not necessarily “*debts*” as defined in the Prescription Act.

26.3 The three-year period begins when the Applicant/complainant has knowledge of the “*act or omission*” that give rise to the complaint. This aligns with section 12(3) of the Prescription Act, which states that a debt is not deemed due until the creditor has knowledge of the identity of the debtor and the facts from which the debt arises.

26.4 In this case, the Applicant became aware of the Fund’s identity and the relevant facts when the deceased’s benefit was paid on 17 November 2020. The complaint therefore should have been filed by 17 November 2023. While there is no direct evidence of when the Applicant received the Benefit Statement as of 1 June 2019, his legal representative referenced an alleged outstanding amount of the R 47 466.00 (deceased’s share of fund benefit) in a letter dated 22 November 2022. This strongly suggests that the Applicant was aware of the benefit amount well before that date – in all probability at the time of the 17 November 2020 payment.

26.5 The relevant “*act or omission*” was the Fund’s payment on 17 November 2020, which triggered the Applicant’s knowledge of the complaint’s basis. However, the complaint was only filed with the Adjudicator on 27 March 2024 – outside the three-year period – rendering it time-barred and beyond the Adjudicator’s jurisdiction.

- 26.6 The fact that the complaint was submitted to the Fund on 22 November 2022 – two years after the Applicant had knowledge of the Fund and the relevant facts – does not reset the time limit. The “*act or omission*” relevant to the complaint occurred on 17 November 2020.
- 26.7 The Applicant had legal representation at all relevant times. The Fund’s Final Distribution Resolution indicates that the Applicant’s legal representative informed the Fund of the deceased’s death and submitted the Death Certificate on 6 February 2020. On 13 March 2020, the Applicant’s attorneys inquired about the deceased’s death benefit. Additionally, the Fund’s Administrator engaged with the Applicant multiple times in 2020. An email from the Applicant’s legal representative to the Adjudicator on 12 September 2024 confirms that immediately after payment of R5 529.22, the Applicant raised concerns with the Fund. Furthermore, the Final Distribution Resolution was sent to the Applicant on 26 October 2020. This shows that the Applicant had knowledge of the Fund, and the facts related to the complaint, and that he was dissatisfied with the payment as early as 17 November 2020, further reinforcing that the complaint arose at that time.
- 26.8 The Applicant’s argument that he could not file the complaint earlier because he was awaiting the Fund’s response lacks merit. Section 30A(3) of the Act explicitly states that if the Fund fails to respond within 30 days of receiving a complaint, the complainant may escalate the matter to the Adjudicator. The Fund did not respond within the prescribed period, yet the Applicant did not timely lodge a complaint with the Adjudicator. His failure to file within the required timeframe resulted in the complaint being time-barred. Thus, the three years period is not calculated from the date the Fund submitted its response to the Applicant’s complaint.
- 26.9 Any dispute concerning the termination of the deceased’s employment fall within the scope of labour law and should be addressed in the appropriate forum.
- 26.10 There is no evidence that the running of the time-barred period was ever interrupted.



27. For reasons stated above, the Tribunal finds the complaint time-barred and there are no grounds to interfere with the Adjudicator determination. The reconsideration application is accordingly dismissed.

**F. ORDER**

1. The Applicant's Reconsideration Application is dismissed.

**SIGNED on this 19<sup>th</sup> day of FEBRUARY 2024.**

A handwritten signature in black ink, appearing to read "Adv Salmé M Maritz". The signature is written in a cursive, flowing style.

**ADV SALMÉ M MARITZ**

For self and on behalf of:

LTC Harms