THE FINANCIAL SERVICES TRIBUNAL

("the Tribunal")

Case No. PFA50/2024

In the matter between:

DUJON DU PLESSIS	First Applicant
LIAM DANIEL DU PLESSIS	Second Applicant
and	
CELESTE DU PLESSIS	First Respondent
FAIRBURN CAPITAL PENSION RETIREMENT FUND	Second Respondent
THE PENSION FUNDS ADJUDICATOR	Third Respondent

and

Case No. PFA51/2024

In the matter between:

LIAM DANIEL DU PLESSIS	First Applicant
and	
CELESTE DU PLESSIS	First Respondent
OLD MUTUAL RETIREMENT ANNUITY FUND	Second Respondent
THE PENSION FUNDS ADJUDICATOR	Third Respondent
OLD MUTUAL WEALTH PRESERVATION PENSION FUND	Fourth Respondent

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017. Consolidation of matters and Condonation

DECISION

A: INTRODUCTION

1. These are two matters based on substantially the same facts and which entail Applications in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decisions taken by the Adjudicator, pursuant to complaints laid in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA"). For this reason, the matters have been consolidated, and both are dealt with in this decision.

2. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.

3. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant(s) to lodge this Application for reconsideration and seek appropriate relief.

4. Both applications have been filed outside of the required time periods. On the Applicant(s) version, they are a few days late, and on the Respondents' version, they are months late. I am inclined to accept the Respondents' version on the degree of lateness as the mere filing of a defective application and the filing months later of a compliant application cannot be acceptable.

B: CONDONATION

5. The principles related to condonation are well known and are best

edified in the Grootboom[1] case at [20] – [23]:

"*It is axiomatic that condoning It is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation.*

The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time. Even this Court has not been spared the irritation and inconvenience flowing from a failure by parties to abide by the Rules of this Court.

I have read the judgment by my colleague Zondo J. I agree with him that, based on Brummer12 and Van Wyk,13 the standard for considering an application for condonation is the interests of justice. However, the concept "interests of justice" is so elastic that it is not capable of precise definition.

As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both Brummer and Van Wyk emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.

It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."

6. Furthermore, the Grootboom at [34] and [35] is similarly instructive:

"*The language used in both Van Wyk and eThekwini is unequivocal. The warning is expressed in very stern terms. The picture depicted in the two judgments is disconcerting. One gets the impression that we have reached a stage where litigants and lawyers disregard the Rules and directions issued by the Court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the Court is self-evident. A message must be sent to litigants that the Rules and the Court's directions cannot be disregarded with impunity.*

It is by now axiomatic that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of that particular case. In this case, the respondents have not made out a case entitling them to an indulgence. It follows that their application must fail."

7. The Applicant(s) were legally represented by attorneys who certainly engaged the Fund(s) throughout the pre-application stages. It is

[1] Grootboom v National Prosecuting Authority and another Case No. CCT08/13

inconceivable that they should not be required to comply with the Tribunal's Rules and the Legislation.

8. Against this background, we do not accept the explanation given by the Applicant(s), and, in the circumstances, the Tribunal exercises its discretion to dismiss both condonation applications.

C: NO CASE ON THE MERITS IN ANY EVENT

9. The essence of the Applicant(s) complaint is that they are aggrieved at the Fund's allocation of the death benefit of their father, Mr D S Du Plessis ('the deceased").

10. The Adjudicator correctly summarises her role and the duties of a fund in her Determination(s):

> The duty of the Adjudicator is not to decide what is the fairest or most generous distribution, but rather to determine whether the board has acted rationally and arrived at a proper and lawful decision (see *Ditshabe v Sanlam Marketers Retirement Fund & Another* (2) [2001] 10 BPLR 2579 (PFA), at 2582 F-G). The fund's task in distributing a death benefit in terms of section 37C of the Act is to identify all the potential beneficiaries (see *Van Schalkwyk v Mine Employees' Pension Fund and Another* [2003] BPLR 5087 (PFA) at paragraph 15). The board is vested with discretionary powers to decide on an equitable distribution of the death benefit. It is only in cases where it has exercised its powers unreasonably and improperly or unduly fettered the exercise thereof, that its decision can be reviewed (see *Mongale v Metropolitan Retirement Annuity Fund* [2010] 2 BPLR 192 (PFA)).

11. Nothing on the papers before this Tribunal suggests that the Fund(s) considered irrelevant factors and failed to consider relevant ones. To the

contrary, the correspondence between the Fund(s) and the Applicants' attorneys indicates just the opposite. Put differently, the correspondence suggests a serious and diligent consideration of the relevant factors and the appropriate exercise of discretion by the Fund(s). The ineluctable inference to be drawn from the complaint and the manner in which it is framed is that the Applicant(s) simply disagree with the allocation, which is not enough for this Tribunal to reconsider the matter.

E: CONCLUSION

12. In the circumstances, the Application for a reconsideration of the Fund(s) decision must fail.

ORDER

(a) The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 25 March 2025.

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PJ VELDHUIZEN & LTC HARMS