

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: PFA/85/2021

ERICK SIBUSISO HLONGWANE

APPLICANT

And

THE PENSION FUNDS ADJUDICATOR

FIRST RESPONDENT

KEY BIRD GENERAL TRADING CC

SECOND RESPONDENT

TRANSPORT SECTOR RETIREMENT FUND

THIRD RESPONDENT

THE SALT EMPLOYEE BENEFITS PTY LTD

FORTH RESPONDENT

NATIONAL BARGAINING COUNCIL FOR THE  
ROAD FREIGHT AND LOGISTICS INDUSTRY

FIFTH RESPONDENT

Application for the reconsideration of a decision by the Pension Funds Adjudicator – jurisdiction of the PFA over non-participating employer

DECISION

- 1 The PFA dismissed a complaint made by the applicant in terms of sec 30A of the Pension Funds Act 24 of 1956. The applicant applies for the reconsideration under sec 230(1) of the Financial Sector Regulation Act 9 of 2017.
- 2 The applicant waived his right to a formal hearing, and the respondents have not indicated any opposition. This is, accordingly, the decision of the Tribunal.

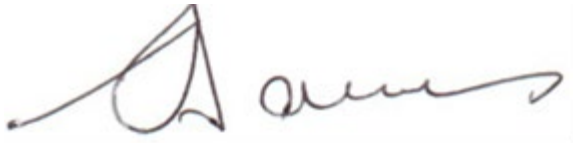
- 3 The issue is a crisp one and has been the subject of the recent decision of this Tribunal in the matter of *Bulose* PFA/2021 on 23 February 2022. The applicant's para-legal representative also represented Mr *Bulose* and argued the same issue then. He is dissatisfied with that decision, which agreed with the PFA's understanding of the Act. I fear that his detailed argument is more about how the Act should have read than how it does read.
- 4 Yes, this Tribunal is bound by decisions of courts but if those decisions do not decide the same issue, the Tribunal is to apply it best endeavours to interpret the Pension Funds Act and apply it to the facts of the case.
- 5 The relevant facts and legal conclusions are these (I repeat the recital in *Bulose*). The applicant was employed as a truck driver by the second respondent. The employer, it may be accepted, was legally bound to register the applicant with one or other prescribed fund under binding collective agreements governing the freight industry.
- 6 The applicant sought payment of his severance benefits from the third respondent, the Fund.
- 7 The applicant never knew whether the employer had been a participating employer, deducted contributions from his salary, or paid any contributions – whether on behalf of itself or the applicant – to any fund.
- 8 It transpired that the applicant was never a member of the Fund and that the employer had not been a participating employer of the Fund.
- 9 The applicant sought a determination from the PFA ordering the employer to register with the Fund and to provide particulars of all contributions that should have been paid to the Fund and pay them over, and for the Fund then to pay the applicant his withdrawal benefit.

- 10 The PFA held that she did not have the jurisdiction to make such an order. The answer to that issue is to be sought in the PF Act and not in previous determinations of either the PFA or this Tribunal.
- 11 Section 30D states that the main object of the Adjudicator is to dispose of “complaints” lodged in terms of section 30A (3) of the Act.
- 12 Moving then to sec 30A, it provides that a complainant may lodge a written complaint with a fund for consideration by the board of the fund. A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof. Subsection (3) is specific: If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator. (All underlining added.)
- 13 That leads us to the definition of complaint in sec 1: It means “a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging—(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund.”
- 14 The applicant is (a) not a complainant as defined because he is or was not a member of the Fund; and his complaint does not (b) relate to the administration of a fund, the investment of its funds or the interpretation and application of its rules or (c) allege that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund.
- 15 The PFA therefore correctly held that this is a labour matter which must be dealt with by other competent organs.

16 The applicant' remedy is, unfortunately, a high court review.

The application is dismissed.

Signed on behalf of the Tribunal on 2 March 2022.

A handwritten signature in black ink, appearing to read 'A. Jones', enclosed in a thin black rectangular border.