



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. PFA53/2025

In a matter between:

HENDRIK JOHANNES PETRUS VISSER

APPLICANT

and

**THE PENSION FUND ADJUDICATOR
RETAIL PROVIDENT FUND
ALEXANDER FORBES
SHOPRITE CHECKERS (PTY) LTD**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

TRIBUNAL PANEL: M F Legodi J and LTC Harms

Appearance for Applicant: None

Appearance for Respondent: None

Date of hearing: On papers

Date of Decision: 28 October 2025

Summary: Application for consideration in terms of section 230 of Act 9 of 2017 – The dismissal of the complainant's complaint by the Adjudicator in terms of section 37D(1)(b)(ii) confirmed and the application for reconsideration dismissed.

DECISION

Introduction

1. An order handed down by the Pension Fund Adjudicator (the Adjudicator) on 10 July 2025 in terms of which Mr Visser's complaint against the Retail Provident Fund (the Fund) was dismissed, is the subject of reconsideration in this application. The parties have agreed to have the application decided on papers filed with the Tribunal.
2. The complaint by Mr Visser (the complainant), related to the Fund the withholding his provident fund benefits in the amount of R2 158 39326 after he was dismissed by his employer, Shoprite Checkers (Pty) Ltd (Shoprite), on allegations of fraud, theft and corruption.
3. The withholding of the complaint's provident benefits by the Fund was as contemplated in Fund's rule 16.4, read with section 37D, which respectively deals with deductions from benefits and making of certain deductions from pension benefits. The withholding of the withdrawal was at the request of Shoprite in its capacity as the complainant's employer.
4. Rule 16.4(1)(c) of the Fund provides that the Board may subject to section 37D of the Pension Funds Act, deduct certain amounts from the benefits to which a beneficiary is entitled including compensation for any damages caused to the employer by reason of theft, dishonesty, fraud or misconduct by the member or in respect of which the member has, in writing, admitted liability to the employer or judgment has been obtained against the member in court.
5. Of relevance section 37D(1)(b)(ii) of the Act provides that a registered fund may deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb) in respect of any damage caused to employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which:

- (aa) *the member has in writing admitted liability to the employer; or*
- (bb) *judgment 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 of terms the rules of the fund and pay such amount to the employer concerned.*

Background

6. The complainant was employed by Shoprite from 1 January 1999 to 21 June 2018, when his employment was terminated. The termination of his employment was after the employer had found the complainant guilty on charges of gross dishonesty.
7. Shoprite also issued summons in the Western Cape High Court against the complainant during 2019. In the particulars of claim, Shoprite pleaded that the complainant acted in concert with the other cited defendants in the formation, execution and or implementation of a fraudulent scheme.
8. In the particulars of claim, it is further averred that the purpose of the scheme was to cause the employer (Shoprite) to make payments that were not due, owing or payable, and that the proceeds of the scheme were subsequently distributed to various entities and individuals. All these are regarded by Shoprite as constituting misconduct, dishonesty, fraud, and or theft.
9. Shoprite also pursued criminal charges against the complainant. Having regard to what is stated above, the Fund decided to withhold the complainant's pension benefits. The Adjudicator agreed with the Fund and dismissed the complainant's complaint.

Was the Adjudicator justified in dismissing the complainant's complaint?

10. Before the Adjudicator, the complainant's complaint was that disciplinary findings against him and pending civil proceedings or criminal charges against him were not sufficient to withhold his provident fund benefits. According to the complainant, the alleged misconduct without a judgment did not justify the withholding of his benefits.
11. The prolonged withholding of his benefit was raised before the Adjudicator as causing him hardship that resulted in a forced sale of his home and personal assets at a reduced price.
12. For all what is stated above, the complainant considered the withholding of his provident fund benefits as unlawful. He also wanted the Adjudicator to order compensation for what he referred to as undue hardship.
13. The Adjudicator in her detailed determination dealt with the plain meaning of section 37D(1)(b)(ii) in particular, with reference to how same is interpreted by the courts including the Supreme Court of Appeal in the matter of **Highveld Steel and Vanadium Corporation Ltd v Oosthuizen [2009] 1 BPLR 1 (SCA)**.
14. In paragraph 16 of the judgment referred to above, the Supreme Court of Appeal held that *'it has been stated in a number of cases that the objective of s 37D(1)(b) is to protect the employer's right to pursue the recovery of money misappropriated by its employees. In many a case, employers only suspect dishonesty on the date of termination of an employee's service and fund membership with the consequence that pension benefits are paid before the suspected dishonesty can be properly investigated'*.
15. It was further held in the **Highveld Steel** case that it has to be accepted as a matter of logic that it is only in a few cases that an employer will have obtained a judgment against its employee by the time the latter's employment is terminated because of the lengthy delays in finalising cases in the justice system and that the results therefore,

is that an employer will find it difficult to enforce an award made in its favour by the time judgment is obtained against him.

16. In disagreeing with the limited interpretation of the words '*has in writing admitted liability*' and '*judgment has been obtained*' in section 37D(1)(b), the Supreme Court of Appeal in the **Highveld Steel case**, concluded as follows:

“[19] Such an interpretation would render the protection afforded to the employer by s37D(1)(b) meaningless, as a result which plainly cannot have been intended by the Legislature. It seems to me that to give effect to the manifest purpose of the section, its wording must be interpreted purposively to include the power to withhold payment of a member’s pension benefits pending the determination or acknowledgement of such member’s liability. The Funds therefore had the discretion to withhold payment of the respondent’s pension benefit in the circumstances. I daresay that such discretion was properly exercised in view of the glaring absence of any serious challenge to the appellant’s allegations of dishonesty against the respondent”.

17. In the present case, the complaint was dismissed after disciplinary proceedings were concluded. Furthermore, both criminal and civil proceedings have been instituted against the complainant and efforts are made to prioritise the litigation in question.
18. The civil and criminal allegations have not only been instituted against the complainant, but also against other employees or ex-employees of Shoprite one of whom is the Information Technology Manager (IT Manager) referred to in a letter dated 7 April 2025 from the complainant addressed to the Adjudicator. In the letter, the complainant admitted that a total amount of R220 000.00 was paid to him for alleged bookkeeping services he rendered to Shoprite after hours. This arrangement is alleged to have been made with the IT Manager during a conversation between the

two of them. The arrangement is said to have centred around the complainant's low salary increase, much lower than the previous years.

19. In its letter of 19 May 2025 addressed to the Adjudicator, the Fund indicated that during the disciplinary hearing of 14 and 15 May 2018, the complainant under oath admitted that he had received a bribe of R10 000.00 per month from his superior to participate in an unlawful scheme to the detriment of Shoprite as an employer including what is stated in paragraph 18 above.
20. Before deciding to withhold the complainant's provident fund benefits, the Fund considered the relevant information provided to it by Shoprite. The Fund had the discretion to withhold payment of the complainant's provident fund benefits. Such a discretion had to be exercised properly. For this, it had to consider the potential prejudice to the complainant who may urgently need to access his benefits.
21. However, the interests of the employer (Shoprite), is also a factor to consider in the exercise of the Fund's discretionary powers to ensure that protection afforded to the employer in terms of s37D(1)(b), is not rendered hollow and meaningless.
22. Shoprite's claim against the complainant is in the region of R33 163 772.00. Several defendants have been sued jointly and severally with the complainant for this amount and most of the defendants are employees or former employees of Shoprite.
23. The consideration of the potential prejudice to the complainant who may urgently need access to his provident fund benefits and the balancing of competing interests with due regard to the strength of the case by Shoprite, is important. Regard being had to the unchallenged allegations of dishonesty as indicated in paragraphs 18 and 19 above, the exercise of discretion by the Fund in withholding payment of the complainant's provident fund benefits cannot be faulted. Similarly, the Adjudicator's dismissal of the complainant's case is justified.

Order

24. Consequently, the application for reconsideration is hereby dismissed.

Signed on 28 October 2025 on behalf of panel.

___*Sgd M F Legodi*_____

M F LEGODI J (Panel member)