

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: PFA14/2024

In the matter between:

LESLIE BENJAMIN BOGATSU Applicant

and

SYGNIA PENSION FUND First Respondent

PENSION FUNDS ADJUDICATOR Second Respondent

MCDONALDS SA PENSION FUNDS Third Respondent

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (Pension Funds Act 24 of 1958 s 30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017- Application lacks merit.

DECISION

- [1] This is an application for reconsideration of a decision by the Pension Funds Adjudicator (PFA). Following a complaint laid by the Applicant, Mr Bogatsu, the PFA found that the Applicant had failed to establish a case against the funds and found that the funds acted lawfully in terms of the fund rules and the Income Tax Act 58 of 1962 (ITA) in relation to the

payment of the benefits due to the Applicant upon retirement. The PFA ruled that the complainant (Applicant) failed to establish before it that he is entitled to the relief he sought and consequently dismissed the Applicant's complaint.

[2] The PFA's determination was premised on the ground that the Applicant's membership of the fund ceased when he elected to take an early retirement in February 2023. The early retirement resulted in the Applicant being entitled to his retirement benefit in terms of the rules of the fund and ITA. The Act is clear and to the effect that:

[2.1] When you retire as a member of a pension fund, pension preservation fund or retirement annuity fund and you wish to take a portion of your retirement interest as a lump sum, you are allowed to take (commute) a lump sum equal to a maximum of one-third of the retirement interest in that fund. The remaining two-thirds will be paid out in the form of an annuity (a regular pension). An extract of the copy of the rules of the funds dealing with payment of retirement benefit was provided and forms part of the record.

[3] In response to the PFA, the funds submitted that the Applicant had a fund credit of R 1 005 984.83 in the McDonald's Pension Fund (MPF) and R

272 671.37 in Sygnia Pension Fund as at 17 August 2023. Further, two-thirds of these balances amount to R 670 656.55 and R 181 780.91, respectively. The funds submitted that as two-thirds of each respective benefit exceeds R 165 000.00 cap in terms of section 1 of the ITA, they are required to limit the cash portion to one-third of the benefit and the Applicant is required to purchase an annuity with the remainder of each benefit. The funds submitted that despite explaining this to the Applicant together with his retirement options available, the Applicant remained dissatisfied and was not pleased with the funds' explanations. Aggrieved by the decisions of the funds, the Applicant remained adamant that he was entitled to his entire 100% withdrawal benefit in cash indicating that the one-third payout does not meet his financial obligations.

- [4] The PFA having dismissed the Applicant's complaint against the funds, the Applicant instituted the present application for reconsideration in which he sets out the reasons why he believes he should receive his 100% cash lump sum withdrawal benefit. The record and the grounds for this application for reconsideration submitted by the Applicant indicate that the Applicant's financial circumstances have changed, and that as a result, he is unable to meet his financial obligations. The Applicant has provided copies of his bank statements, credit agreements and instalment agreements in support of his application for reconsideration.

[5] As already stated, the PFA considered the Applicant's complaint and found that the funds acted correctly in terms of their rules when they declined the Applicant's demand for payment of his entire 100% withdrawal benefit in cash. The PFA reasoned that the funds' decision was correct in law and could not be faulted. The Applicant then seeks the reconsideration of the decision of the PFA.

[6] Upon proper consideration of the papers submitted by the Applicant, he has not established that the funds acted wrongfully. It is also clear from the decision of the PFA that the complaints form completed and signed by the Applicant show that the Applicant stated that he was not complaining about any wrongful conduct by the funds *per se*, but he insists that he is entitled to be paid out his entire pension benefit in cash, something the funds cannot do as they would be acting outside of the fund rules and outside of statutory provisions. A fund does not have the legal power or capacity to do something outside of its rules or the law, such act by a fund would be *ultra vires*.

[7] There is no merit in the application for reconsideration. The PFA correctly found that the decision of the funds is in accordance with the law. It cannot be faulted. There is nothing in the application for reconsideration which indicated that the funds or the PFA were incorrect when they told the Applicant that he was not entitled to the payment of his 100% cash

lump sum withdrawal benefit. Consequently, the PFA correctly found that the Applicant failed to make out a case against the fund. It follows therefore that the application for reconsideration should fail.

CONCLUSION

[8] The application for reconsideration lacks merit and should accordingly be dismissed.

ORDER

[9] The application is dismissed.

[10] Signed on behalf of the Tribunal on 20 August 2024.



Zama Nkubungu-Shangisa (Member) with

LTC Harms (Chairperson)
