

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: PFA37/2024

In the matter between:

MADUKELA SAMUEL K LETSOALO

Applicant

and

GREAT NORTH TRANSPORT PROVIDENT FUND

First Respondent

THE PENSION FUNDS ADJUDICATOR

Second 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- Section 28(14) states that all claims against the liquidated fund must be proved to the satisfaction of the liquidator, subject to a right of appeal to the High Court - jurisdiction of PFA excluded

DECISION

- [1] The present matter concerns an application for reconsideration of a decision by the Pension Funds Adjudicator (PFA) stating that the PFA lacks jurisdiction to deal with a fund that has been liquidated and where the Financial Sector Conduct Authority (FSCA) has appointed a liquidator to manage the liquidation process.

[2] A brief background is merited: -

[2.1] The PFA advised that the liquidators responded to the Applicant's complaint, stating that the fund went into liquidation on 13 August 2020 and that the fund's preliminary distribution amounts were approved by the FSCA on 07 February 2021. The liquidators indicated that the advertisement period regarding the liquidation of the fund ran from 16 July 2021 to 15 August 2021 and that a notice of liquidation of the fund was published in several local newspapers, as well as in the Government Gazette on 16 July 2021. The liquidators further stated that during the period of objections which proceeded from 16 August 2021 to 20 August 2021, there were objections received by the FSCA from members and that these objections were answered and escalated up to a Tribunal hearing. The liquidators indicated that the Tribunal concluded that there was no evidence of any misappropriation of funds within the fund and the FSCA subsequently approved the liquidation of accounts for payment.

[2.2] The PFA in its decision letter to the Applicant further advised the Applicant that the liquidators advised that they started to pay all members that claimed from October 2022 and the Applicant's total amount due was R 1 280 014.32, with a tax amounting to R 307 805.15 which was paid to the South African Revenue Services. A balance of R 972 209.17 was paid to the Applicant on 18 November 2022. The liquidators indicated that

there was plenty of time to lodge an objection or ask questions regarding the Applicant's fund credit when the period of objections in 2021 was announced. The period for any queries regarding the fund has since closed and the fund has paid all amounts due to the Applicant which were held in the fund.

[3] The Applicant's complaint lodged with the PFA arose as a result of his withdrawal benefit from the fund paid to him on 18 November 2022 and the funds liquidation in 2020 (which was four years prior to lodging of the complaint to the PFA). The fund has been liquidated in terms of Section 28 of the Act the Act.

[4] The liquidation of a pension fund is regulated by section 28 of the Act. Section 28(1) reads:

“Subject to the provisions of this section, a registered fund may be terminated or dissolved in such circumstances (if any) as may be specified for that purpose in its rules and in the manner provided by such rules, and the assets of the fund shall, subject to the said provisions, in that event be distributed in the manner provided in the rules”.

[5] Section 28(14) states that all claims against the liquidated fund must be proved to the satisfaction of the liquidator, subject to a right of appeal to

the High Court. Section 1 of the Act defines a “court” as a provisional or local division of the Supreme Court of South Africa, i.e., a High Court. As mentioned, the liquidator had set the requirements for proof of claims. Disputes about claims are subject to appeal to the High Court, which means that the PFA and this Tribunal do not have the required jurisdiction to decide such issues. Once the Registrar is satisfied that his directions to the extent that they have not be varied or set aside by the court have been given effect to, he must direct the liquidator to finalise the liquidation. As already stated, the complainant only lodged a complaint after the finalisation of the liquidation process in terms of section 28. Thus, the complainant did not lodge an objection, nor did he seek to prove a claim in terms of section 28. Instead, he lodged a complaint with the PFA office where his complaint was dismissed. Hereafter he lodged a reconsideration application with this Tribunal.

- [6] The effect of a liquidation in terms of Section 28 of the Act is that after the liquidation process, there is no fund. The Applicant’s remedy lay exclusively in the provisions of Section 28, which he has not utilised. Accordingly, for the foregoing reasons, the PFA did not, and this Tribunal does not have jurisdiction to consider the complaint.

CONCLUSION

- [7] The application for reconsideration is accordingly dismissed.

ORDER

[8] The application is dismissed.

[9] Signed on behalf of the Tribunal on 15 November 2024.

A handwritten signature in black ink, appearing to be 'ZS', enclosed within a light gray rectangular box.

Zama Nkubungu-Shangisa (MEMBER) with

JUDGE LTC HARMS (CHAIRPERSON)
