

THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA55/2024

In the matter between:

NOMPUMEZO MITCHELL MNYAKA - SITUMA Applicant

and

OLD MUTUAL SUPERFUND PROVIDENT FUND First Respondent

NEDBANK LIMITED Second Respondent

THE PENSION FUNDS ADJUDICATOR Third 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.

DECISION

INTRODUCTION

1. The Applicant is **NOMPUMEZO MITCHELL MNYAKA - SITUMA**, an adult female and former employee of the Second Respondent ("the Applicant"). The Applicant is a member of the First Respondent by virtue of her employment with the Second Respondent.
2. The First Respondent is the **OLD MUTUAL SUPERFUND PROVIDENT FUND** ("the First Respondent").
3. The Second Respondent is **NEDBANK LIMITED** ("the Second Respondent").
4. The Third Respondent is the **PENSION FUNDS ADJUDICATOR** ("the Adjudicator")

5. This is an application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("FSRA") against the decision taken by the Third Respondent in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
6. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.
7. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant to lodge this application for reconsideration and seek appropriate relief.

THE COMPLAINT & THE SURROUNDING FACTS

8. The Second Respondent filed a complaint on 12 April 2024 with the Adjudicator in relation to the quantum of the withdrawal benefit paid to her.
9. The Applicant commenced employment with the Second Respondent on 25 September 2015, and her employment was terminated on 30 November 2023, whereupon she was paid a net withdrawal benefit after tax deductions of R184,141.86. The Applicant believes she was entitled to a tax-free withdrawal benefit as she maintained that she was retrenched and not dismissed.
10. On or about 30 September 2020, the Applicant, who had been suffering from a long-standing medical condition, underwent a partial amputation of a portion of her left foot. Her doctor ultimately determined that she was

fit to return to work, but unfortunately, the Second Respondent did not have a position for her that would accommodate her disability.

11. The Applicant wrote to the Second Respondent on 24 August 2023 and acknowledged that the Second Respondent did not have a suitable position for her and that she was taking up contract employment with another employer commencing in October 2023.
12. The Applicant was invited to an MS Teams Meeting on 28 September 2023 to discuss her incapacity.
13. On 20 October 2023, the Second Respondent wrote to the Applicant on a document entitled **NOTICE OF TERMINATION DUE TO INCAPACITY – BY MUTUAL AGREEMENT** ("the Agreement"). This document advised the Applicant *inter alia* that:

We confirm that following an incapacity process, your employment with Nedbank will be terminated by mutual agreement due to incapacity as a result of the bank's unsuccessful attempts to reasonably accommodate you.

14. The Agreement was signed by Charmian Delponte on behalf of the Second Respondent and ostensibly personally by the Applicant. Put differently, the Applicant has not challenged the submission that she signed the Agreement.
15. The Applicant maintained to the Adjudicator that she and the Second Respondent had agreed that her exit reason would be styled as a retrenchment and not a dismissal, but this is not evident from the Agreement. On the contrary, the termination of employment is clearly

indicated as a termination due to incapacity. If the Applicant had disagreed with this, one would have expected her to have raised this before signing the Agreement.

16. On or about 27 November 2023 and 30 November 2023, respectively, two claim forms were provided to the First Respondent, a manual and an electronic form. The former indicated the reason for the termination of employment to be resignation, and the latter dismissal. Neither mention retrenchment.

17. The Applicant was advised by Corporate Escalations at the Old Mutual Life Assurance Company SA Ltd that the tax process for a resignation and dismissal are the same and would reflect as such on the tax certificate.

18. The Adjudicator, in her determination, found that the Applicant had *inter alia*:

"...failed to provide any proof that she signed a withdrawal claim form indicating the reason for her exit as retrenchment."

19. In the circumstances, the Adjudicator dismissed the complaint.

CONCLUSION

20. We cannot fault the reasoning of the Adjudicator, and accordingly, the application for reconsideration must fail.

ORDER

(a) The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 14 November 2024.

A handwritten signature in black ink, consisting of a series of loops and a final flourish.

PJ Veldhuizen (member of the Tribunal)
LTC Harms