



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. PFA26/2025

In a matter between:

NOMANDILE CYNTHIA MPENGESI

APPLICANT

and

ARWYP MEDICAL CENTRE

FIRST RESPONDENT

PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

**ALEXANDER FORBES RETIREMENT FUND
(PROVIDENT SECTION)**

THIRD RESPONDENT

TRIBUNAL PANEL MEMBERS: MF Legodi J (Chair), Professor M Sigwadi and
Adv. KD Magano

TRIBUNAL PANEL:

Appearance for the Applicant: Self

Appearance for the First Respondent: Mr C Page, as observer only

Appearance for the Third Respondent: Mr Thyne, as observer only

Date of hearing: 5 September 2025

Date of Decision: 6 October 2025

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of section 230 of the FSR Act - Payment of a retirement benefit – Arrear contributions – Matter remitted to the Pension Funds Adjudicator for further investigation.

DECISION

A. THE PARTIES

1. The Applicant is Ms Nomandile Cynthia Mpengesi, an employee of Arwyp Medical Centre and a member of the Alexander Forbes Retirement Fund (Provident Section).
2. The First Respondent is Arwyp Medical Centre, the Applicant's employer (*"the Employer"*).
3. The Second Respondent is the Pension Funds Adjudicator (*"the Adjudicator"*), the statutory ombud as defined in section 1(1) of the Financial Sector Regulation Act 9 of 2017 (*"the FSR Act"*) and is established in terms of the Pension Funds Act 24 of 1956 (*"the PFA"*).
4. Alexander Forbes Retirement Fund (Provident Section) is the Third Respondent (*"the Fund"*).
5. Section 230 of the FSR Act provides the basis for an appropriate Applicant to lodge an application for consideration and seek appropriate relief.

B. THE FACTS

6. This is a reconsideration application under section 230(1) of the FSR Act against the decision taken by the Adjudicator in terms of section 30M of the PFA.
7. The Applicant submitted that she was employed by Arwyp Medical Centre from 01 October 1990 to date. She is registered with the Fund under the participation of the Employer.¹ She submits that contributions to a provident fund were deducted from her salary from 1990 to 2006, and these contributions are not reflected in her current retirement benefit with the Fund.
8. The Employer submits that there was a break of the employee's service from 1999 to 2007. It states that in this period the Applicant's services were outsourced to two labour brokers, namely Style Appointments and 4 - Med Nursing Services. The Employer submits that no records indicate that Style Appointments or 4-Med Nursing facilitated provident fund contributions for the Applicant during her employment with them.
9. The Employer further states that it does not have records of the Applicant's contributions for the period from 1990 to 2006. It only has records from 2007, when the Applicant started to contribute to the Fund. It should be noted that the Applicant's contributions to the Fund as from 2007 to date are not owing and are not in dispute.

¹ It is important to note that Employer only started to participate in this Fund as from 2007 and the disputed missing contributions relate to a period before 2007.

10. The crux of the Applicant's ground for reconsideration before this Tribunal lies on her missing provident fund contributions from 1990 to 2006.

C. THE PROCEEDINGS BEFORE THE ADJUDICATOR

11. The Applicant approached the Fund and the Employer to investigate where all her missing contributions from 1990 to 2006 went. The Employer's failure to provide the Applicant with satisfactory answers led to her lodging a complaint before the Adjudicator on 22 November 2024. She requested the Adjudicator to investigate the matter and to order the Employer to pay out the missing contributions for the period from 1990 to 2006.
12. According to the Adjudicator, the issue that she needed to determine was whether or not the Employer was in arrears with contributions with respect to the complainant.
13. The Adjudicator invited and received submissions from the Employer and the Fund. The Fund's submissions confirmed, amongst others, that the Applicant joined the Fund in 2007 by virtue of employment with the Employer.
14. The Employer confirmed that the complainant was employed on 1 October 1990. It stated that the payslip retrieved indicates that contributions to a provident fund were made during her initial tenure.²
15. The Adjudicator considered the submissions of both the Employer and the Fund in response to the complaint.

² See para 4.5 of the Adjudicator's determination, p 8 of PART A of the Tribunal record.

16. The Adjudicator referred to the issue of jurisdiction, in respect of section 30I(1) of the PFA and found that she should not investigate a complaint if the act or omission to which it relates occurred more than three years before the date she received the complaint. This meant that since the Applicant's written complaint was dated 22 November 2024, any non-compliance before 22 November 2021, should be excluded from investigation because it is time barred.
17. As for merits, the Adjudicator referred to the Fund rules, noted that the Employer commenced participation with the Fund in August 2007, and the Applicant was registered on the same date, furthermore, the Adjudicator stated that there are no missing contributions in respect of the Applicant and that she (the Applicant) failed to prove contributions before 2007.
18. The Adjudicator dismissed the complaint.
19. It would be seen in the discussions below that this determination did not address the specific complaint lodged by the Applicant to the Adjudicator.

D. GROUND FOR RECONSIDERATION

20. The Applicant is aggrieved by the Adjudicator's determination and, for that reason, lodged this application for reconsideration.
21. The Applicant's grounds for reconsideration are essentially the same as her complaint to the Adjudicator. The issue to be determined is whether the Adjudicator was correct in dismissing the complaint of the Applicant and for not investigating the Applicant's claim that the Employer deducted pension contributions from her salary for the period from 1990 to 2006.

22. The Applicant now seeks to set aside the Adjudicator's determination on *inter alia* the following basis:

22.1. That the Adjudicator was wrong to determine that her matter had prescribed.

22.2. That she was not aware of any break in service between her and the Employer, Arwyp Medical Centre, and only became aware of the missing contributions (debt) upon consultation with the Fund.

22.3. That the Adjudicator's determination was incorrect as she erroneously misunderstood or intentionally disregarded some information given by the Applicant to suit her decision. The latter articulation that the Adjudicator '*intentionally disregarding some information given by the applicant to suit her decision*', is that of the applicant and is not shared by the panel members.

22.4. The Applicant submits that the Adjudicator chose to take notice of the 2004 payslips and IRPS5 provided by the Employer and disregarded payslip for January 1996 that she supplied to her.

22.5. The Applicant submits that her complaint arises from the missing contributions for the period 1990 to 2006, which are unaccounted for by the Employer, even though there is clear evidence of provident fund deductions from the payslips submitted.

22.6. The Applicant concluded that the Adjudicator made an error when she stated that there are no missing provident fund contributions before August 2007.

23. During the hearing of this matter, the Applicant submitted four payslips issued by Arwyp to prove the deduction of contributions at the time. The payslips were dated 31 January 1996, 30 September 1996, 30 June 1997, and 24 December 1997. Mr Page, who attended the hearing on behalf of the Employer as an observer, indicated that, given more time and better collaboration between the Employer and the Applicant, they should be able to assist the Applicant regarding the status of the missing contributions.
24. The Adjudicator, in her determination, focused on the period after 2007, where contributions were made to the Fund by the Employer. She accepted that the Employer continued to make regular contributions but overlooked the fact that there were other payslips confirming that the Applicant had made contributions to a provident fund during the period from 1990 to 2006, and these amounts had been deducted from the Applicant's salary.
25. The Applicant submitted that the Employer failed to provide her with evidence of any section 14 transfer that happened or purportedly happened during her employment period.

E. PRESCRIPTION

26. One of the questions before this Tribunal is whether the Adjudicator was correct to determine that, because of prescription, she could not investigate the missing contributions from 1990 to 2006.

27. The Adjudicator referred to section 12(3) of the Prescription Act³ and concluded that the claim arose in March 2007 when the scheme with Sanlam terminated.⁴ She found that the Applicant became aware of the termination of the scheme in Sanlam (*“the debt”*) in March 2007⁵ and therefore the 3 years prescription is calculated from the time.
28. The Adjudicator concluded that *“thus, the complainant was aware of the termination of the scheme in Sanlam in March 2007, and she only indicated that the reasons for the termination were not supplied”*.⁶
29. The Adjudicator’s basis for her conclusion that the Applicant became aware of the debt in March 2007 was on the following submission of the Applicant:
- “The employer stated that her contributions prior to March 2007 were transferred to labour brokers and held by Sanlam. She stated that the termination of the scheme in Sanlam or transfer to labour brokers was not transparent, and the reason for the transfer or termination was not supplied.”*⁷
30. The Applicant submits that she had no knowledge of such information, and that the Employer had the duty to notify the Applicant of such termination and the right to claim with the fund (Sanlam). She submits that *“according to the general rule of prescription, the prescription does not commence a creditor if the debtor wilfully prevents the creditor from coming to know of the existence of the debt”*.⁸

³ See para 34 below where the provisions of section 12(3) of the PFA are stated.

⁴ See para 5.6 of the Adjudicator’s determination, p 10 of PART A of the Tribunal record.

⁵ See para 5.6 of the Adjudicator’s determination, p 10 of PART A of the Tribunal record.

⁶ See para 5.5 of the Adjudicator’s determination, p 10 of PART A of the Tribunal record.

⁷ See para 5.5 of the Adjudicator’s determination, p 10 of PART A of the Tribunal record.

⁸ See para 1.4 of the Application for reconsideration, p 11 of PART A of the Tribunal record.

31. The Applicant submits that she only realised, upon planning her retirement on 16 September 2024, that there were outstanding provident fund contributions. This was after she had made some enquiries about her pension benefits, as she is about to retire.
32. The Adjudicator's reliance on the above statement in paragraph 29 to conclude that the Applicant knew or should have known about the termination of the Sanlam pension in 2007 is misdirected. The Applicant's reference to the lack of transparency on the termination of Sanlam was not about how the process unfolded in 2007, but it was her explanation of the difficulty she was facing currently to get relevant information from the Employer for the purposes of this case before the Tribunal.⁹
33. The Applicant submits that prescription only commenced when she became aware of the discrepancies regarding her pension payout in 2024, and upon discovery, she took steps to address the matter, thus, the complaint is not time-barred.
34. In terms of section 12(3) of the PFA, a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, provided that a creditor shall be deemed to have such knowledge if she could have acquired it by exercising reasonable care.

⁹ See an e-mail from Brian Manyonga dated 7 February 2025, p 110 of PART B of the Tribunal record, stating that "*termination of employment or transfer to labour brokers is not transparent, reason for transfer or termination not supplied and no termination contracts are evident to prove that Cynthia indeed terminated her contract with Arwyp medical centre to join labour brokers*".

35. In *Truter and Another v Deyssel*,¹⁰ the Supreme Court of Appeal confirmed that the “*facts from which the debt arises*” are underlying, material facts, not legal conclusions (consequences) or expert opinions. Prescription therefore begins when those facts are, or ought reasonably to be, within the creditor’s knowledge. Once the material facts are known (or knowable with reasonable care), prescription commences.¹¹
36. The Tribunal is not satisfied that the Applicant knew, or could with reasonable diligence and care have known, all material facts when the contributions were stopped.
37. For the reasons stated above, the Adjudicator did not apply the provisions of section 30I of the PFA correctly.

F. CHANGE OR RAISE A DIFFERENT COMPLAINT

38. The Applicant submits that the Adjudicator’s determination is incorrect as she (the Adjudicator) erroneously misunderstood and intentionally disregarded some information that the Applicant had given her. As indicated in paragraph 22.3 above, the latter articulation by the applicant is not shared by the panel members.
39. The Complainant (now the Applicant before the Tribunal) requested the Adjudicator to investigate what happened to her record of contributions and fund credit from 1990 until 2006.

¹⁰ *Truter and Another v Deyssel* 2006 (4) SA 168 (SCA) at 18 & 20.

¹¹ See also *TZ Sehlabaka v Pension Funds Adjudicator and Others* FST Case no: PFA8/2025 dated 8 July 2025 at para 29.

40. The Adjudicator noted that the issue that she needed to determine was whether or not the Employer is in arrears with contributions with respect to the complainant.

41. It is apparent from the record that the order in the Adjudicator's decision dated 28 March 2025 does not relate to the specific complaint raised by the Complainant in the complaint dated 22 November 2024.¹²

42. The Applicant's complaint before the Adjudicator was as follows:

"My provident fund contribution start in August 2007, meaning there are missing contributions from 1990 to 2006. I have tried to come with a resolution with my employer, but my issue was ignored and management failed to come with proof as to what happened to the other contributions even though I sent them payslips to prove that there were provident fund deductions prior to 2007".¹³

43. The Applicant stated her desired outcome or relief sought as follows:

"I would like ARWYP to pay out any missing provident fund monies together with interest for all the missing period".¹⁴

44. The Adjudicator held that the Complainant (Applicant) had failed to establish a case against the Fund and dismissed the Applicant's complaint on 28 March 2025.

¹² See para 45 below.

¹³ See para D of the Applicant complaint to the Adjudicator, p 3 of PART B of the Tribunal record.

¹⁴ See para E of the Applicant complaint to the Adjudicator, p 3 of PART B of the Tribunal record.

45. Contrary to the Complainant's stated desired outcome, the Adjudicator confined the complaint's scope to the payment of the Applicant's withdrawal benefit by the Fund (Alexander Forbes Provident Fund).¹⁵
46. It is important to highlight that the Applicant's complaint was not to compel the Fund to pay the Applicant's retirement benefits that were contrary to the Fund rules, but rather to request the Adjudicator to investigate the missing contributions for the period between 1990 and 2006.
47. The Adjudicator misdirected herself by focusing on the payment of retirement benefits by the Fund and not that of the Employer's missing contributions prior to 2006. The Applicant did not dispute her benefits as far as the Fund is concerned, and the contributions that she made between 2007 to date.
48. The Adjudicator's determination was premised on the ground that the Applicant was a member of the Fund as from 2007 and that there is no record that she made contributions to a provident fund as from 1990 to 2006. The Adjudicator concluded that the Fund could only pay benefits in terms of the rules and dismissed the complaint.

G. PAYSLIPS AND MISSING CONTRIBUTIONS

49. The Adjudicator acknowledged that the Applicant, when submitting the complaint, submitted a copy of a payslip dated 30 June 1997, which reflected a provident fund contribution of R75.00.¹⁶

¹⁵ See para 3.3 of the Adjudicator's determination, p 11 of PART A of the Tribunal record.

¹⁶ See paras 14 above and 3.2 of the Adjudicator's determination, p 6 of PART A of the Tribunal record.

50. In paragraph 5.3 of the determination, the Adjudicator concluded that *“the complainant could not provide proof of provident fund contributions for the period 1990 to 2006”*.
51. The Tribunal record’s papers show that the Employer in its own words acknowledged that there were periods during the Applicant’s employment where she contributed to a provident fund.¹⁷
52. Although it is correct that the Fund must comply with its rules and the provisions of the relevant statutes, upon proper consideration of the papers submitted by the Applicant and in the determination of the Adjudicator, the Tribunal finds that there is relevant information that the Adjudicator should have considered in her determination. It must be understood that the issue is not about the applicability of fund rules relating to the current pension fund, but it is about money that was evidently deducted from her salary as contributions towards a provident fund. When she now seeks to claim her provident fund benefit, the Applicant is informed that her contributions only commenced from 2006, leaving the prior deductions unaccounted for.
53. The Applicant, during this Tribunal’s hearing submitted payslips with deductions that indicate that she contributed to a provident fund for a period from 1990 to 1999, in line with her employment.¹⁸
54. The Adjudicator does not address this aspect of payslips in her determination of 28 March 2025. The payslips referred to in paragraph 23 above, should be seen

¹⁷ See para 4.5 of the Adjudicator’s determination, p 8 of PART A of the Tribunal record, and paras 14 and 23 above. See also para 4.11 where the Employer stated that historical records indicate that contributions prior to outsourcing were paid into a Sanlam group scheme.

¹⁸ See para 23 above for the details.

in context and should not be seen as new evidence produced or mentioned for the first during hearing to which certain procedure or rules apply on remitting the matter to the Adjudicator.

55. The issue before the Adjudicator is quoted in paragraph 42 above. That is, the 'missing contributions from 1990 to 2006' and that she '*sent them payslips to prove that there were provident fund deductions prior to 2007*'. To deal with this critical issue, the Applicant then during hearing provided the Adjudicator with one payslip dated 30 June 1997 as indicated in paragraph 49 above.
56. However, despite what is stated in paragraphs 42 and 49 above, the Adjudicator in her determination as indicated in paragraph 48 above, only relied on the Applicant's membership with the fund from 2007 and that there was no record that she made contributions to a provident fund as from 1990 to 2006.
57. Having acknowledged that the Applicant, when submitting the complaint, she also submitted a copy of a payslip dated 30 July 1997, the Adjudicator had an opportunity to probe further. The probe could have followed the process envisaged in section 30J and also considering Adjudicator's powers under subsection (3) read with section 4 of the Commission Act 8 of 1947.
58. An investigation would have been justified particularly because the complainant is a cleaner who has been working in the same position as such and same theatre ward since 1990 to date. The principle of equity in the circumstances as envisaged in section 30D (1) required flexibility and fairness that would have justified an investigation in terms of section 30J regard being had to what was placed before the Adjudicator.

59. The Employer's representative during hearing displayed willingness to assist the Applicant and correctly so after he had conceded that for the period 1990 to 1999 the Applicant was employed by the same employer and deductions were made from the Applicant's salaries except for the period when the Employer engaged labour brokers after 1999. Such willingness could be followed up by the Adjudicator upon remittal of this matter. The Employer should be in a better position to know to which fund were the contributions made since 1990 until the labour brokers took over. If contributions were deducted by the Employer from the Applicant's salaries during 1990 to 1999 and not paid to any fund, the Adjudicator should be able to make an appropriate determination. The Employer could also assist the Adjudicator regarding the arrangements the Employer had with the labour brokers when the latter took over the Employer's employee, namely the Applicant.
60. This Tribunal, in a reconsideration application, may reconsider decisions of the Adjudicator and nothing more.¹⁹ There should be a legal basis on which the Tribunal can interfere with the Adjudicator's decision. What is stated herein should be seen in the context of the facts of the matter and some of which are common cause. The determination by the Adjudicator ought to be set aside.

H. **ORDER**

61. The decision contained in a letter dated 28 March 2025 of the Adjudicator is set aside and remitted back for further consideration in terms of section 234(1)(a) of the FSR Act.

¹⁹ See para 7 of *Glen William Truebody v PFA and Others* FST Case no: PFASO/2021 dated 24 February 2022.

Signed at PRETORIA on this 6th day of October 2025 on behalf of the Panel.

___*Sgd Prof/Dr M Sigwadi*___

Prof/Dr M Sigwadi (Member)

With the Panel consisting also of
MF Legodi J (Chair), and
Adv. KD Magano