

## THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA64/2022

In the matter between:

<b>SANLAM LIFE INSURANCE LIMITED</b>	Applicant
and	
<b>MASAKHANE PROVIDENT FUND</b>	First Respondent
<b>ITUMELENG MARIA MHLAKWANA</b>	Second Respondent
<b>THE PENSION FUNDS ADJUDICATOR</b>	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.*

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### DECISION

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#### INTRODUCTION

1. The Applicant is **SANLAM LIFE INSURANCE LIMITED**, a company registered in accordance with the company laws of the Republic of South Africa and carrying on business at No 2 Strand Road, Bellville, 7532 (“the Applicant”). The Applicant administers the Second Respondent.
2. The First Respondent is the **MASAKHANE PROVIDENT FUND** of Farm Middelkraal, Marikana (“the First Respondent”).
3. The Second Respondent is **ITUMELENG MARIA MHLAKWANA**, care of Molale Pebe Attorneys, No 28 Van Velden Street, Brits “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 decision of the Tribunal.
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**

8. The Second Respondent filed a complaint on the 12<sup>th</sup> of May 2022 with the Adjudicator in relation to the First Respondent’s failure to make payment of a portion of the member spouse, Mr GK Mhlakwana’s (“the member spouse”), pension interest to the Second Respondent.
9. The Second Respondent and the member spouse were divorced on 1 June 2020. The divorce order provided that the Second Respondent would be entitled to 50% of the member spouse’s pension interest held at the time of divorce. The value of the member spouse’s pension interest at the date of divorce was R225,846.15.
10. The member spouse exited the fund almost a year after the divorce order was granted, on 30 April 2021.

11. On 2 June 2021, the Second Respondent claimed payment of the 50% pension interest from the First Respondent. These funds were not forthcoming. The First Respondent advised the Second Respondent on the 9th of June 2022 that the payment had been made to be member spouse. The First Respondent submitted that the member spouse had indicated on his withdrawal form that no divorce order in terms of section 37 D of the PFA existed. This was untrue. The First Respondent admits that it received a copy of the divorce order as well as an email from the Second Respondent's attorneys on 2 June 2022 but argues *inter alia* that it had already commenced an automated payment process of the member spouse's withdrawal benefit and this process could not be stopped. In the circumstances, the withdrawal benefit was paid to the member spouse on 4 June 2021, two days after the First Respondent was given notice.
12. The Second Respondent immediately commenced interdict proceedings against the member spouse, presumably to prevent the dissipation of the funds. On the 22<sup>nd</sup> of June 2020, the attorneys for the Second Respondent provided the First Respondent with a copy of the interdict papers. On the 23<sup>rd</sup> of June, the attorneys for the Second Respondent addressed correspondence to the First Respondent indicating that they were dissatisfied with the conduct of the First Respondent, in that they had made payment to the member spouse despite having been notified of the divorce order. The First Respondent, in its response to the Third Respondent, advised that it had presented the Second Respondent with options to remedy the error however no feedback was received from the

Second Respondent until the filing of the complaint with the Adjudicator.

13. The Adjudicator determined that the narrow issue to be decided was whether the First Respondent failed to pay a portion of the member spouse's pension interest to the Second Respondent in terms of its Rules and the PFA.
14. It is common cause that by the time that the payment was made to the member spouse, the First Respondent had been advised of the divorce order, and the defence raised by First Respondent is simply that:
  - 14.1 it was an automated payment already in process, and the payment could not be stopped; and
  - 14.2 the Second Respondent had taken too long after the divorce was granted to advise the First Respondent; and
  - 14.3 The First Respondent had given the Second Respondent option to remedy the error, and she had not reverted to them.
15. The Adjudicator, in its determination, found the Second Respondent should have interrupted the payment. We agree.

## **CONCLUSION**

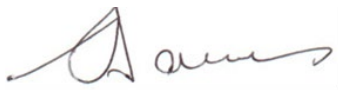
16. In light of the concessions made by the Second Respondent that it had notice of the divorce order before making payment to the member spouse, the determination of the Adjudicator must stand.
17. The fact that the second respondent indicated that the payment was made due to an automated process that could not be interrupted is an

internal issue that cannot prejudice the Second Respondent.

**ORDER**

(a) The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 15 March 2023.

A handwritten signature in black ink, appearing to read 'LTC Harms', enclosed in a thin black rectangular border.

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**LTC Harms (deputy chair) o.b.o. self and  
PJ Veldhuizen (member of the Tribunal)**