

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO.: PFA1/2024**

In the matter between:

**SECURITY MED 24 (PTY) LTD**

**APPLICANT**

**AND**

**L S MOKOENA**

**FIRST RESPONDENT**

**PENSION FUNDS ADJUDICATOR**

**SECOND RESPONDENT**

**PRIVATE SECTOR SECURITY PROVIDENT FUND**

**THIRD RESPONDENT**

**SALT EMPLOYEE BENEFITS (PTY) LTD**

**FOURTH RESPONDENT**

**REGISTRAR OF THE HIGH COURT:  
JOHANNESBURG LOCAL DIVISION**

**FIFTH RESPONDENT**

**Summary:** Application for reconsideration of decision of the Pension Fund Adjudicator in terms of section 230 of the Financial Sector Regulation Act 9 of 2017; and for condonation for late submission of application. Effect of CCMA settlement on statutory obligations.

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**DECISION**

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**INTRODUCTION**

- 1 This application is in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017, against a determination of the Pension Funds Adjudicator (“the Adjudicator”). The determination was made under sec 30M of the Pension Funds Act 24 of 1956. (“the PFAAct”).
- 2 The parties waived their right to a formal hearing, and this is, accordingly, the decision of the Tribunal.

## THE COMPLAINT

- 3 The First Respondent/Complainant was employed by the Applicant as a security guard from 01 September 2020 to 31 December 2021. At the time the Applicant/employer was a participating employer of the Private Security Provident Fund cited as the Third Respondent ("Fund") and the Applicant was accordingly obliged to pay contributions of behalf of its employees to the Fund.
  - 3.1 The contributions consist of two elements: the contribution of the Complainant as its employee and the contribution of the Applicant as his employer.
  - 3.2 The Applicant failed to pay both parts of the contributions to the Fund as required.
  - 3.3 The First Respondent's filed a complaint with the Adjudicator accusing the Applicant of making deductions from his salary from September 2020 to December 2021, for provident fund contributions, however the Applicant failed to remit the deductions to the Fund, thereby prejudicing his right to receive provident fund benefits.
  - 3.4 On 13 April 2022 the Adjudicator notified the Applicant that it was investigating the First Respondents complaints against the Applicant, and gave the Applicant timeframes within which to respond to the complaint. However, no response was received.
- 4 On 13 April 2022 the Adjudicator addressed a letter to the Fund in terms of Section 30 E(1) of the PFAAct requesting details of the Applicant as a member of the Fund. In response on behalf of the Fund, Salt (the administrator of the Fund) stated that:
  - 4.1 The Applicant started participation in the Fund on 01 June 2019 but was not compliant in terms of section 13A of the Act, and as a result it sent a letter Applicant/employer and reported the Applicant to the Financial Sector Conduct Authority ("FSCA") for non-compliance.
  - 4.2 Complainant was not registered as its member during the period he was employed by Applicant.

- 4.3 The arrear amounts for September 2020 to December 2021 are R8 922.85 plus late payment interest of R1 801.35 calculated up to 31 August 2022.
- 5 As the Applicant was granted opportunities to comment on the allegations made against it as required in terms of section 30F of the Act, but failed to respond, the Adjudicator disposed of the matter on available submissions.

### **Determination**

- 6 A determination was made on 15 June 2022 by the Adjudicator in the following terms;
- 6.1.1 *The fund is ordered to register the complainant as its member from 01 September 2020 until 31 December 2021, within four weeks of this determination.*
- 6.1.2 *The employer is ordered to pay to the fund the amount of R8 922.85 as arrear contributions for September 2020 to December 2021, within four weeks of this determination.*
- 6.1.3 *The fund is ordered to recalculate the amount of late payment interest in terms of section 13A(7) of the Act for the period in paragraph above and advise the employer of the amount thereof, within two weeks of this determination;*
- 6.1.4 *The employer is ordered to pay the fund the amount of late payment interest as computed in paragraph, within two weeks of receiving the computations from the fund;*
- 6.1.5 *The fund is ordered to pay the complainant his outstanding withdrawal benefit consisting of the arrears remitted contributions remitted by the employer in terms above paragraph and the and the amount of late payment interest in paragraph above, less any deductions allowed in terms of the Act, within two weeks of receiving payment from the employer; and*
- 6.1.6 *The fund is ordered to provide the complainant with a breakdown of the withdrawal benefit paid in terms of paragraphs above, within one week of effecting such payment.*

- 7 The Determination dated 15 June 2022 was sent to the Applicant's email address. The Applicant did not comply with the terms of the determination, and the Complainant eventually utilised section 30(O) of the PFact and attempted to execute the warrant which was issued by the Registrar of the High Court on 27 June 2022
- 8 This attempted execution gave rise to the present application for reconsideration, filed on 16 January 2024.

## **THE APPLICANTS CASE FOR RECONSIDERATION**

### **Application for Condonation**

- 9 The Applicant, aggrieved by the Determination of the Adjudicator lodged the application for reconsideration, coupled with an application for condonation for the late submission of its application.
  - 9.1 The Applicant submitted there was no way it could have responded to the Determination of the Adjudicator timeously as it only came to its attention on 15 November 2023 when the Adjudicator used section 30(O) of the PF Act to execute the warrant which was issued by the Registrar of the High Court on 27 June 2022. The Applicant obtain copies of the Determination seventeen (17) months after the document were allegedly sent.
  - 9.2 This should be seen against the provision of the FSR Act providing that the Applicant had sixty (60) ordinary days to file an application for reconsideration after notification. If the operative date is 15 June 2022, then the application was filed way out of time.
  - 9.3 The Applicant further submitted that none of the emails sent by the office of the Adjudicator reached it because the address of johan@securitymed24.com used was wrong, the correct email address is in fact johan@securitymed24.co.za.
  - 9.4 The Tribunal Record <sup>1</sup> indicates the email address as "johan@securitymed24.com" instead of johan@securitymed24.co.za. as indicated in the Applicant's letterhead.<sup>2</sup>

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<sup>1</sup> Page 41 Part A of Record

<sup>2</sup> Page 21 Part A of Record

- 9.5 Since there is no evidence that the Applicant received any of the emails sent to it from the office of the Adjudicator prior to 15 November 2023 we have no difficulty in granting condonation.

### **Merits of Application for Reconsideration**

- 10 The Applicant contends that the Adjudicator's decision was based on a misconception and was without merit, because:
- 10.1 The Complainant's complaint was dealt with by the CCMA under case number GATW2566-22 on 17/3/2022, after proving that four months of Provident Fund deducted were made from his salary and that he was owed outstanding leave monies.
- 10.2 The Complainant and Applicant concluded a settlement agreement in terms of which an amount of R3,384.00 was awarded and paid to the complainant. The settlement agreement reached at the CCMA is a binding document was in full and final settlement of this dispute.
- 10.3 Applicant paid back the deductions which totals R1,492.59 together with the R1,891.41 leave money due to First Respondent. Applicant alleged that the deductions made for June 2021 - R360.37, July 2021 - R348.88, August 2021 - R448.86, September 2021 - R334.48, during October 202, were made error, and after the error was noticed they were cancelled. The signed agreement was attached as proof.
- 11 However, the agreement only states that the Applicant/employer agreed to pay Claimant/employee R3384.00 on or before 01 April 2022. The agreement does not state that the payment was in full and final settlement of all the claims the Claimant had against the Applicant, as alleged by Applicant.
- 12 After considering the Applicants submission the questions to be decided whether the settlement signed at the CCMA<sup>3</sup> exempt the Applicant from the application of the Fund and the Collective Agreement.

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<sup>3</sup> See Chapter VIII Section 114 and 115 of the Labour Relations Act 66 of 1995

13 In the Determination the Adjudicator held that:

- 13.1 The Applicant and all participating employers in the private security industry are obliged to register eligible employees with the Fund, such registration is not voluntary but peremptory in terms of Rule 3.2.1 of the Main Collective Agreement<sup>4</sup>.
- 13.2 Clause 1(1) of this Agreement provides that its provisions apply to all employers and all employees who are engaged in the Private Security Sector in the Republic of South Africa as defined in sub clause (2).
- 13.3 The complainant commenced employment with the employer on 01 September 2020 and ought to have been registered in September 2020. However, the employer did not register the complainant with the fund in contravention of section 13A of the Act, rule 3.2.1 of the fund, and the Main Collective Agreement.
- 13.4 In support the Adjudicator referred to *Municipal Employees Pension Fund v Mongwaketse* (969/2019) [2020] ZASCA 181 (23 December 2020) at paragraphs [42] to [44], Wallis JA held that the rules of a fund are its constitution, and that the doctrine of ultra vires applies. The Constitutional Court affirmed the decision in *Municipal Employees Pension Fund and Another v. Mongwaketse* (CCT.34/21) [2022] ZACC 9.
- 13.5 The employer had a duty imposed by section 13A(1)(a) and (b) of the Act and the rules of the fund to pay contributions and submit schedules to the Fund indicating on whose behalf payment is being made, and the Fund in turn has a duty to take all reasonable steps to ensure that the contributions are paid timeously as indicated in section 7D(i)(d) of the Act (see *Martin v The Printing Industry Pension Fund for SATUWU Members* [2003] 4 BPLF 4562 (PFA)).

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<sup>4</sup> Page 33 Clause 5.4 Part A Tribunal Record: The fund was established in terms of the Main Collective Agreement for the National Bargaining Council for the Private Security Sector issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1977 and registered as a pension fund in terms of the Act (see *Private Security Sector Provident Fund v D & L Patrols CC* [2008] 3 BPLR 261 (PFA)).

- 13.6 The fund indicated that the complainant was employed with Asesabi Security Services from 01 February 2018 until 31 August 2020 prior to commencing employment with the employer on 01 September 2020. Therefore, rules 3.2.5 and 3.2.6 of the Fund and Clauses 30(6) and (7) of the Main Collective Agreement are not applicable to the complainant as he was not out of service for a period exceeding six months. Thus, the employer ought to have commenced payment of provident fund contributions in September 2020.
- 13.7 Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's bank account and section 13A(3)(a)(ii) states that the contributions must be paid in such a manner as to have the fund receive the contributions no later than seven days after the end of that month for which contributions are payable.
- 13.8 The Adjudicator held finally that the appropriate remedy for the Complainant is to put him in the position he would have been had the employer timeously registered him as a member of fund and paid all provident fund contributions due on his behalf. (see *Orion Money Purchase Pension Fund (SA) v PFA and Others* [2002] BPLR 3830 (C) at 3839 F-G and *Mabale Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F.

## CONCLUSION

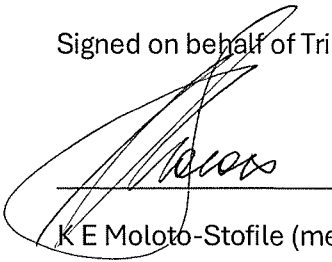
- 14 The Applicant sought to rely on the Settlement Agreement it concluded with the First Respondent to evade its obligations under Rules 3.2.5 and 3.2.6 of the Fund and Clauses 30(6) and (7) of the Main Collective Agreement.
- 14.1 However, the Settlement cannot pronounce itself on issues relating to obligation of the Applicant under the Pension Fund Act and Main Collective Agreement, over which the CCMA has no jurisdiction.
- 14.2 Such attempts were made in vain as the law is clear on the point. The Applicant was obliged to register the Complainant with the Fund and to transmit the Complainant's and the Applicant's portions of the contribution to the Fund.

14.3 Accordingly, there is no reasonable justification for exempting the Applicant from its obligations under Rules 3.2.5 and 3.2.6 of the Fund and Clauses 30(6) and (7) of the Main Collective Agreement.

**ORDER**

**The application is dismissed.**

Signed on behalf of Tribunal on 18 June 2024

A handwritten signature in black ink, appearing to read 'K E Moloto-Stofile', is written over a horizontal line.

K E Moloto-Stofile (member of the Tribunal) obo self; and

LTC Harms (deputy chair)