

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO: PFA8/2025**

In the matter between:

**THABISO ZAKARIA SEHLABAKA**

Applicant

and

**OLD MUTUAL SUPERFUND PROVIDENT FUND**

First Respondent

**SASOL NEGOTIATED PROVIDENT FUND**

Second Respondent

**OLD MUTUAL CORPORATE RETIREMENT FUND**

Third Respondent

**THE PENSION FUNDS ADJUDICATOR**

Fourth Respondent

**SASOL AFRICA (PTY) LTD**

Fifth Respondent

Decision on Papers

Date of Decision: 8 July 2025

Summary: Application for Reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 against determination of Pension Funds Adjudicator not to investigate due to lack of jurisdiction as the complaint is time-barred as envisaged in section 30I of the Pension Funds Act, 24 of 1956.

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**DECISION**

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1. The Applicant applies in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 ("the FSR Act") for the reconsideration of a decision taken by the Fourth Respondent, the Pension Funds Adjudicator ("the Adjudicator"), dated 5 December 2024. Prior to this decision the Adjudicator also gave a similar decision on 14 August 2024. In both decisions

the Adjudicator declined to investigate the Applicant's complaint regarding the quantum of the benefit paid by the First Respondent, Old Mutual Superfund Provident Fund ("the Superfund"), citing a lack of jurisdiction due to the complaint being time-barred as envisaged in section 30I of the Pension Funds Act, 24 of 1956 ("the Act").

2. The First Respondent is , **OLD MUTUAL SUPERFUND PROVIDENT FUND** ("the Superfund").
3. The Second Respondent is, **SASOL NEGOTIATED PROVIDENT FUND**.
4. The Third Respondent is, **OLD MUTUAL CORPORATE RETIREMENT FUND**.
5. The Fourth Respondent is, **THE PENSION FUNDS ADJUDICATOR** ("the Adjudicator").
6. The Fifth Respondent is, **SASOL AFRICA (PTY) LTD** ("the Employer").
7. The parties waived their rights to a formal hearing.
8. The Applicant seeks condonation for the late filing of his application for reconsideration. The Adjudicator's decision is dated 5 December 2024, and the Applicant's reconsideration application was filed on 13 February 2025. No request for reasons was made in terms of section 229 of the FSR Act. Accordingly, the application should have been filed within 60 ordinary days of notification of the decision. The Tribunal considered the Applicant's explanation, the relatively short delay, and the absence of opposition. Thus, the Tribunal is satisfied, and the condonation is granted.
9. The application for reconsideration raises the question whether the Applicant's complaint is time-barred as envisaged in section 30I of the Act. If so, this would result in the Adjudicator lacking jurisdiction to investigate the Applicant's complaint.
10. The Applicant was employed by the Fifth Respondent from 15 February 1988 until his retrenchment on 31 January 2015. During his employment, he was initially a member of the Sasol Pension Fund, then transferred to the Sasol Negotiated Provident Fund on 1 June 1995 (section 14 of the Act transfer), and later to the Old Mutual Superfund Provident Fund with effect from 1 July 2013, with Sasol Africa (Pty) Ltd as the participating employer.
11. On 8 September 2014, an amount of R2 310 070.56 was transferred from the Sasol Negotiated Provident Fund to the Superfund via a section 14 transfer.

12. Evidence indicates that a surplus apportionment amount of R41 287.60 from the Sasol Negotiated Provident Fund was transferred on 4 June 2019 to the Old Mutual Unclaimed Benefits Preservation Fund.
13. On 5 August 2014 and 12 May 2014, benefit quotation statements in respect of the Applicant's retirement benefits were sent to the Applicant. On 17 December 2014, the Superfund sent the Applicant his latest Member Benefit Statement showing the value of his retirement savings as R2 246 802.97 as of 30 June 2014 and provided additional information on his benefits. The Applicant was further informed that his accumulated credit will be transferred to the Superfund with the participating employer being Sasol Limited in terms of section 14 of the Act. According to the employer, the Applicant need not have to elect to join the Superfund as this was done via a section 14 transfer.
14. The Applicant exited the Superfund on 31 January 2015.
15. He submitted withdrawal documentation on 6 February 2015.
16. On 21 April 2015, the Applicant was paid a withdrawal benefit of R1 824 016.11 (after tax) by the Superfund. A Benefit Payment Letter was sent by the Superfund to the Applicant's address at 3919 Zamdela Street, Sasolburg, 1941 – an address which corresponds with that in his reconsideration application. The letter contained a detailed breakdown of the benefit, including the tax deduction, and recorded that the amount constituted a full and final payment of all benefits due to the Applicant in terms of the Rules of the Fund. The letter further advised that the tax deduction was based on an estimated amount received from the South African Revenue Service ("SARS") and that the final liability may change upon SARS's final assessment. The Applicant was instructed to submit the attached tax certificate with his next annual income tax return. The letter also recorded that the benefit included interest accrued after the tax application had been made, which had not been subject to tax, and the Applicant was advised to declare such interest in his next tax return.
17. On 13 November 2019, the Applicant received a further payment of R26 777.32 (after tax) from the Unclaimed Benefits Preservation Fund. On 15 November 2019, a benefit breakdown letter was sent by Old Mutual Corporate Retirement Fund Administration Service Centre to the address reflected in the Applicant's reconsideration application. The letter similarly detailed the calculation of the benefit, with reference to the applicable tax deduction and the interest accrued after the tax application.

18. According to the Superfund, no further amounts are payable to the Applicant.
19. The Applicant lodged his complaint with the Adjudicator on 13 August 2024.
20. On 8 October 2024, 5 November 2024 and 15 September 2024, respectively, the employer and the Superfund filed their responses, respectively to the Applicant's complaint. The Tribunal considered these responses filed, which largely reiterate the contents of paragraphs 10 to 18 above. For brevity's sake, these are not repeated but are incorporated herein by reference.
21. On 5 December 2024, the Adjudicator declined to investigate the Applicant's complaint, finding it time-barred in terms of section 30I of the Act.
22. On 13 February 2025, the Applicant filed his reconsideration application based on the following grounds:
  - 22.1 Alleged incorrect South African Revenue Services ("SARS") tax deduction of R15 049.20 from his unclaimed benefit, which he claims was never paid to SARS and remains owed to him by the Superfund.
  - 22.2 Alleged lack of information, stating that 17 years of service (1988 to 1995 and 1995 to 2005) are unaccounted for.
  - 22.3 The Applicant claims that he cannot recall signing documents relating to his exit from the Sasol Negotiated Provident Fund or transfer to the Superfund.
  - 22.4 The Applicant claims prescription only commenced when he became aware of the discrepancies regarding his pension payout in early 2024, and upon discovery, he took steps to address the matter – thus, the complaint is not time-barred.
  - 22.5 The Applicant is dissatisfied with the overall benefit amount received after 27 years of service.
  - 22.6 On 3 April 2024, the Applicant filed supplementary grounds of reconsideration. He alleges the following irregularities:
    - 22.6.1 Non-payment of a funeral benefit for his late wife, who passed away on 15 August 2009.
    - 22.6.2 Unexplained change of his membership number.
    - 22.6.3 Contributions recorded from Sasol's Sigma division, even though he never worked in that division.

22.6.4 Unreconciled entries in his transactional statements. He explains: *“I became aware of the discrepancy (sic) in my statements that I requested from Old Mutual in 2024.”*

23. The Tribunal has considered the Applicant’s grounds for reconsideration, the factual chronology, benefit payments and the Funds’ transfers.

24. The Adjudicator’s decision to decline further investigation of the Applicant’s complaint is based on section 30I of the Act, which provides:

*“(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.*

*(2) The provisions of the Prescription Act, 68 of 1969, relating to the calculation of a debt’s prescription period, apply to the computation of the three-years period referred to in subsection(1).”*

25. Section 30I(3) of the Act was repealed by the Pension Funds Amendment Act, 11 of 2007. This subsection previously allowed the Adjudicator to condone non-compliance with time limits for lodging complaints. With its repeal, the Adjudicator no longer has the discretion to extend or condone delays beyond the prescribed three-year period for filing of complaints (See: *Brinant Security Services (Pty) Ltd v Private Security Sector Provident Fund and Others [2023] ZAGPPHC 1113* – *“The Adjudicator does not possess the discretion to condone nor extend the time bar as was provided for in the unamended section 30I in subsection (3). Subsection (3) has been deleted by the 2007 amendment to the Act.”*)

26. This means that complaints must be lodged within three years from the date of the act or omission, and this period is calculated in accordance with the Prescription Act.

27. The Adjudicator declined to investigate the Applicant’s complaint, citing a lack of jurisdiction under section 30I(1) of the Act, as the complaint was time-barred. The “act” to which the complaint relates occurred more than three years before the date on which the complaint was received in writing by the Adjudicator – the relevant “act” – the payments of the

Applicant's benefits in 2015 and 2019 respectively. The Applicant's complaint was only lodged in August 2024 – well beyond the statutory three-year period.

28. The Applicant argues that prescription only commenced when he became aware of the alleged discrepancies in early 2024. However, in terms of section 12(3) of the Act, 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 he could have acquired it by exercising reasonable care.
29. In *Truter and Another v Deyssel 2006 (4) SA 168 (SCA)* at [18 ] & [20], the Supreme Court of Appeal confirmed that the “*facts from which the debt arises*” are the 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.
30. The Tribunal is satisfied that the Applicant knew, or could with reasonable diligence and care have known, all material facts when the benefits were paid. The Applicant knew the identity of both the employer and the Superfund, had benefit statements for both payments, and received a detailed breakdown – including tax deductions – by April 2015 when the primary benefit was paid. The subsequent 2019 payment from the Unclaimed Benefits Preservation Fund would have alerted any reasonably diligent person to inquire further. Accordingly, the material facts were fully known by 2015 and 2019 when payments were made.
31. Despite this, the Applicant only pursued inquiries in 2024. Ignorance of the Adjudicator's existence does not interrupt prescription (See: *Rapudi v Caxton Newspapers Distributors and Others PFA71/2023 (FST)*). Nor does difficulty in obtaining documents – a prudent claimant would have escalated matters timeously to the Adjudicator. The Applicant offers no credible reason for a delay exceeding five years. His allegations of incorrect tax deductions, missing service years and absent documentation are vague, unsupported, and do not reveal any new facts that were not already discoverable with reasonable diligence and care at the time of payment.
32. The Applicant's claim that he is entitled to R15 049.20 is without merit. This amount was lawfully deducted on payment of his unclaimed benefits in terms of section 11(1)(a) of the

Fourth Schedule to the Income Tax Act, 58 of 1962, based on a SARS tax directive, of which the Applicant was aware since 15 November 2019 – but only raised his objection 5 years later – out of time. The Superfund is legally required to deduct and pay this tax to SARS before making a payment. The Superfund cannot refund lawfully deducted tax to the Applicant. If the Applicant disputes the deduction or believes it wasn't paid to SARS, he must raise it with SARS.

33. The Tribunal therefore finds no basis to interfere with the Adjudicator's conclusion that the Applicant's complaint is time-barred under section 30I of the Act. The Applicant's reconsideration application is accordingly dismissed.

**F. ORDER**

1. The Applicant's reconsideration application is dismissed.

**SIGNED on this 8<sup>th</sup> day of JULY 2025.**

A handwritten signature in black ink, appearing to read 'Adv Salmé Maritz', written in a cursive style.

**ADV SALMÉ MARITZ**

For self and on behalf of:

LTC Harms