



**Financial Services  
Tribunal**

**THE FINANCIAL SERVICES TRIBUNAL**

Case No. PFA89/2025

In the matter between:

**ASSMANG (PTY) LTD  
T/A KHUMANI IRON ORE MINE**

Applicant

and

**KENNETH MATHIBELA**

First Respondent

**THE PENSION FUND ADJUDICATOR**

Second Respondent

**ASSMANG PROVIDENT FUND**

Third Respondent

**TRIBUNAL PANEL:** PJ Veldhuizen and LTC Harms

Appearance for Applicant: n/a

Appearance for Respondent: n/a

Date of hearing: n/a

Date of Decision: 5 March 2026

*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. Pension Funds Adjudicator's jurisdiction is defined under section 30D of the Pension Funds Act.*

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**DECISION**

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**A: INTRODUCTION**

1. The Applicant is Assmang (Pty) Ltd t/a Khumani Iron Ore ("the Applicant").
2. The First Respondent is Kenneth Mathibela (Pty) Ltd ("the Employee").
3. The Second Respondent is the Pension Funds Adjudicator ("the Adjudicator").
4. The Third Respondent is Assmang Provident Fund ("the Fund").
5. This is an Application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the Adjudicator, pursuant to a complaint laid in terms of Section 30A of the Pensions Fund Act 24 of 1956 ("the PFA").
6. 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.

**B: THE COMPLAINT AND THE RECONSIDERATION**

7. The complaint concerned the withholding of the First Respondent's withdrawal benefit by the Fund at the behest of the Applicant in terms of Section 37D(1)(b)(ii) of the PFA.
8. In her Determination, the Adjudicator found *inter alia* that Section 37D(1)(b)(ii) of the PFA, which, since the 2024 amendment, incorporated

the reference to a compensation order under Section 300 of the Criminal Procedure Act No 51 of 1977 (“the CPA), did not act retrospectively.

9. Put differently, the Adjudicator held that:

9.1 before the amendment incorporating Section 300 of the CPA, the institution of criminal proceedings was not sufficient to meet the requirements for a Fund to withhold benefits.

9.2 the amendment to 37D(1)(b)(ii) of the PFA amounted to new law, and its application was not retrospective.

10. The Adjudicator further held that the Fund had not given the First Respondent an opportunity to be heard before it decided to withhold the benefit.

11. The Applicant maintains that the present form of 37D(1)(b)(ii) of the PFA is simply a codification of the fact that a “judgment” as referred to in the section includes a compensation order under section 300 of the CPA. The current version of the section now reads:

(b) deduct any amount due by a member to the member’s employer on the date of retirement, the date on which the member ceases to be a member of the fund or the date on which the member’s employment with a participating employer in a retirement fund is terminated in accordance with the Income Tax Act and the Tax Administration Act, 2011 ([Act No. 28 of 2011](#)), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in [subparagraph \(ii\)](#), in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—

(i) the member has in writing admitted liability to the employer; or

(ii) judgment has been obtained against the member in any court, including a magistrate’s court, and includes a compensation order granted in terms of [section 300](#) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)),

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;

12. The Fund in compliance with the Adjudicator's Determination released the benefit to the First Respondent. The Applicant argues that this was despite having been expressly notified of the intention to launch these proceedings for a reconsideration of the Adjudicator's Determination.

**B: DISCUSSION**

13. The issue of whether the Fund decided to withhold the benefit without having given the First Respondent an opportunity to be heard is incorrect on the facts. The First Respondent was indeed afforded this opportunity on more than one occasion.
14. The Applicant correctly identifies in their Heads of Argument that the crisp issue in this matter is whether *"that part of the amendment affected to 37D(1)(b)(ii) which refers to a compensation order constitutes a new law (and thus cannot be applied retrospectively) or whether it constitutes mere codification or clarification of existing law"*.
15. In our view, this amendment simply clarifies the position under 37D(1)(b)(ii) and applies retrospectively.
16. The fact that the Fund has already released the benefit renders this application moot as it would serve no purpose to remit the matter back to the Adjudicator. It is not within the jurisdiction of this Tribunal to deal with the consequences, if any, of the Fund's decision to release the benefit.

**C: CONCLUSION**

17. In the circumstances, the Application for a reconsideration of the

Adjudicator's determination should be dismissed.

**ORDER**

(a) The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 5 March 2026.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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**PJ VELDHUIZEN & LTC HARMS**