

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO : PFA69/2025**

In the matter between:

**TSHAKA METTHEWS MABASA** Applicant

and

**NESTLE PROVIDENT FUND PENSION FUND** First Respondent

**NESTLE SA (PTY)** Second Respondent

**THE PENSION FUND ADJUDICATOR** 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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**A. INTRODUCTION**

1. This is an application brought by Mr Tshaka Metthews Mbasas (“the applicant”) in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”) for the reconsideration of the decision taken by the Pension Fund Adjudicator (“the PFA”) on **30 June 2025** wherein the PFA advised that it had no jurisdiction to investigate the applicant’s complaint.
2. The applicant brought this application on 23 September 2025 and this was not within the prescribed 60 (“sixty”) day in terms of section 230(2)(b) of the FSR Act. To this end the applicant seeks a condonation from non-compliance with section 230(2)(b) of the FSR Act. The applicant alleges that despite the PFA having taken its decision on 30 June 2025, he only became aware of the decision on 6 September 2025. It appears that none of the

respondents has taken issue with the applicant's application for condonation and from the explanation tendered by the applicant, there is nothing to the contrary before us why we should not grant the application for condonation.

## **B. BACKGROUND**

3. On **23 September 2025**, the applicant lodged a complaint with the PFA in terms of section 30A(3) of the Pension Funds Act 24 of 1956 ("the Act") against Nestle Provident Fund Pension Fund ("the Pension Fund") and Nestle SA (Pty) Ltd ("Nestle"). The applicant was previously employed by Nestle and by virtue of such employment he became entitled to be a member of the Pension Fund. During the period from 5 May 1997 to 14 November 2006, the applicant was advanced various loans amounts totalling R171,418.89 by the NBC Home Loan Division. The aforesaid loan/s were advanced to the applicant in terms of section 19(5) of the Act. The amount of R171,418.00 was thus owing to the Pension Fund when the applicant exited on **31 January 2007**.
4. The Pension Fund has in response to the PFA and in its heads of argument submitted to the Tribunal stated that the amount owed by the applicant had to be paid back to it when he exited by way of a deduction from his benefit in terms of section 37D(1)(a)(i) of the Act. Despite a full explanation furnished to the PFA by the Pension Fund regarding the reasons for the granting of the loan and legal justification for the deduction of the loan amount, the applicant is still persistent that the deduction was legally impermissible. The applicant is of the view that the loan amount should not have been deducted without his consent (in writing) and that same should have been paid out by the NBC Credit Life Insurance Scheme. It is however evident from the provisions of the NBC Life Insurance Scheme that the policy only covered death and disability and not retrenchment.
5. It is common cause that the decision of the Pension Fund to deduct the loan in dispute was made on 31 January 2007 and the applicant lodged his complaint on 23 September 2025, which is approximately 18 (eighteen") years. The PFA upon the receipt of the complaint could have simply refused to entertain same on the basis of lack of jurisdiction but took reasonable steps to afford the Pension Fund an opportunity to respond to the allegations raised in the applicant's complaint. The Pension Fund has not only provided facts supported by documentary evidence but also provided a legal basis for their decision.
6. Having considered the applicant's application and response thereto from the Pension Fund received on 24 March 2025, the PFA in its determination made in terms of section 30M of the Act dated 30 June 2025 concluded that in terms of section 19(5) of the Act it had no jurisdiction to investigate the applicant's complaint, as it was time barred. The applicant has in his application for reconsideration provided some reasons for the delay in lodging his application in terms of section 30A(3) of the Act, namely that he is a laymen and not knowledgeable about the processes and/or procedure for lodging the complaints within set timeframes, he was not aware of the existence of the office of the PFA in 2007

and the location thereof. The applicant alleges that he only came to know about the time frames when he received the determination of the PFA.

7. The applicant therefore seeks the reconsideration of the PFA's decision so that he can have closure and have the merits of his complaint adjudicated regarding the deduction of the loan from his pension fund benefits without his consent, admission of liability or the outcome of a judgement from court.

## C. DISCUSSION

8. It is common cause that the PFA received the applicant's complaint approximately 18 years after the decision to deduct the outstanding loan amount was made by the Pension Fund. The PFA despite having afforded the Pension Fund to respond to the merits of the complaint, was correct to find that the applicant's complaint was lodged out of time and that the applicant was time barred as contemplated by section 30I of the Act.
9. In his application for reconsideration before the Tribunal, the applicant has set out the reasons why he failed to lodge his complaint with the office of the PFA within the set time-limits prescribed in terms of section 30I of the Act. It is evident from the applicant's application that the reasons for the delay has no merit at all. We have noted the Pension Fund reference to the Tribunal's decision in **Sehlabaka v the Pension Fund Adjudicator & Others**, where we *inter alia* stated that ignorance of the PFA's existence does not by itself interrupt the running of prescription. The reasons proffered by the applicant that he was a layman and had no knowledge about the existence of the office of the PFA and the timeframes referred to in section
10. It is apparent from the facts before us that the applicant is approximately 18 years late and the PFA was correct in its finding that section 30I of the Act precludes an Adjudicator from investigating and adjudicating upon any complaint if the act or omission to which it relates occurred more than three years prior to the receipt of the written complaint.
11. Section 30I(3)(b) of the Act which previously provided the Adjudicator with the discretion on good cause shown to condone non-compliance with any time limit prescribed in Chapter VA of the Act that deals with the consideration and adjudication of complaints has been repealed and the PFA no longer has such discretion. After the repeal of section 30I(3)(b) of the Act, the PFA has no authority in law to consider any application for condonation. Thus, the applicant's request for consideration of any ground for condonation for the late filing of her complaint by the PFA and this Tribunal cannot arise at all.
12. The decision of the PFA to refuse to consider the applicant's application is in accordance with its main object as set out in section 30D of the Act, being to dispose of complaints in

a procedurally fair, economical and expeditious manner<sup>1</sup>. The need to have time limits and adjudicate matters expeditiously was confirmed by the Constitutional Court in **Mohlomi v Minister of Defence**<sup>2</sup>,

**“[11] Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigating damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale...”<sup>3</sup>**

#### **D. CONCLUSION**

13. The Applicant’s 18 years delay in lodging the complaint is inordinate and even if we had the discretion to condone the non-compliance, no reasonable and acceptable explanation has been made by the applicant for such a delay. We therefore find that the PFA is constrained by section 30I of the Act not to consider and adjudicate the complaint of the applicant lodged outside of the legislatively prescribed time limits.

14. It is for these reasons that we find that the applicant has not made out a case for reconsideration of the decision of the PFA in terms of section 230 of the FSR Act.

#### **ORDER**

1. The late filing of the applicant’s application for reconsideration is condoned;
2. The application for reconsideration is dismissed.

Signed on 03 February 2026

  *Sgd Adv M Mphaga*  \_\_\_\_\_

**M Mphaga**

**Judge LTC Harms (Chair)**

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<sup>1</sup> See: *Govender v Alpha Group Employees Provident Fund and Another* (3) 2001 10 BPLR 2583

<sup>2</sup> 1997 (1) SA 124 (CC) at para 11

<sup>3</sup> See Also In **Vandeyar v UTICO Staff Pension Fund** [2000] 3 BPLR 332 (PFA) at 336 where it was held that the purpose of section 30I(1) of the Act was to foster finality and certainty.