Financial Services Tribunal

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA74/2025

In the matter between:

SHAHIED DANIELS Applicant

and

PENSION FUNDS ADJUDICATOR First Respondent

OLD MUTUAL SUPERFUND PENSION FUND Second Respondent

SOUTH AFRICAN INSTITUTE OF PROFESSIONAL ACCOUNTANTS Third Respondent

Tribunal: Adv T Golden SC, Adv A Saldulker and Professor M Sigwadi

Appearance for Applicant: Adv J Scheepers

Appearance for First Respondent: Ms Ntshangase (watching brief)

Appearance for Second Respondent: Mr Mbolekwa

Appearance for Third Respondent: Adv P Maharaj-Pillay

Date of hearing: 22 April 2026

Summary: Application for reconsideration in terms of section 230 of the FSR Act 9 of 2017

RULING

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1. This is an application for reconsideration brought in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") against a determination issued by the Pension Funds Adjudicator ("the Adjudicator") on 15 August 2025.

2. The Applicant seeks to set aside the Adjudicator's determination which dismissed his complaint including the Second Respondent, Old Mutual Superfund Pension Fund's ("the Fund") decision to withhold his pension benefit in terms of section 37D(1)(b)(ii) of the Pension Funds Act 24 of 1956 ("the Act"), pending the outcome of civil proceedings instituted against him by the Third Respondent, South African Institute of Professional Accountants ("SAIPA").

RELEVANT BACKGROUND

3. The Applicant was employed by SAIPA as its Chief Executive Officer from 21 January 2019 until his dismissal on 26 September 2024 following a lengthy disciplinary process which commenced on 19 April 2024. During his employment, the Applicant was a member of the Fund.

4. The Applicant was dismissed after being found guilty on various charges relating to, among others, international travel, expenditure associated with an honorary doctorate, the Invictus agreement, the registration of a Swiss company and trademarks, contravention of the terms of his suspension, and incompatibility with the Board.

5. On 23 November 2024, and before the Applicant lodged his complaint with the Adjudicator, SAIPA instituted action against the Applicant in the Gauteng Division of the High Court, Johannesburg, under case number 136547/2024.

6. The particulars of claim issued by SAPIA advance various claims for damages allegedly suffered by SAIPA as a consequence of the Applicant's conduct while employed as its CEO.

7. Following the termination of his employment, the Applicant was paid R19 787.81 from his pension savings pot on 22 November 2024. The remaining amount in issue was his vested pot fund credit, recorded in the determination as R905 090.18 as at 3 April 2025.

8. SAIPA first requested the Fund to withhold the Applicant's withdrawal benefit in November 2024 and thereafter, on 13 December 2024, submitted a request to withhold form and a letter explaining the delay in submitting the request. The reason for the late request was because SAIPA still had to undertake a thorough exercise to determine the funds that were misused by the Applicant during his tenure as CEO.

9. The Fund's position before the Adjudicator was that it sought further information from both parties before it could make a final decision whether to withhold the pension benefit.

10. The Fund ultimately communicated its decision on 23 June 2025 to withhold the Applicant's benefit pending the outcome of the civil action instituted by SAIPA.

11. The Applicant lodged a complaint with the Adjudicator in terms of section 30A of the Act on 11 February 2025, challenging the lawfulness of the withholding decision.

12. The Adjudicator dismissed the complaint on 15 August 2025 and found that the withholding of the Applicant's withdrawal benefit was lawful in terms of section 37D(1)(b)(ii) of the Act. In doing so, the Adjudicator accepted that SAIPA had established a *prima facie* basis, at least in respect of Claims A and B, to justify the withholding pending finalisation of the civil action.

13. Aggrieved by this determination, the Applicant instituted the present reconsideration application.

14. We note that the Tribunal was informed during the hearing that the Fund had approached SAIPA to ascertain whether it would consent to the release of a portion of the Applicant's pension benefit. We were informed that an amount of approximately R314,996.65 was approved for payment to the Applicant following SAIPA's consent. We were given to understand that this amount was the difference between the Applicant's available benefit and the amount retained in respect of Claims A and B. The Fund would continue to withhold the remainder of the benefit on the basis that SAIPA had demonstrated a *prima facie* basis for the withholding of the benefit.

THE JURISDICTION ISSUE

15. During the hearing of the application, the Tribunal raised the question whether the Adjudicator possessed jurisdiction to investigate the complaint in light of section 30H(2) of the Act.

16. The parties were invited to address the Tribunal on this issue and were afforded an opportunity to file supplementary written submissions.

17. We address this issue upfront. If the jurisdiction point is upheld, then this would be dispositive of the application.

18. The jurisdictional question is whether section 30H(2) of the Act deprived the Adjudicator of jurisdiction to investigate the Applicant's complaint because, before the complaint was lodged, proceedings had already been instituted in a civil court in respect of a matter which would constitute the subject matter of the Adjudicator's investigation.

19. The Adjudicator considered the point in its determination and adopted the view that the complaint before it concerned only the lawfulness of the Fund's decision to withhold the Applicant's benefit, and not the merits of SAIPA's civil action. The Adjudicator stated as follows in its determination regarding jurisdiction:

> "*Jurisdiction*
>
> *5.1 The employer submitted that the Adjudicator does not have jurisdiction to adjudicate this complaint as it forms the subject matter of the litigation before the High Court, to which the Court must make a final determination in the matter. This is considering that the civil action preceded the complaint lodged in terms of section 30H of the Act. In this regard, it is not the function of the Adjudicator to determine whether or not there is merit to the employer's claim against Mr Daniels, but to determine whether the fund complied with its duties before taking a decision to withhold his withdrawal benefit. Thus, the Adjudicator has jurisdiction to determine if the withholding of the benefit is lawful or not.*"

20. The Tribunal raised the jurisdiction point because, properly characterised, the Applicant's complaint required an investigation into the same factual substratum

and substantially the same legal issues which already serves before the High Court: whether SAIPA's pleaded claims, based on the Applicant's alleged conduct during employment, disclosed the kind of theft, dishonesty, fraud or misconduct contemplated by section 37D(1)(b)(ii), whether SAIPA had a quantifiable claim, and whether there was a sufficient basis to preserve the benefit pending the determination of those claims.

21. The issue for determination is whether, at the time the Applicant lodged his complaint with the Adjudicator, civil proceedings had already been instituted "*in respect of a matter which would constitute the subject matter of the investigation*" within the meaning of section 30H(2) of the Act.

22. Section 30H(2) of the Act provides:

> "*The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation*."

23. The wording of the section is peremptory. The Adjudicator is not given a discretion to entertain a complaint once the jurisdictional facts in section 30H(2) have been established.

24. The enquiry is therefore not whether it would have been convenient, efficient or fair for the Adjudicator to investigate the complaint. The enquiry is whether, before the complaint was lodged, civil proceedings had already been instituted in respect of a matter which would constitute the subject matter of the investigation.

25. The statutory phrase "*in respect of a matter which would constitute the subject matter of the investigation*" is materially wider than "*the same complaint*", "*the same cause of action*", or "*the same relief*". It speaks to the substance of the matter to be investigated, not merely the form of the complaint.

26. The Applicant submitted that the Adjudicator possessed jurisdiction because the complaint before the Adjudicator and the civil proceedings before the High Court concern different matters.

27. According to the Applicant, the High Court action concerns SAIPA's claim for damages, whereas the complaint before the Adjudicator concerned whether the Fund lawfully exercised its discretion to withhold his pension benefit.

28. He submitted further that the Adjudicator was not required to determine the final merits of the civil claim or his liability to SAIPA. No proceedings had been instituted in any court to interdict payment of the pension benefit. It was argued on his behalf that the civil action therefore did not concern the same subject matter as the complaint. Essentially, he argued that the subject matter of the complaint was distinct from that of the High Court proceedings.

29. In support of his position, the Applicant relies principally upon *Cape Town Municipality v South African Local Authorities Pension Fund and Another* 2014 (2) SA 365 (SCA) and *Hillhouse v Pidelta (Pty) Ltd and Another* 2024 JDR 3350 (KZP).

30. The First Respondent adopts substantially the same position as the Applicant on the jurisdiction point. It submitted that the Adjudicator's function was confined to determining whether the Fund properly exercised its discretion under section 37D.

31. The First Respondent contends that the civil proceedings concern liability for damages, whereas the complaint concerns only the Fund's administrative or statutory decision to withhold benefits.

32. The First Respondent also relies on *uMgungundlovu District Municipality v Natal Joint Municipal Pension Fund and Another* (7187/2022P) ZAKZPHC 142 as support for the proposition that a fund's decision to withhold is not necessarily the end of the matter and may, in an appropriate case, be referred to the Adjudicator. The submission is that the Adjudicator reviews the fund's decision rather than determining the employer's civil claim.

33. It accordingly argued that section 30H(2) finds no application.

34. The Fund submitted that the Applicant's characterisation of his complaint is unduly formalistic. It argued that section 30H(2) requires a substantive enquiry into the

nature, purpose and effect of the proceedings, rather than a narrow comparison of causes of action or remedies.

35. It contended that the section 37D withholding mechanism exists to preserve the efficacy of pending proceedings for compensation and that the Applicant's complaint directly sought to undo that preservation mechanism.

36. It relied on *Cape Town Municipality, Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC and Others* 2013 (6) SA 499 (SCA), and *Highveld Steel & Vanadium Corporation Ltd v Oosthuizen* 2009 (4) SA 1 (SCA) in support of its position.

37. SAIPA aligned with the Fund and too submitted that the distinction drawn by the Applicant and the Adjudicator is one of form rather than substance.

38. It contended that the complaint required the Adjudicator to investigate whether the pleaded causes of action disclosed misconduct of the kind contemplated by section 37D, whether quantifiable damages existed, and whether a sufficient *prima facie* basis had been established for the Fund to withhold the benefit.

39. According to SAIPA, those enquiries are embedded in, and inseparable from, the claims already before the High Court.

40. It accordingly submitted that section 30H(2) operated as a complete jurisdictional bar.

Applicable legal principles

41. The leading authority on section 30H(2) is *Cape Town Municipality v South African Local Authorities Pension Fund and Another* 2014 (2) SA 365 (SCA). The Supreme Court of Appeal held that section 30H(2) forms part of the statutory scheme governing pension fund complaints, under which the Adjudicator performs a function comparable to that of a court in relation to complaints falling within the Act.

42. The SCA explained that section 30H(2) is directed at concurrent jurisdiction between civil courts and the Adjudicator. Where the relevant dispute has first been lodged before a civil court, the section gives priority to the court by excluding the Adjudicator's jurisdiction.

43. Importantly, the SCA rejected a narrow formulation of the enquiry. The section does not require the prior court proceedings to be proceedings concerning "*the complaint*". It uses wider language: proceedings "*in respect of a matter which would constitute the subject matter of the investigation*".

44. The Court held that, in comparing the matter before the civil court with the matter that would be investigated by the Adjudicator, it is appropriate to adopt the approach applicable to a plea of *lis alibi pendens*.

45. In *Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC and Others* 2013 (6) SA 499 (SCA), the SCA explained that the requirements of *lis alibi pendens* and *res judicata* are not applied mechanically or formalistically.

46. The enquiry is directed at whether the same issue or substantially the same matter is already pending elsewhere. Differences in the form of relief, the procedural posture of the parties, or the precise cause of action do not necessarily defeat the plea where the central issue remains essentially the same.

47. The principle is underpinned by the need to avoid duplication, inconsistent decisions, and the re-litigation of substantially the same dispute before tribunals of competent jurisdiction.

48. In *Highveld Steel & Vanadium Corporation Ltd v Oosthuizen* 2009 (4) SA 1 (SCA), the SCA held that section 37D(1)(b)(ii) must be interpreted purposively to include a power to withhold payment of a member's pension benefit pending the determination or acknowledgement of the member's liability.

49. The SCA recognised that, without such a power, the statutory protection afforded to employers would often be rendered ineffective, because an employer would frequently not have obtained judgment by the time an employee's employment and fund membership terminated.

50. The withholding decision is therefore not a free-standing controversy unrelated to the employer's claim. It is ancillary to, and designed to preserve the efficacy of the

employer's pending claim for compensation in respect of conduct falling within section 37D.

51. *Highveld Steel* makes clear that a fund exercising the withholding power must do so with care, balancing the competing interests and having regard to the strength of the employer's claim.

52. The Applicant relies on *Hillhouse v Pidelta (Pty) Ltd and Another* 2024 JDR 3350 (KZP) where the Court held that section 30H(2) did not bar a complaint to the Adjudicator where the civil action concerned liability for alleged loss of cattle, while the prospective complaint to the Adjudicator would concern whether the pension fund had properly exercised its discretion to withhold the benefit.

53. However, Hillhouse is distinguishable in respect of the facts and the legal issues. The application in that matter did not directly challenge the pension fund's decision by review or under the Pension Funds Act and the Court's comments on the availability of a complaint to the Adjudicator arose in the context of whether the applicant had an alternative remedy for purposes of a final interdict. The Court was not determining a reconsideration of an Adjudicator's decision after the Adjudicator had undertaken the investigation. But in any event, we are bound by the SCA's decisions in *Cape Town Municipality* and *Caesarstone*.

54. More fundamentally, the present matter requires the Tribunal to determine whether the actual complaint lodged with the Adjudicator, and the investigation actually undertaken, overlapped in substance with the matter already before the High

Court. That enquiry is fact-specific and must be conducted by reference to the complaint, the determination, the Fund's reasons, SAIPA's pleaded claim, and the relief sought before the Adjudicator.

55. The Fund also relied on *uMgungundlovu District Municipality.* This case concerned an employer's attempt to interdict a fund from paying benefits pending a civil damages claim. The proposition relied upon is that a fund's withholding decision is not necessarily final and that the Act provides a route to the Adjudicator. Whilst we do not have difficulty with this as a general proposition, it does not resolve the present jurisdictional question.

56. The existence of a statutory complaint mechanism does not displace the specific limitation in section 30H(2). Where the complaint would require the Adjudicator to investigate a matter already before a civil court, section 30H(2) remains operative.

Analysis

57. It is common cause that SAIPA instituted civil proceedings against the Applicant before the Applicant lodged his complaint with the Adjudicator. The first jurisdictional fact in section 30H(2) is therefore satisfied.

58. The remaining question is whether those civil proceedings were instituted "*in respect of a matter which would constitute the subject matter of the investigation*". The Applicant's argument rests on the separation of two issues: first, SAIPA's civil claim for damages, and secondly, the Fund's decision to withhold the Applicant's pension benefit. But this characterization loses sight of the substance of the issues.

59. The record confirms that the Adjudicator could not determine whether the Fund lawfully exercised its section 37D discretion without investigating the nature and strength of SAIPA's pleaded civil claim. In particular, the Adjudicator had to consider:

59.1. First, whether the claim asserted by SAIPA was one for compensation in respect of damage caused by theft, dishonesty, fraud or misconduct as contemplated by section 37D(1)(b)(ii);

59.2. Second, the claims relied upon for withholding were sufficiently particularised and quantified. The Adjudicator ultimately accepted Claims A and B, which were pleaded in the amount of R449 982.75 and R140 113.78 respectively, as reflecting an element of dishonesty and as having been quantified;

59.3. Third, whether there was a *prima facie* case or sufficient basis for the Fund to conclude that SAIPA had a reasonable prospect of establishing liability in the pending civil proceedings;

59.4. Fourth, whether the Fund had afforded the Applicant an opportunity to answer SAIPA's allegations and had balanced the competing interests;

59.5. Fifth, whether SAIPA had taken steps to prosecute the civil proceedings and whether the Fund would be required to monitor the progress of those proceedings to ensure that there was no undue delay.

60. These enquiries are not incidental. They are rooted in the same pleaded facts, alleged misconduct, alleged loss, and prospective adjudication of liability which forms the subject of the High Court action instituted by SAIPA.

61. The withholding decision exists only because SAIPA asserted a claim contemplated by section 37D. Without SAIPA's civil claim, the Fund would have had no basis to continue withholding the benefit pending judgment.

62. The complaint before the Adjudicator therefore sought to disturb the preservation of the *res* which section 37D permits to be preserved pending the determination of the High Court claim.

63. The fact that the Adjudicator was not required finally to decide whether the Applicant is liable to SAIPA does not dispose of the matter. Section 30H(2) is not limited to cases in which the Adjudicator would finally determine the identical cause of action. It is triggered in cases where the matter, which would constitute the subject matter of the investigation, is already before a civil court.

64. The application of section 30H(2) is not confined to cases where prior court proceedings were instituted specifically to interdict payment of the pension benefit. The statutory language refers to civil proceedings "*in respect of a matter*" which would constitute the subject matter of the investigation. It does not require the prior

proceedings to seek identical relief or to take the form of an interdict concerning the benefit. Nor is the enquiry defeated by the fact that the relief sought differs. The central issue underlying both proceedings is whether SAIPA's claims arising from the Applicant's alleged conduct during employment are of the kind and strength that justify preservation of the pension benefit pending determination of liability.

65. If the Adjudicator were to conclude that SAIPA's pleaded claims did not disclose misconduct contemplated by section 37D, or that SAIPA had failed to establish a sufficient *prima facie* basis, this conclusion would trespass upon issues already placed before the High Court. This is precisely the mischief which section 30H(2) is aimed at: the duplication of proceedings before a civil court and the Adjudicator in respect of substantially the same matter.

66. The Applicant and the Adjudicator's reliance on a strict distinction between "*liability for damages*" and "*lawfulness of withholding*" is accordingly too narrow. It treats the withholding decision as if it were a discrete administrative event capable of assessment without substantive engagement with SAIPA's High Court claim. For reasons explained above, this is not the correct approach. The lawfulness of the withholding cannot be investigated in isolation from the High Court claims as the purpose of withholding the pension benefit a la *Highveld Steel* is to prevent an employer's eventual judgment from being rendered hollow. A complaint seeking the release of the benefit while the employer's claim is pending therefore directly affects the practical efficacy of the civil proceedings.

67. The Tribunal accepts that not every complaint about a pension fund's conduct will be restricted or barred merely because civil proceedings are pending. Section 30H(2) requires a substantive relationship between the civil proceedings and the matter that would be investigated by the Adjudicator. Thus, the Adjudicator's investigation required an assessment of the same factual matrix and pleaded claims that had already been placed before the Court.

68. The fact that the Applicant framed his complaint as one concerning the Fund's discretion cannot alter the substance of the matter. A party cannot avoid section 30H(2) by characterizing a dispute already before a civil court as a complaint about the consequences or preservation mechanisms flowing from that dispute.

69. The broader wording of section 30H(2), as emphasised in *Cape Town Municipality,* requires the Tribunal to look beyond form and identify the subject matter of the investigation. Applying this approach, SAIPA's civil proceedings and the complaint to the Adjudicator sufficiently overlap to invoke section 30H(2).

<u>Consequence of lack of jurisdiction</u>

70. Once section 30H(2) applies, the Adjudicator has no jurisdiction to investigate the complaint.

71. Consequently, a determination made in the absence of jurisdiction is unlawful.

72. It is not for the Tribunal to determine the merits of the withholding decision itself, because the reconsideration proceedings are directed at a determination which the Adjudicator was not competent to make.

73. The result is that the Adjudicator's determination must be set aside on jurisdictional grounds.

74. We do not, and cannot, pronounce on the merits of SAIPA's civil action nor do we determine, finally, whether the Fund may or should continue to withhold the Applicant's benefit.

75. The Fund remains obliged, while the withholding persists, to exercise its powers lawfully, reasonably and in accordance with its rules, including monitoring whether SAIPA prosecutes the civil proceedings without undue delay and whether continued withholding remains justified.

76. The Applicant is not without a remedy. Any relief concerning the continued preservation, release, or partial release of the pension benefit insofar as it is bound to the pending civil proceedings, must be sought in the court seized with those proceedings or in any other competent court.

77. The Tribunal finds that, by virtue of section 30H(2) of the Pension Funds Act 24 of 1956, the Pension Funds Adjudicator lacked jurisdiction to investigate the Applicant's complaint lodged on 11 February 2025.

78. Given the conclusion on jurisdiction, no purpose would be served by remitting the decision to the Adjudicator as it will have no practical effect.

ORDER

79. For the reasons set out above, the following order is made:

    79.1. The determination of the Pension Funds Adjudicator dated 15 August 2025 is therefore set aside.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS 3rd DAY OF JULY 2026.

___ASaldulker__________

A Saldulker (On behalf of the Tribunal)