



Case No: PFA90/2025

In a matter between:

SIBISI CONVEYOR PRODUCTS [PROPRIETARY] LIMITED APPLICANT

and

GUSTAV OOSTHUIZEN FIRST RESPONDENT

PENSION FUNDS ADJUDICATOR SECOND RESPONDENT

DISCOVERY LIFE PROVIDENT UMBRELLA FUND THIRD RESPONDENT

TRIBUNAL PANEL: Judge LTC Harms & K.D Magano

Date of Decision: 19 May 2026

Summary: *Pension Funds Act 24 of 1956 — application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 — dispute concerning non-payment of provident fund contributions — applicant contending that employee ceased membership of fund while remaining employed — WhatsApp exchanges relied upon as constituting withdrawal from membership — no withdrawal in accordance with rules of fund*

established — Clause 3.6 prohibiting withdrawal while member remains in service — section 13 of Pension Funds Act rendering rules binding on employer, fund and member — informal arrangements between employer and employee incapable of terminating membership contrary to fund rules — procedural fairness complaint based on alleged non-receipt of correspondence dismissed — determination transmitted through same email address by which applicant later received determination and instituted reconsideration proceedings — no basis established to interfere with Adjudicator’s determination — application for reconsideration dismissed.

DECISION

INTRODUCTION

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 14 May 2025.
2. The dispute arises from the alleged non-payment of provident fund contributions in respect of the first respondent, who was employed by the applicant during the relevant period. The complaint before the Adjudicator concerned whether contributions deducted, or required to be deducted, from the first respondent’s remuneration were properly paid over to the relevant provident fund in accordance with the governing rules and the terms of the employment contract. The applicant disputed liability for contributions after March 2024 on the basis that the first respondent had requested to be removed from the fund and had accordingly ceased to be a member of the pension fund.

3. In the determination under reconsideration, the Adjudicator rejected the applicant's contention that the first respondent had lawfully ceased to be a member of the fund while remaining in full-time employment. Accordingly, the Adjudicator upheld the complaint in part and ordered the applicant to pay the outstanding contributions, together with interest, to the fund.
4. The applicant now seeks to impugn that determination on several grounds. Broadly stated, it contends that the Adjudicator failed properly to consider the evidence before it; that the first respondent had elected to terminate his membership of the fund; that certain deductions had been refunded; and that the determination was issued in circumstances that were procedurally unfair because it was not afforded an opportunity to respond to the complaint before the determination was issued.
5. The application ultimately turns on a narrow question. It is whether the Adjudicator committed any material error of fact or law in concluding that the applicant remained liable for the outstanding contributions.

FACTUAL BACKGROUND

6. The applicant's case before the Tribunal is set out in the original application for reconsideration and the subsequently augmented grounds for reconsideration. Read together, the papers reveal that the applicant advances a mixture of factual and procedural complaints directed at the Adjudicator's determination. The parties have waived their right to an oral hearing. Consequently, the matter will be decided on the record before this Tribunal.

7. The applicant's case is that deductions made during the period July 2023 to December 2023 were made in error because the first respondent had not yet become a member of the fund, and that those amounts were refunded to the first respondent.
8. The applicant further accepts that contributions were made on behalf of the first respondent during the period January 2024 to March 2024, after the commencement of the first respondent's membership of the fund. However, its principal contention is that the Adjudicator erred in finding that provident fund contributions remained due for the first respondent after March 2024. The applicant contends that contributions ceased because the first respondent had requested to be removed from the fund.
9. In support of this contention, the applicant relies primarily on WhatsApp exchanges between the first respondent and the applicant's former chief executive officer. According to the applicant, these exchanges demonstrate that the first respondent no longer wished to contribute towards the provident fund and that the parties reached an understanding that the deductions would stop.
10. On the grounds of procedural fairness, the applicant contends that the determination was issued in circumstances where it was not afforded a proper opportunity to place its version before the Adjudicator. In substance, the applicant alleges that correspondence relating to the complaint was transmitted to an email address that was either no longer monitored or did not come to the attention of the persons responsible for responding to the complaint. On that basis, the applicant contends

that the proceedings before the Adjudicator were procedurally irregular and inconsistent with the requirements of *audi alteram partem*.

11. In the augmented grounds of reconsideration, the applicant develops these complaints further. It contends that the Adjudicator misconstrued the nature of the dispute by treating the matter as one concerning compulsory membership under the rules of the fund, rather than a consensual arrangement between employer and employee relating to payroll deductions.
12. The applicant further contends that the Adjudicator unduly relied on the provisions of the fund rules without sufficient regard to the factual circumstances on which the applicant relied. In particular, it is alleged that the first respondent's conduct, including the alleged request that deductions cease and the acceptance of refunded amounts, demonstrated an intention to discontinue participation in the fund notwithstanding his continued employment.
13. Although the applicant raises several criticisms of the determination, the essence of the complaint remains directed at a single conclusion reached by the Adjudicator: namely, that the first respondent remained a member of the fund while in service and that the applicant therefore remained obliged to pay the requisite contributions in accordance with the governing rules of the fund.
14. The first respondent has not participated in the reconsideration proceedings and has filed no response before the Tribunal. The factual position advanced on his behalf must therefore be gathered principally from the complaint lodged before the

Adjudicator, the documentary material forming part of the record, and the findings reflected in the determination under reconsideration.

15. From that material, it appears that the first respondent disputes the applicant's contention that he lawfully terminated his membership of the fund while remaining in employment. The complaint proceeded on the basis that provident fund contributions formed part of the conditions of employment and that the applicant remained obliged to pay the requisite contributions to the fund during the period of employment.
16. It further appears from the record that, although discussions arose concerning the deductions reflected on the first respondent's remuneration, the first respondent disputed that he had withdrawn from membership of the fund in accordance with the governing rules.
17. The dispute before the Tribunal must accordingly be determined against the backdrop of these contentions and the documentary material that served before the Adjudicator.

ADJUDICATOR'S DETERMINATION

18. In the determination issued on 14 May 2025, the Adjudicator upheld the complaint in part and directed the applicant to pay outstanding provident fund contributions, together with interest, to the fund.
19. The Adjudicator distinguished between the period July 2023 to December 2023 and the period commencing in January 2024. In relation to the earlier period, the

Adjudicator held that this period fell outside its jurisdiction because the first respondent had not yet become a member of the fund. The determination was therefore confined to the period commencing in January 2024, when the first respondent became a member of the fund, and contributions became payable in terms of the rules of the fund.

20. The determination records that the complaint and subsequent correspondence, including the fund's response to the complaint, had been forwarded to the applicant during the course of the proceedings before the Adjudicator. However, the applicant did not respond to the correspondence from the Adjudicator's office. Therefore, the complaint was decided without the applicant's submissions.
21. In reaching its conclusion, the Adjudicator considered the employment contract, remuneration records, payslips, the rules of the fund and the correspondence exchanged between the parties. The determination records that provident fund contributions formed part of the first respondent's remuneration structure.
22. The Adjudicator further considered the applicant's contention that the first respondent had terminated his membership of the fund and that deductions had ceased following discussions between the first respondent and the applicant's former chief executive officer concerning the affordability of the deductions. That contention was rejected on the basis that no document evidencing a withdrawal from membership in terms of the rules of the fund had been produced. The Adjudicator relied on Clause 3.6 of the fund rules, which provides that a member may not

withdraw from membership while remaining in service unless otherwise provided for in the rules.

23. The Adjudicator accordingly concluded that the material before it did not establish that the first respondent had ceased to be a member of the fund while remaining employed by the applicant and that the applicant therefore remained liable for the payment of the requisite contributions.
24. Following the institution of the reconsideration proceedings, the Adjudicator issued further reasons which addressed the applicant's allegation that the applicant had not been afforded an opportunity to respond to the complaint.
25. The Adjudicator recorded that the complaint, the fund's response and subsequent correspondence were sent to the same email address used by the applicant during the relevant period. The Adjudicator further noted that communications exchanged after the complaint was lodged reflected that the email address remained in use. On that basis, the Adjudicator concluded that the applicant had been afforded an opportunity to respond before the determination was issued.

ANALYSIS AND FINDINGS

27. The applicant's case rests on the contention that the first respondent ceased to be a member of the fund after March 2024 and that the obligation to pay contributions accordingly fell away.

28. The difficulty with that contention is that the material before the Tribunal does not establish a withdrawal from membership in terms of the rules of the fund. No withdrawal form was produced. No election signed by the first respondent appears from the record. Nor is there any communication from the fund confirming that the first respondent terminated his membership while remaining employed by the applicant.

29. The WhatsApp exchanges relied upon by the applicant do not alter that position. At their highest, those exchanges reflect discussions concerning the deductions appearing on the first respondent's remuneration and the affordability of those deductions.

30. The rules of the fund formed part of the material considered by the Adjudicator. Clause 3.6 provides that a member may not withdraw from membership while remaining in service unless otherwise provided for in the rules. Section 13 of the Pension Funds Act 24 of 1956 further provides that, subject to the provisions of the Act, the rules of a registered fund are binding on the fund, its members, shareholders and officers, as well as any person claiming under the rules. Therefore, the rules govern both the conditions of membership and the circumstances in which membership may terminate. The Adjudicator was accordingly correct in finding that membership could not be terminated contrary to the rules while the employment relationship remained in existence.

31. The WhatsApp exchanges relied upon by the applicant must be considered in context. As stated above, the communications traversed a range of issues, including whether certain payments made to the first respondent constituted loans or advances, the financial position of the applicant and a proposal that the provident fund be “cancelled”. Read as a whole, the exchanges reflect discussions concerning deductions from the first respondent’s remuneration and the applicant’s financial constraints.
32. The exchanges do not, however, constitute a withdrawal from membership in terms of the rules. They contain no formal instruction directed to the fund, no completed withdrawal documentation and no indication that the fund accepted or processed a withdrawal from membership while the first respondent remained employed by the applicant.
33. The applicant’s case proceeds on the basis that the WhatsApp conversation was sufficient to terminate membership of the fund. That contention cannot be sustained. Membership of a pension fund is governed by the rules of the fund, which bind both the employer and the member. In this instance, the applicant, the first respondent and the fund were bound by clause 3.6 of the rules of the fund.
34. The contention that the Adjudicator placed undue reliance on the rules of the fund cannot be sustained. The issue before the Adjudicator was not whether deductions made during the period July 2023 to December 2023 had been refunded. The determination expressly held that the Adjudicator lacked jurisdiction in relation to

that period because the first respondent had not yet become a member of the fund. The issue was whether the WhatsApp exchanges relied upon by the applicant established a withdrawal from membership after the first respondent had become a member of the fund and while he remained employed by the applicant.

35. Even if the WhatsApp exchanges were construed as conveying an intention to withdraw from the fund, such withdrawal would still have had to occur in accordance with the rules of the fund. As already stated, Clause 3.6 prohibited withdrawal from membership while the member remained in service unless otherwise provided for in the rules. The material before the Tribunal does not establish compliance with those provisions.
36. The Adjudicator therefore correctly concluded that the material before her did not establish a withdrawal from membership in accordance with the rules while the first respondent remained employed by the applicant.
37. The procedural fairness complaint cannot be sustained. Even if the applicant's explanation is accepted that the earlier correspondence did not come to the attention of the persons responsible for dealing with the complaint, that does not end the enquiry. The Adjudicator's determination was sent to the same email address. Nevertheless, it came to the applicant's attention, as the applicant thereafter brought this application for reconsideration. The applicant does not explain why the same email address was incapable of bringing the complaint and the fund's response to

its attention, but capable of bringing the determination to its attention. That inconsistency undermines the procedural complaint

38. In any event, proceedings before this Tribunal constitute a rehearing on the record placed before the Adjudicator, together with any additional material properly admitted in the reconsideration proceedings. The Tribunal is therefore required to consider the substantive grounds advanced by the applicant and to determine whether the determination can be sustained on the material before it.
39. Having considered the record before it, this Tribunal is not persuaded that there is any legal or factual basis to interfere with the Adjudicator's determination.
40. The application for reconsideration must therefore fail.

ORDER:

41. As a result, the following order is made:

36.1. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal panel.

____ *Sdg Adv KD Magano* ____
KD MAGANO