



**THE FINANCIAL SERVICES TRIBUNAL**

**Case No.: FSP75/2025**

In the matter between:

**MALOSE PHINEAS MANYAMA**

Applicant

and

**THE PENSION FUND ADJUDICATOR**

First Respondent

**ADJUDICATOR MA LUKHAIMANE N.O**

Second Respondent

**AUTO WORKERS PROVIDENT FUND administered by  
MOTOR INDUSTRY RETIREMENT FUNDS (MIRF) (PTY) LTD**

Third Respondent

**SUPER GROUP AFRICA (PTY) LTD T/A  
FLEET AFRICA (PTY) LTD**

Fourth Respondent

**MOTOR INDUSTRY BARGAINING COUNCIL**

Fifth Respondent

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**TRIBUNAL PANEL:** LTC Harms, PR Long

**Date of Decision:** 02 March 2026

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## **DECISION**

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### **INTRODUCTION**

1. The applicant applies for a reconsideration of a decision by the first respondent ('the adjudicator') in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ('the FSR Act').
2. In essence, the applicant seeks payment of an amount of R115,800.72, plus interest, which the applicant claimed as a withdrawal benefit on 28 September 2009 from the third respondent ('the fund') and which the applicant alleges was never paid to him.
3. The application for reconsideration is also out of time, in the result, the applicant seeks condonation for the late application.

### **THE FACTS**

4. The applicant was employed by Fleet Africa ('the fourth respondent') on 25 September 1974. While the applicant initially alleged that he was employed by the fourth respondent until he was retrenched on 25 February 2020 due to the COVID-19 pandemic and later that he did not know the date on which he ceased to be employed by the fourth respondent, a withdrawal claim form and an

employer's certificate of service demonstrates that his employment actually terminated on 31 July 2009. Following his exit from the fourth respondent, the applicant signed and submitted a withdrawal claim form on 28 September 2009 to claim his benefit from the fund.

5. The applicant claims that he did not receive his R115,800.72 withdrawal benefit because the fund paid it to an incorrect entity and into an incorrect bank account. He points to a letter dated 10 March 2025, which incorrectly listed the payee as 'Corporate Selection Umbrella Retirement Fund' rather than himself. Furthermore, he argues that the payment was purportedly made into an 11-digit ABSA bank account (04-----81), whereas his actual ABSA account was a 10-digit number (40-----1). In the result, the applicant claims that the payment was '*misdirected or intentionally misrepresented.*'
6. Additionally, the fund later processed a second payment of R76,875.59 on 12 March 2025, representing a Section 14 transfer fund credit. This the applicant acknowledges he received.
7. The fund provided system records, including a remittance advice dated 10 March 2010, reflecting that a withdrawal benefit of R115,800.72 was successfully paid directly to the applicant on 24 March 2010 via Electronic Fund Transfer (EFT). The fund formally clarified that the reference to 'Corporate Selection Umbrella Retirement Fund' was merely a typographical error on the 10 March 2025 letter, which was subsequently corrected to reflect the applicant as the true payee.

Despite the zero preceding the applicant's account number, the fund maintains that the monies were paid into the applicant's bank account.

8. The applicant lodged a complaint with the adjudicator wherein he claimed that he never received the monies as alleged by the fund. The adjudicator, despite conducting an investigation, determined that it lacked jurisdiction to entertain the matter in that the applicant's complaint was time barred in terms of section 30I of the Pension Funds Act 24 of 1956 ('the Act')

## CONDONATION

9. Following the adjudicator's ruling dated 20 June 2025, the applicant applied to this Tribunal on 3 October 2025, for a reconsideration of the adjudicator's decision. The application is therefore late.
10. In terms of section 230(2) of the FSR Act an application for reconsideration must be made:

(a) *if the applicant requested reasons in terms of section 229, **within 30 days after the statement of reasons was given** to the person; or*

(b) *in all other cases, **within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed.*** (Emphasis added)

11. In terms of Rule 31 of the Tribunal Rules, read with section 230(2)(b) of the FSR Act, an application for condonation must be succinct and must show good cause.
12. The applicant alleges that although the adjudicator's decision was emailed to his attorney on 20 June 2025, he only received the decision on 17 July 2025. No explanation is proffered for the time lapse. Be that as it may, after receiving the adjudicator's decision the applicant consulted his attorney who advised the applicant that counsel will have to be briefed to settle the application for reconsideration. The attorney also required the applicant to commit funds to the preparation of the application. Being a pensioner, the applicant claims that he did not have the required funds at the time and had to 'raise' the funds. Counsel was only briefed on 19 September 2025.
13. The application for condonation is not opposed and having considered the reasons for the delay, the late filing of the application for reconsideration is condoned.

### **THE TIME BAR ISSUE**

14. In its further reasons filed before this Tribunal, the adjudicator contends that it:

*'...could not investigate the complaint concerning the payment of R115 800.72, as it was time-barred for the reasons set out in paragraphs 5.2 to 5.4 of the determination. For clarity, the applicant exited the fund in July 2009 and completed the requisite exit documentation in September 2009, as evidenced by the withdrawal claim form. At that point, the applicant was aware that a payment*

*was due to him. Consequently, any claim relating to non-payment ought to have been lodged within three years from the date of the claim. In light of this, the Adjudicator was precluded from investigating the complaint.'*

15. Section 30I of the Act prescribes the time limits for lodging complaints with the adjudicator and provides as follows:

*(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, 1969 (Act No. 68 of 1969), relating to a debt apply in respect of the calculation of the three-year period referred to in subsection (1).*

16. The applicant claims that he only became aware of the non-payment of the withdrawal benefit after 22 October 2024, following an enquire to the fund. This is however improbable.

17. The applicant signed and submitted a withdrawal claim form on 28 September 2009 to claim his benefit from the fund. Save to state that he did not receive the benefit, the applicant does not dispute that he tendered the benefit claim form during 2009. The applicant was therefore aware since 28 September 2009 that a withdrawal benefit was due to him. The applicant nonetheless waited fifteen (15) years to enquire about the benefit that he purportedly never received.

18. Section 30I of the Act prescribes that the adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the complaint was received.
19. The applicant argues that the adjudicator could not dismiss the claim based on prescription because neither the fund nor the employer formally pleaded prescription as a defense. This argument conflates substantive law with jurisdictional limits. The time bar in section 30I is a jurisdictional prerequisite distinct from extinctive prescription under the Prescription Act.<sup>1</sup>
20. This Tribunal has dealt with this distinction in *R S Gurney N.O. and Others v Mkhize and Others* (PFA53/2022). In that case, the Tribunal ruled that it is incumbent upon the adjudicator to determine her own jurisdiction at the outset, which includes assessing whether a complaint is time-barred. The Tribunal explicitly stated that it is not the responsibility of the respondent to raise or prove prescription, rather, the adjudicator is statutorily obligated to make this determination independently.
21. Despite finding that it did not have the jurisdiction to investigate the complaint in light of the time bar prescribed in section 30I of the Act, the adjudicator nonetheless investigated the matter to the point of requesting bank statements to show that the monies were / were not paid to the applicant.

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<sup>1</sup> *Investec Employee Benefits Limited v Marais and Others* [2012] 3 All SA 622 (SCA) (1 June 2012).

22. However, the adjudicator's decision to ultimately dismiss the complaint was unequivocally correct. The applicant exited the fund in July 2009 and signed the exit forms in September 2009. He therefore possessed full knowledge of the facts relevant to his complaint for over a decade. Ultimately, the applicant has provided no reasonable explanation as to why it took him 15 years to lodge a complaint for the non-payment of his benefit. The three-year jurisdictional window permanently closed in March 2013, rendering his complaint definitively time barred.

## **ORDER**

23. In the result, we make the following order:

- i) The late filing of the application for reconsideration is condoned.
- ii) The application for reconsideration is dismissed.

**Signed on behalf of the Tribunal on this the 2<sup>nd</sup> day of March 2026.**

\_\_\_Sgd Adv PR Long\_\_\_\_\_

**Adv PR Long**

With the Panel also consisting of: LTC Harms