

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Case number: 231/2022

Reportable: YES/NO

Of interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

ELZINA WEYERS
(PREVIOUSLY COMBRINK / BESTER

Applicant

And

THE DEPARTMENT OF EMPLOYMENT AND LABOUR
FREE STATE PROVINCIAL GOVERNMENT

1st Respondent

GOVERNMENT EMPLOYEES PENSION FUND

2nd Respondent

THE PRINCIPAL EXECUTIVE OFFICER
GOVERNMENT EMPLOYEES PENSION FUND

3rd Respondent

HEARD ON:

06 OCTOBER 2022

JUDGMENT BY:

DANISO, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 15h30 on 14 February 2023.

[1] On 2 March 2021, the applicant resigned with immediate effect from her employment with the first respondent. At that time the applicant had been employed with the first respondent since 2009 and a member of the second respondent's pension fund ("GEPF").

[2] On 20 January 2022, approximately ten months after her resignation the applicant launched an application against the respondents seeking an order on the following terms:

"1. That the First Respondent is directed and compelled to complete and sign all documents necessary to enable the Applicant to withdraw unemployment benefits payable to her from the Government Employees Pension Fund (GEPF) under pension number: 9[...];

2. Additional to prayer 1, that the First Respondent is directed to submit the completed and finalized documentation to the Second Respondent, within 15 days of service of this Court's order;

3. The costs of this application are to be paid by the First Respondent and/or any Respondent who opposes the relief sought in this application...."

[3] The application was primarily directed at the first respondent and the crux thereof was premised on the grounds that pursuant to her resignation, the applicant completed all the necessary documents that would enable her to claim her pension benefits from the GEPF however, since then there has been a protracted delay by the first respondent to sign the said documents with the result that the applicant has not been able to claim her pension benefits from the GEPF.

[4] The application was opposed by the first respondent, essentially on the grounds that the applicant was indebted to the first respondent for unpaid leave in the amount of R50 267.87 therefore, the first respondent would only sign the required documents only after the applicant has signed an acknowledgement of debt. In addition, the first respondent also filed a provisional counter application in terms of which it sought an order that the application be stayed or postponed pending the finalization of a claim that intended to institute against the applicant in that regard.

[5] At the commencement of the hearing, I was informed that the parties have settled the matter the only issue which remained for determination is that of costs.

[6] The applicant was of the view that the first respondent should be burdened with the costs because: the first respondent opposed the application and also launched a conditional counter-application while being aware that the first respondent was not entitled to withhold the payment of the applicant's pension benefits without the applicant having signed an acknowledgement debt or in terms of a court order as provided for in S37D(1)(b) of the Pension Fund Act¹ ("The Act") and s21(1) of the Government Employees Pension Law Act.² The applicant ultimately signed the acknowledgement of debt on 6 June 2022 but still, the first respondent did not sign the requirement documents and insisted on opposing the matter. The first respondent went further and even filed a further affidavit on the eve of the hearing.

[7] Counsel for the first respondent argued to the contrary and averred that the opposition and the counter-application was necessary because at the time of her resignation, the applicant was indebted to the first respondent for the unpaid leave. The debt was disputed in the applicant's papers and the dispute existed until the applicant signed the acknowledgement of debt on 6 June 2022 in terms of which she admitted being indebted to the first respondent in the said amount, the applicant must therefore pay the costs of this application including that of the counter-application.

¹ Act No, 24 of 1956.

² Act No, 35 of 2003 (as amended).

[8] It is trite that when awarding costs, the court has a discretion, which it must exercise judiciously having regard to the facts of the case and fairness and equity to both sides.

[9] On the facts germane to this matter, at the time when the applicant launched this application she was aware of the debt that was due to the first respondent. In her papers she vehemently disputed the amount and how it was computed. Despite that denial and six months after she launched the application and received the first respondent's opposing papers the applicant signed an acknowledgement of debt essentially admitting the debt asserted by the first respondent.

[10] I am of the view that the applicant's eventual admission of the first respondent's debt militates against her contention that these proceedings were necessary to resolve the dispute between the parties. There were no exigent reasons for the applicant to launch these proceedings.

[11] On the other side, the provisions of s37D(b) (ii) (bb) of the Act permit a pension fund to deduct any amount due by an employee to the employer pursuant to either an acknowledgment of debt signed by the employee or based on a judgment obtained by the employer against the employee.

[12] In this matter there is no explanation why the first respondent chose to rather frustrate the applicant's right to claim the pension benefits by refusing to sign the necessary documents instead of invoking the provisions of s37D(b) (ii) (bb) by obtaining a judgment against the applicant.

[13] In conclusion, I find that both parties are blameworthy for being embroiled in these proceedings. These are precisely the kind of proceedings which the SCA in *Socratous v Grindstone Investments* characterized as an "unwarranted proliferation of litigation where our courts are already under severe pressure due to congested court rolls."³

³(149/10) **[2011] ZASCA 8** (10 March 2011) at [16].

[14] In the circumstances, I grant the following order:

ORDER

1. Each party shall be responsible for the payment of its own costs in respect of both the application and the counter-application.

N.S. DANISO, J

APPEARANCES:

Counsel on behalf of the applicant:

Adv. I. Macakati

Instructed by:

Phatsoane Henney Attorneys

BLOEMFONTEIN

Counsel on behalf of the respondents:

Adv D. De Kock

(first)

Instructed by:

State Attorney

BLOEMFONTEIN