IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 76828/2017

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

[redacted] 29/01/2020

E.M. KUBUSHI DATE

In the matter between:

YORK TIMBER HOLDINGS LIMITED (Registration Number: 1916/004890/06)	**Applicant**

and

THE PENSION FUND ADJUDICATOR	**First Respondent**
THE HOSPITALITY & GENERAL PROVIDENT FUND	**Second Respondent**
THE REISTRAR OF PENSION FUNDS	**Third Respondent**
FINANCIAL SERVICES BOARD	**Fourth Respondent**

JUDGMENT

KUBUSHI J,

[1] This is an application seeking to review and set aside the determination of the first respondent, the Pension Fund Adjudicator ("the Adjudicator") handed down on 13 September 2017 against the applicant, York Timber Holdings Limited ("York Timber") and for an order referring the matter back to the Adjudicator for reconsideration.

[2] Any party who feels aggrieved by a determination of the Adjudicator may, in terms of section 30P of the Pension Fund Act 24 of 1956 ("the Act"), within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint. The division of the High Court contemplated herein may consider the merits of the complaint made to the Adjudicator under section 30A (3) and on which the Adjudicator's determination was based, and may make any order it deems fit. The process followed for relief in terms of section 30P of the Act is one of review. York Timber has as a result approached court for relief in terms of the provisions of Uniform Rule 53.

[3] At the commencement of the proceedings, I was informed that York Timber received the Adjudicator's determination *per* registered post on 29 September 2017 although the complaint in this regard was upheld on 13 September 2017. There was, therefore, a lapse of two weeks which resulted in York Timber filing its application out of time. In these papers York Timber is also applying for the condonation for the late filing of its founding papers. As there was no opposition, the application for such condonation was granted.

[4] The answering affidavit of the second respondent, the Hospitality & General Provident Fund ("the Provident Fund") was, at the time of filing, not commissioned, but was merely signed by the deponent. However, when the matter appeared in court the defect had been duly rectified.

[5] The Adjudicator's determination sought to be reviewed and set aside emanates from a complaint lodged by the Provident Fund against York Timber. The Provident Fund is an approved pension fund in terms of the Act. York Timber joined the Provident Fund as a participating employer on 1 October 2006 in terms of a participating agreement and its employees, as such, became members of the Provident Fund.

[6] In accordance with the rules of the Provident Fund the standard regulated minimum contribution rate is 7,5 per cent for the employer and employee. Based on the provisions of the rules of the Provident Fund titled "supplement to agreement of participation", a participating employer and members may commence contributing at a lower rate than 7,5 per cent subject to them increasing the percentage to 7,5 per cent within a period of two years.

[7] Pursuant to the aforesaid rules, the Provident Fund and York Timber concluded a 'supplement to agreement of participation' in terms of which York Timber and its employees commenced contributing at a lower rate of 6 per cent. In order to ensure compliance with the contribution rate, the parties signed a 'reminder agreement' which required York Timber to increase the employer/employee contribution to 7 per cent by 1 July 2007 and should have raised the contribution rate by 0,5 per cent to 7,5 per cent by July 2008.

[8] Despite repeated reminders, from time to time, from the Provident Fund requesting York Timber to increase its rate of contribution to the regulated minimum rate in compliance with the 'reminder agreement', York Timber failed to do so. York Timber's attorneys of record instead, requested several documents and additional information relating to the request for compliance which was provided to them, but no contributions were forthcoming. As a result of such non-compliance by York Timber, the Provident Fund lodged a complaint with the Adjudicator.

[9] In essence, two complaints pertaining to the 'supplement to agreement of participation' and the 'reminder agreement' were lodged. Both complaints concerned the failure by York Timber to pay provident fund contributions for the period September 2016 to date of the respective complaints to the Provident Fund and to provide the attendant contribution schedules.

[10] The first complaint was lodged on 6 April 2016 and the determination thereof was made on 27 October 2017. The factual background to the complaint was York Timber's refusal and/or failure to pay over contributions of about 331 of its employees who were alleged to be members of the Provident Fund. In response to the said complaint, York Timber argued that the 331 employees whose contribution was not remitted to the Provident Fund chose to cease contributing to the Provident Fund effective from September 2016, thus, they were no longer members of the Provident Fund as they had joined other funds in which York Timber was a participant.

[11] The issue for determination in this complaint was, therefore, whether the members of the Provident Fund (that is, the 331 employees of York Timber who it was alleged failed to pay over contributions to the Provident Fund), were entitled to transfer to other approved funds in which York Timber participated. The Adjudicator in this regard ruled in favour of York Timber and made an order that allowed the employees in question to transfer to other approved funds of their choice in which York Timber participated effective from September 2016. The Adjudicator held further that York Timber cannot be held liable for contributions of these members from September 2016.

[12] The second complaint, which is pertinently the subject matter of this application, was lodged on 5 May 2017 and the determination thereof, as already stated, was made on 13 September 2017. The complaint pertained specifically to the failure by York Timber to pay increased monthly contributions (at an agreed increased percentage rate), in accordance with the 'supplement to agreement of

participation' and the 'reminder agreement'. The issue that fell for determination, in this regard, was whether or not York Timber failed to pay contributions to the Provident Fund at the required rate as agreed in terms of the 'supplement to agreement of participation' and its rules.

[13] In the complaint, the Provident Fund requested that York Timber be ordered to correct the breach by making good on lost savings by members from the date of maturity of the supplemental agreement and to pay over the difference made in the members' fund credits from the shortfall in contributions and lost interest allocations over time. The Provident Fund indicated that York Timber was then in arrears with contributions in the amount of R1 235 675, 50 for a period of ten (10) years which was made up by the increase of the 6 per cent rate to 7 per cent during the period July 2007 to June 2008 and the increase of the rate 7 per cent to 7, 5 per cent during the period July 2008 to July 2017.

[14] The Adjudicator notified York Timber about the complaint lodged against it by the Provident Fund and afforded them thirty days within which to respond. However, despite being afforded several opportunities, York Timber failed and/or neglected to file a response to the Provident Fund's complaint. As a result, the Adjudicator proceeded with the hearing of the complaint on the available evidence.

[15] In the determination made by the Adjudicator, York Timber was ordered to increase the contribution rate to 7,5 per cent in respect of employer and employee contributions from 1 July 2007 to date of the determination as set out in the schedule to the Provident Fund's rules; and to pay to the Provident Fund the arrear contributions together with late payment interest as computed by the Provident Fund within six weeks of the determination. The Provident Fund was, on the other hand, ordered to compute York Timber's arrear contributions from July 2007 to date of the determination, together with late payment interest owed by it calculated in accordance with section 13A(7) of the Act, within two weeks of the determination; to transmit the computation to York Timber within three days of completing them; to

allocate the contributions paid by York Timber to the members' fund credits and update their records within two weeks of receiving payment from York Timber; and to provide the members affected with a breakdown of their contributions and benefit statements, within ten weeks of the determination. This is the determination by the Adjudicator that York Timber seeks to have reviewed and set aside.

[16] In its case, York Timber concedes that it is in a financial position to pay the amounts that are in fact due and payable and that there was no wilful and deliberate failure on its part to pay the contributions that were due in terms of the Provident Fund's grievance. York Timber's complaint, however, is that no calculation formed part of the record filed by the Provident Fund and despite that a monetary award was made. It, thus, appears as if the award was arbitrary and at the very least failed to strike equilibrium between the rights of York Timber and that of the Provident Fund *alternatively*, the Adjudicator made a decision that no reasonable decision maker would have made in the circumstances and on facts that do not rationally justify the decision. The result, accordingly, is that there was a material misdirection by the Adjudicator and lack of rationality as well as an explanation for the failure by York Timber to attend to the process.

[17] York Timber sets out two main grounds of review in its founding papers and as expounded in the heads of argument as:

17.1 the lack of the necessary jurisdiction by the Adjudicator in the light of the provisions of section 30H read with section 30I of the Act, to order compliance with the increases for anything older than three years from the date on which the complaint was received from the Provident Fund, by York Timber;

17.2 the arbitrary calculation of the amount owed due to lack of information (list of membership) from York Timber about the number of employees that elected to move from the Provident Fund to another fund during the period of September 2016 to December 2016 (annexure "YK1"), during February 2010 (annexure "YK2") and during 2010 (annexure "YK3").

[18] Consequently, I find that the main issue that falls for adjudication is whether the determination of the Adjudicator dated 13 September 2017 should be set aside and be referred back to the Adjudicator for reconsideration. Underlying the said question are two issues, namely, whether the Adjudicator had jurisdiction to make a determination in respect of that part of the Provident Fund's complaint which relates to non-payment of contributions for the three years prior to 4 May 2017; and in respect of the award, whether the actual membership of the Provident Fund at the appropriate points in time were considered and the amounts and interest due correctly calculated.

[19] Counsel for the Provident Fund conceded in argument in court that the amount for the contributions were not correctly calculated as not all the employees but some of them owed the contributions. He, however, requested that an order be made directing the parties to compute the debt together rather than sending the matter back to the Adjudicator for reconsideration. What remained for adjudication was only the question of the jurisdiction of the Adjudicator in respect of some of the contributions which are alleged by York Timber to have prescribed and whether this court should, if the first issue is found in favour of Provident Fund, make an order directing the parties to compute the debt together or refer the computation back to the Adjudicator.

[20] I deal hereunder with the two questions in turn.

Whether the Adjudicator had the jurisdiction to make a determination in respect of claims older than three years?

[21] It is not is dispute that the Adjudicator is a creature of statute and shall not in terms of the Act investigate or make determination of a prescribed act or omission. It is also not in dispute that at the time of determination the Adjudicator was aware that the complaint was lodged more than three years following the cause of action. Thus, in her determination the Adjudicator made the following finding on the issue of prescription:

> *"Although the complaint was lodged more than three years following the cause of action, the respondent's default is continuous and it remains a participating employer in the complainant. It is clear that the employees of the respondent who are members of the complainant continue to be prejudiced by the non-payment of contributions at the correct rate. Further, the facts indicate that the complainant continues to engage the respondent regarding the payment of contributions at the correct rate by sending reminder letters, which includes the follow-up it made with its attorneys on 8 February 2017 and 14 March 2017. Thus, in light of the above, the complaint is not time-barred in terms of section 30I (1) of the Act."*

[22] York Timber's case raises a technical grievance of lack of jurisdiction and/or prescription. York Timber submits in its papers that a large portion of the claim by the Provident Fund as awarded by the Adjudicator had become prescribed and ought not to have been allowed, irrespective of the merits of the claims and/or complaint. It submits further that all payments claimed for contributions payable in terms of the participation agreement older than three years, whether it is from the employer or the employee became prescribed in the light of section 30H read with section 30I of the Act. Consequently, the Adjudicator lacked the necessary jurisdiction to order York Timber to comply with the increased contributions preceding three years from the date on which she received the Provident Fund's complaint.

[23] The proposition by York Timber's counsel is that each act of non-payment of the increased monthly contribution in respect of a particular member, constitute a separate and distinct debt which became due as contemplated in the Prescription Act 68 of 1969. Prescription, according to counsel, began to run on each of such debt when the increased contribution was not paid to the Provident Fund. Counsel

relied in his argument on the provisions of section 30I (1) of the Act which prescribes the period of prescription as three years.

[24] To interrupt the running of prescription for purposes of the Act, and to vest the Adjudicator with the necessary jurisdiction and powers of investigation, the complaint of the Provident Fund should have been received by the Adjudicator within three years of each of the debts having become due. As such, the Adjudicator should have refrained from dealing with that part of the Provident Fund's complaint which related to non-payment of increased monthly contributions prior to 4 May 2017. The Provident Fund's complaint was received by the Adjudicator on 5 May 2017. The contention is that the Adjudicator simply lacked jurisdiction to investigate the non-payment of contributions which occurred more than three years prior to receipt of the complaint by the Adjudicator, that is, prior to 5 May 2017.

[25] Counsel's proposition is that the Adjudicator's finding that although the complaint was received "*...more than three years following the cause of action, the [applicant's] default is continuous...*", is without any legal and/or factual basis and the Adjudicator failed to apply the law as enunciated in ***Old Mutual Life Assurance Co. (South Africa) Ltd v Pension Funds Adjudicator and Others*** 2007 (3) SA 458 (C). According to counsel, the finding by the Adjudicator that the Provident Fund "*... continues to engage the [applicant] regarding the payment of contribution at the correct rate by sending letters...*" is irrelevant and that it is simply not the law that the sending of 'reminder letters' to a debtor, interrupts the running of prescription.

[26] It is the Provident Fund's case that even though the cause of action in this matter arose more than three years before its complaint was filed with the Adjudicator, and as articulated by the Adjudicator in her determination, York Timber remains a participating employer in the Provident Fund, thus York Timber's default is continuous. Therefore, due to such continuous default, prescription in this matter is interrupted and as such, section 30I (1) of the Act does not apply. The contention is

that York Timber continues to be in default in that it has failed to make the contributions as *per* the supplement to agreement of participation.

[27] In the heads of argument, the Provident Fund's counsel sets out the basis for the interruption of prescription in this matter as firstly, the failure by York Timber to increase its contribution rate to 7,5 per cent which resulted in the continuous default by York Timber and the fact that York Timber remained a participating member in the Provident Fund. Secondly, reminder letters were sent to York Timber's attorneys regarding payment of the contributions at the correct rate.

[28] Section 30I which deals with the time limit for lodging complaints, provides that 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 her or him in writing. The provisions of the Prescription Act relating to a debt apply in respect of the calculation of the three year period.

[29] The question of prescription relating to pension funds was dealt with in the unreported judgment of the Eastern Cape Division in *The* ***Municipal Workers Retirement Fund v Ndlambe Local Municipality*** case no. 4884/2017 heard on 7 November 2018 and delivered on 22 November 2018. In that judgment the court relying on the judgment of the Supreme Court of Appeal in *Roestorf and Another v Johannesburg Municipal Pension Fund and Others* 2012 (6) SA 184 (SCA), when dealing with the issue of prescription expressed itself as follows:

> "[5] A number of grounds of resistance of the defence of prescription were raised but I shall deal with only one, which in my view is dispositive of this defence. Counsel for the Fund referred me to the judgment in *Roestorf and Another v Johannesburg Municipal Pension Fund and Others* 2012 (6) SA 184 (SCA). In this matter the two appellants, who were members of the first respondent, had been medically boarded in 1995. Their pensions were paid to them monthly but years later they challenged the calculation of their retirement benefits and in 2006 filed a complaint with the Pension Fund Adjudicator, who upheld their complaint that their retirement benefits had been incorrectly calculated. The first respondent was ordered to pay the revised

pension and arrears together with interest. The first respondent approached the High Court to review and set aside this determination. The High Court set aside the determination and found, *inter alia*, that the appellants' claim in reconvention for a correction of their pension fund entitlement based on an incorrect computation had been extinguished by prescription. On appeal, Heher JA dealt with the question of prescription as follows at paragraph [16] to [20]:

'[16] So technical an avoidance of correcting a manifest injustice may be regarded as morally questionable. It is also unsound according to principles of law.

[17] it is no doubt possible and – perhaps – correct to regard each incorrect monthly payment as a breach of contract by the Fund which gives rise to an independent cause of action and results in a series of debts arising from month to month. See in this regard *Barnett and Others v Minister of land Affairs and Others* 2007 (6) SA 313 (SCA) (2007 (11) BCLR 1214) paras 20 – 21 and the cases there cited. In such an event each cause would prescribe three years from the date that it arose. I prefer, however, to approach the case from a different perspective.

[18] On retirement the appellants qualified for and were the recipients of pensions justified by their total incapacity to perform their duties in the service of the City. Their pension entitlement was an annualised sum (annuity) paid monthly to each of them. The Fund commenced such payments in 1995 and has done so ever since. The only rationale for such payments was the rules of the Fund to which the appellants had been contributing members. However, each payment constituted a tacit acknowledgement of the Fund's obligation to pay according to its rules. For the purposes of the Prescription Act that obligation was the 'debt' owed to and claimable by the appellants.

[19] Section 14 of the Prescription Act provides:

'(1) The running of prescription shall be interrupted by an express or tacit acknowledgment of liability by the debtor.

(2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt from the date upon which the debt again becomes due.'

In *Agnew v Union and South West Africa Insurance Co Ltd* 1977 (1) SA 632A this court approved the dictum of Broome JP in *Petzer v Radford (Pty) Ltd* 1953 (4) SA 314 (N) at 317H:

> 'To interrupt prescription an acknowledgment by the debtor must amount to an admission that the debt is in existence and that he is liable therefor.'

The Fund has satisfied both requirements each month as it has paid the appellants' pensions pursuant to the rules. The consequence has been a continuing and on-going interruption of prescription in relation to every amount each appellant was entitled to claim as his correctly calculated benefit. The fact that the Fund has each month paid a lesser amount and contended consistently that that amount and no more represented the correct computation of its obligation under the rules does not change matters. As Van Heerden J explained in *Erasmus v Grunow en 'n Ander* 1978 (4) SA 233 (O) at 244A – D:

> 'Na woordlui vereis art 14 (1) egter nie dat die skuldenaar ten volle aanspreeklikheid moet erken. Die skuldenaar wat erken da thy vir 'n gedeelte van die skuld aanspreeklik is, erken da nook steeds aanspreeklikheid vir of ten opsigte van daardie skuld. Neem bv die geval waarin die skuldenaar, wat 'n motorcar vir R1000 aangekoop het, die kooptransaksie erken maar die houding inneem dat die koopprys slegs R900 bedra. Die skuld voer 'n objektiewe bestaan en word, behlawe uit 'n bewysoogpunt, nie gerrak dear die skuldenaar of skuldeiser se seining of betwisting van die presiese omvang of terme daarvan nie. In die gegewe voorbeeld erken die skuldenaar die skuld en betwis slegs die omvang daarvan. Anders gestel, erken hy aanspreeklikheid ten opsigte van die skuld, maar stel hy die omvang van sy aanspreeklikheid in geskil. Ook die skuldenaar wat beweer da thy reeds gedeeltelik presteer het, erken aanspreeklikheid teenoor die skuldeiser ten opsigte van 'n bepaalde skuld. Sekerlik kan nie in een van hierdie gevalle gese word dat die skuldenaar aanspreeklikheid ontken nie.'

Moreover, as the learned judge further pointed out – ibid at 244E – 245H – the wording of ss 14 (1) and 15 (1) of the Prescription Act leads to the conclusion that the legislature intended that a partial acknowledgement of a debt should have the effect of interrupting prescription in respect of the whole debt. (See also *Solomons v Multilateral Motor Vehicle Accident Fund and Another* 1999 (4) SA 237 (C).)

[20] Thus it is that in the circumstances of the present case the Fund has by its repeated payments to the appellants ensured that their claims to a correction of their entitlements have been protected against prescription. In the present instance that applies not only to that part of the claim that was included in the

complaint to the adjudicator but also to the claims which first surfaced in the counter-application in 2010."

[6] In my view this reasoning and conclusion applies in the present case. The Municipality paid contributions monthly for the period in question in terms of section 13A (1) of the PFA, and thereby acknowledged this statutory obligation. The fact that there was a shortfall and that it believed that it was paying the correct amounts each month does not detract from this acknowledgement. It follows, as stated by Heher JA, that there has been a continuing and on-going interruption of prescription in relation to every amount which the Municipality was obliged to pay to the Fund.

[7] It was submitted that the present matter is distinguishable from *Roestorf*, because in *Roestorf* there was a dispute about the correct calculation of benefits, whereas in the present matter there is no dispute about the amount of the contributions which should have been paid. I do not think that this difference disturbs the underlying reasoning in *Roestorf*. There was an acknowledgement of liability for a portion of the debt, whatever the cause of the shortfall, and this was sufficient for an interruption of prescription. The defence of prescription therefore cannot succeed."

[30] Similarly, it is my view that the reasoning and conclusions reached by the court in ***Ndlambe Local Municipality*** are apposite in this instance.

[31] As a point of departure, York Timber is correct to say that each incorrect monthly payment of the contributions was a breach of contract by it which gave rise to an independent cause of action and resulted in a series of debts arising from month to month. Ordinarily such debts would prescribe if they arose more than three years before the complaint was lodged with the Adjudicator as is the case in this instance.

[32] However, York Timber's supposition does not find application in the circumstances of the facts in this instance. The reason being that prescription was interrupted. The rationale of the Provident Fund's argument that prescription was interrupted by the reminder letters sent by it to York Timber is incorrect. What is correct, as argued by York Timber, is that prescription could have been interrupted if it (York Timber) had acknowledged the debt, which it claims it did not acknowledge.

[33] It is, however, common cause that York Timber paid monthly contributions for itself and its employees to the Provident Fund. The rationale for such payment was the rules of the Provident Fund to which York Timber continued to participate and its employees were members. Following on the decision in ***Ndlambe Local Municipality*** and as supported by ***Roestorf***, each such contribution paid constituted a tacit acknowledgement of York Timber's obligation to pay according to the rules of the Provident Fund; and for the purposes of the Prescription Act that obligation was the debt owed to and claimable by the Provident Fund.

[34] As has been held in ***Roestorf***, a partial acknowledgement of a debt has the effect of interrupting prescription of the whole debt, consequently, by continuing to pay the contributions, even though at a reduced rate, York Timber acknowledged that it was liable to pay such contributions. Therefore, each month that it paid the contributions to the Provident Fund, York Timber acknowledged its obligation to the Provident Fund. The consequence of such payments have been a continuing and on-going interruption of prescription in relation to every amount which York Timber failed to pay, that is, the difference between the amount of contributions it paid and the amount made up by the increased rate of the contributions.

[35] I hold, therefore, that because there was an acknowledgement of liability by York Timber for a portion of the contributions, whatever the cause of the shortfall, this was sufficient for interrupting prescription. As a result, under such circumstances York Timber's grievance of prescription will not succeed. It, thus, means that the Adjudicator had the necessary jurisdiction to hear and determine this matter.

Whether the matter should be referred back to the Adjudicator for reconsideration?

[36] The Provident Fund concedes in its papers that the Adjudicator is indeed the appropriate forum wherein matters such as these ought to be adjudicated but argues that there is no need to refer the matter back to the Adjudicator as the matter has already been adjudicated upon and a determination made. Referring the matter back to the Adjudicator would, according to the Provident Fund's counsel, be a waste of time and resources.

[37] In my understanding of the papers filed of record, the main reason why York Timber seeks an order that the matter be referred back to the Adjudicator is because of its lack of participation during the hearing before the Adjudicator. However, there is actually no need for this matter to be adjudicated afresh on the merits as the merits have been conceded. It is not York Timber's case that it is not liable to pay the contributions. Its case is only that the computation of the award made is not correct – a fact that has been admitted by the Provident Fund. What remains to be determined is the number of York Timber's employees who were members of the Provident Fund as at September 2017 for the computation of the contributions and interest due and payable, that is, the computation of the benefits which the members accumulated whilst under the membership of the Provident Fund.

[38] In the light of the Provident Fund's concession that the number of employees used to compute the award was not correct, I am inclined to agree with York Timber that the matter should be remitted to the Adjudicator for a fresh computation of the award. My view is that ordering the parties to do the calculation will create challenges of its own. The Adjudicator is better placed to resolve such challenges particularly in circumstances where a dispute may arise as a result of the parties not being in agreement about the number of employees.

[39] York Timber has been substantially successful in this application and is thus entitled to be awarded costs on a party and party scale.

[40] As a result the following order is granted:

1. The determination of the first respondent dated 13 September 2017 in terms of section 30M of the Pension Funds Act 24 of 1956 ("the Act"), is reviewed and set aside in terms of section 30P of the Act read with rule 53 of the Uniform Rules of Court and replaced by the following order:

   "1.1 The respondent is ordered to increase the contribution rate to 7, 5 per cent in respect of employer and employee contributions from 1 July 2007 to date as set out in the schedule to the complainant's rules;

   1.2 The parties are ordered to compute the respondent's arrear contributions from July 2007 to date, together with late payment interest owed by it calculated in accordance with section 13A (7) of the Act, within two weeks of this order;

   1.3 The parties are ordered to transmit the computation in 1.2 to the Adjudicator for a final determination of the award;

   1.4 The respondent is ordered to pay to the complainant the arrear contributions together with late payment interest as computed in accordance with paragraph 1.2 above, within six weeks after the final determination by the Adjudicator;

   1.5 The complainant is ordered to allocate the contributions paid by the respondent to the members' fund credits and update their records, within two weeks of receiving payment from the respondent; and

   1.6 The complainant is ordered to provide the members affected with a breakdown of their contributions and benefit statements, within ten weeks of the final determination by the Adjudicator."

2. The matter is referred back to the first respondent for computation of the award and a final determination thereof.

3. The second respondent is ordered to pay the costs of this application on a party and party scale.

[redacted]

JUDGE OF THE HIGH COURT

<u>Appearance:</u>

Applicant's Counsel	**: Adv. Y. Coertzen**
Applicant's Attorneys	**: Van Der Merwe & Associates**
First Respondents' Counsel	**: Adv. A. A. Milazi**
First Respondents' Attorneys	**: TK Segodi Attorneys**
Date of hearing	**: 24 October 2019**
Date of judgment	**: 29 January 2020**