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

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No: 3357/2016

In the application between:

GERTRUDE MATSITSO BOHLOKO Applicant

and

LIBERTY GROUP LIMITED Respondent

JUDGMENT BY: C REINDERS, J

HEARD ON: 8 DECEMBER 2016

DELIVERED ON: 15 DECEMBER 2016

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[1] The Respondent is Liberty Group Limited (hereafter "Liberty"), a legally authorised financial service provider who, inter alia, administers pension fund plans. The Lifestyle Retirement Preserver Pension Fund Plan (herafter "the Plan") is administered by Liberty subject to a set of rules (hereafter "the Rules").

[2] The Applicant is Gertrude Matsitso Bohloko (hereafter “Ms Bohloko”), a former Deputy Registrar of the Central University of Technology. It is common cause that she acquired membership of the Plan when she transferred her pension benefit (known as a translocation benefit) in the amount of R 1 723 924.85 from her former employer upon her retirement to Liberty in 2014.

[3] In terms of Section 4.4 of the Rules a member are bound by the provisions of the Rules. This principle is supported by the Pension Funds Act of 24 of 1956 (the “PFA”), stipulating in Section 13 thereof that the rules in respect of pension funds are binding on its members.

[4] Section 6 of the Rules deals with “benefits”, defined by the Rules as “an annuity or any amount payable to a member or any other person arising out of membership of the plan.” The retirement benefit to which a member is entitled is governed by Section 6.1.1 of the Rules. In terms of this subsection a member may give written notice to the administor to retire from the plan (and thus receive the benefit) at the selected retirement date or at any date on or after a member reaches the “normal retirement age”. The latter is defined by the Rules as “the date on which a member attains 55 years of age or on which the member becomes permanently incapable of carrying on their occupation due to sickness, accident, injury or incapacity through infirmity of mind or body.”

[5] Under the heading “Withdrawal Benefits” in subsection 6.3 of the Rules, Section 6.3.3 provides as follows: “ a member may at any time after becoming a member withdraw all or part of his benefit as a cash lump sum, **provided that only one amount per translocation benefit …may be withdrawn prior to payment of a retirement or death benefit**.”

[6] In terms of Section 19(5)(a) of the Act a registered fund may, **if its rules so permit** (my emphasis) and subject to the regulations, grant a loan to a member by way of an investment of its funds, or furnish a guarantee.

[7] Ms Bohloko applies for an order in the following terms:

“1. That the Respondent be directed to release my (sic) pension interest and /or part thereof;

2. In the alternative to the above, that the Respondent be directed to grant a loan and advance to the Applicant the amount required by ABSA BANK to settle the bond over her immovable property situated at No.[....] B. D., F., BLOEMFONTEIN;

3. That the Respondent be directed to pay the costs of the Application on (an) attorney and client scale alternatively party and party scale only if the Application is opposed.”

[8] According to Ms Bohloko she is a 52 year old lady who produces and sells farm products to meet her financial obligations. Due to the negative impact of the on-going drought she has been unable to attend to payment of, amongst others, her mortgage bond with Absa Bank, two life policies with Liberty and her medical aid premiums. During February 2016 she approached Liberty with a request for “some withdrawals to make payment” of the said policies and mortgage bond, but was informed that she would not be able to make the withdrawals as requested. Hereafter she approached her attorney of record and various correspondences ensued between the parties, leading to the launch of this application.

[9] Ms Bohloko’s entitlement to her pension interest with Liberty is governed by the Rules as a result of her membership with Liberty. It is common cause that Ms Bohloko has not yet reached the normal retirement age of 55, nor is any of the other criteria in respect of a

normal retirement age applicable to her. It is also not disputed that she made a withdrawal from her benefit with Liberty in the amount of R 343 852.31 during 2015, thus precluding her from making any further withdrawals in terms of Rule 6.3.3. In regards to the granting to her of a loan by Liberty, it is not the case of Ms Bohloko that the Rules provide for the granting of loans to members or the furnishing of guarantees. She merely avers that "nothing prevents" the fund from granting same. In applying both the Act and the Rules, I am of the view that I cannot issue an order directing Liberty to grant a loan to Ms Bohloko in the absence of such a provision in the Rules.

[10] Ms Bohloko pleads with this court to direct Liberty to release the funds of her pension interest or grant her a loan in order to avoid the loss of her residential property, claiming that she has a constitutional right to property, which right she is being deprived of by Liberty's refusal to release her pension benefit. Even though I have heartfelt sympathy for the financial predicament and hardship that Ms Bohloko faces, I am not at liberty to interfere in the contractual relationship between Liberty and Ms Bohloko by ordering Liberty, in direct contrast to the explicit terms of the agreement, to release part of or the entire benefit of Ms Bohloko before she is entitled thereto, or grant her a loan not permitted by Liberty.

[11] The usual order is that cost will follow suit. I find reason to deviate therefrom in order to show my disapproval for the uncooperative manner in which Liberty responded to the numerous requests by Ms Bohloko's attorney of record to be provided with the Rules. In my discretion I therefore intend not to burden Ms Bohloko with the costs of Liberty's opposition to this application.

[12] Accordingly the following order will issue:

The application is dismissed.

C. REINDERS, J

On behalf of the Applicant:	Mr. M. Khang Instructed by: Mphafi Khang Inc. BLOEMFONTEIN
On behalf of the Respondent:	Adv. M. Dewrance Instructed by: Moodie & Robertson c/o Lovius Block BLOEMFONTEIN