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IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Division, Pretoria)

Case no:038191/2025

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED.

DATE: 29 APRIL 2025

SIGNATURE

Judgment Reserved: 8 APRIL 2025

Judgment handed down: 29 APRIL 2025

In the matter between:

VOLTEX (PTY) LTD

APPLICANT

AND

BIDVEST SOUTH AFRICA

RETIREMENT FUND

FIRST RESPONDENT

ADRIANUS PLOMP

SECOND RESPONDENT

LORNA ANNE PLOMP

THIRD RESPONDENT

JUDGMENT

STRIJDOM, J

1. In this matter the applicant seeks the following relief:

- 1.1 The first respondent is interdicted and restrained from making payment of any portion of the second and third respondent's pension interest, which is held by the first respondent, pending the finalization of this application and the application to be instituted by the applicant within 30 days of granting of an order.
2. At the commencement of this application I ruled that the matter is urgent.
3. The empower provision that the applicant relies on for the institution of this application is section 37D(1)(b)(ii)(bb) of the Pension Fund Act 24 of 1956 ("the Act").
4. Section 37D(1)(b)(ii)(bb) of the Act provides:

"(1) A registered fund may:

(a) ...

(b) deduct any amount due by a member to the member's employer on the date of retirement, the date on which the member ceases to be a member of the fund or the date on which the member's employment with a participating employer in a retirement fund is terminated in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act 28 of 2011), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in subparagraph (ii), in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which

(ii) judgment has been obtained against the member in any Court, including a Magistrate's Court, and includes a compensation order granted in terms of section 300 of the Criminal procedure Act, 1977 (Act no 51 of 1977.)

(bb) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (b)(ii), and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any Court including a Magistrate's Court."

5. In addition to the provisions of section 37D(1)(b)(ii)(bb) of the Act, the Court will have regard to the provisions of the Bidvest South Africa Pension Fund Guide to Acknowledgement of Debt and Retained Benefits ("the Guide").
6. The background facts which gave rise to these proceedings are briefly these. The applicant, a supplier and distributor of electrical and related industrial products across South Africa, employed the second respondent as a production manager, and the third respondent as a depot manager within its operations. Both held positions of trust and operational control, including responsibilities over inventory, dispatch, and internal controls designed to safeguard the applicant's stock and financial integrity.¹
7. Following internal investigations, both the second and third respondents were charged with multiple counts of theft, fraud, dishonesty, and gross misconduct, including manipulation of sales and returns processes, misappropriation of stock through duplicate credit notes, and deliberate concealment of stock losses.
8. The second respondent pleaded guilty to certain charges and was found guilty of the remainder of the charges brought against him. The second respondent was summarily dismissed on 25 February 2025.

¹ Caselines: 02-162 to 172

9. The third respondent was also found guilty of all charges brought against her and has subsequently been dismissed.
10. Since the fraud and/or theft has been discovered the applicant has uncovered a combined loss of approximately R1 728 468,00 in respect of the second respondent and approximately R1 337 091,00 in respect of the third respondent.²
11. The respondents raise the following objections to the relief sought:
- 11.1 That the applicant has not complied with the internal procedures of the first respondent;
 - 11.2 That the application is premature as no judgment has been obtained against the second and third respondents;
 - 11.3 That the second and third respondents will suffer financial hardship if their pension benefits are withheld.
12. It is trite that an applicant seeking interim interdictory relief must satisfy the requirements set out in *Setlogelo v Setlogelo*.³

Prima Facie Right

13. It was submitted by the second and third respondents that there is currently no judgment against the respondents, no compensation order in terms of section 300 of the Criminal Procedure Act, 51 of 1977, and the respondents have not admitted liability. It was further argued that the applicant has failed to indicate that it has suffered financial loss at the hands of the respondents.
14. In my view, the applicant's prima facie right is founded in the statutory entitlement under section 37D(1)(b)(ii)(bb) of the Pension Funds Act 24 of 1956. This

² Caselines: 02-18 para 32 to 34

³ 1914 AD 221

provision creates a statutory right in favour of an employer to recover damages caused by theft or fraud by its employee. Although it contemplates recovery after judgment, it does not preclude a party from approaching the Court for interim relief to preserve that recoverable benefit.

15. It is trite that section 37D requires a civil judgment to authorize the Fund to deduct and pay the benefit to the employer. The applicant seeks to preserve the fund interest to ensure that the remedy contemplated in section 37D is not frustrated. The relief sought is to preserve the funds pending a judgment. The applicant has already laid a criminal charge against the second and third respondents and intends to institute civil proceedings.

16. In *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen*⁴ the Court confirmed that a statutory right under section 37D, once pleaded and grounded in facts, constitutes a sufficient prima facie right for interim interdictory purposes.

17. The Court highlighted the following principles regarding interim interdictory relief:

17.1 Purpose of Withholding Benefits:

The withholding of pension benefits serves as a protective measure to ensure that the employer can recover damages if the employee is found liable.

17.2 Balancing Competing Interests:

The Court stressed the need to balance the employer's right to recover losses with the potential prejudice to the employee who may urgently need access to their pension benefits and could ultimately be found innocent.

Exercise of Discretion: Pension funds must exercise their discretion with care, considering the strength of the employer's claim and the

⁴ 2009 (4) SA 1 (SCA)

circumstances of the case. Conditions may also be imposed to ensure fairness.

18. To give effect to the purpose of section 37D, its wording must be interpreted purposively to include the power to withhold payment of a member's pension benefits pending the determination or acknowledgement of such member's liability.

19. In my view a pension fund may lawfully withhold benefits where there is a credible, fact-based claim for recovery of losses, and that interim interdictory relief is appropriate to preserve the employer's rights while the issue of liability is adjudicated.

Apprehension of Irreparable Harm

20. For the second and third respondent it was contended that they are without income and that they are dependent on the pension benefit for living and medical expenses.

21. It was submitted by the applicant that it faces a clear and imminent risk of irreparable harm if the interdict is not granted.

22. The pension benefits held by the first respondent are the only identified, accessible and liquid assets from which the applicant may seek to satisfy a judgment to be obtained in due course. If the funds are paid out, there is a real risk that the applicant will suffer irreparable harm, as no other enforceable means of recovery have been identified.

23. The respondents (second and third respondents) have not disclosed any assets. Their version in the answering affidavit⁵ is evident of their lack of income and reliance on these funds for survival. These allegations reinforce the risk of dissipation.

Balance of Convenience:

24. It was contended on behalf of the second and third respondents that the third respondent has a severe medical condition that required her to undergo a colostomy, which required her to remove her kidney as an integral component of their monthly expenditures and the respondents are obliged to contribute towards medical aid coverage.

25. It was further submitted that in light of the third respondent's dismissal, both respondents will suffer a loss of income and pension benefits which will render it imperative to terminate their medical aid subscription.

26. In this matter the applicant seeks only to preserve the funds until such time as it obtains judgement. If the applicant fails in its civil action, the funds remain intact and will be released to the second and third respondents. If the relief is refused and the funds are paid out in the interim, the applicant's statutory remedy under section 37D may be permanently frustrated.

27. The financial hardship that the second and third respondent will suffer must be weighed against:

27.1 The serious nature of the misconduct they were found guilty of;

27.2 The quantum of the losses;

27.3 The lack of any indication that they hold alternative assets.

⁵ Answering affidavit: Caselines para 92; 02-153

28. The second and third respondent have advanced no substantial factual rebuttal to the core allegations, relying instead on procedural defences.

29. In my view the potential loss of R3 million for the applicant outweighs the prejudice to the respondents.

No Adequate Alternative Remedy

30. It was argued by counsel for the second and third respondent that the applicant failed to follow the first respondent's internal processes, particularly those outlined in the Guide to Acknowledgement of Debt and Retained Benefits.

31. "It is clear that the grant of an interdict is a discretionary remedy. One of the main factors which the Court is enjoined to take into account in deciding whether to exercise its discretion is whether there is any other remedy open to the applicant which can adequately protect him in his rights."⁶

32. The first respondent has stated that it cannot guarantee the preservation of the second and third respondent's pension benefit unless directed to do so by a Court order.

33. The Guide to Acknowledgement of Debt and Retained Benefits is an internal document published by the first respondent, setting out administrative steps for employers to request the temporary withholding of a member's pension benefit. The guide is not prescriptive, does not override the provisions of the Pension Funds Act, and cannot confer rights or compel the Fund to withhold benefits in the absence of a Court order. In my view it does not provide an adequate or enforceable alternative remedy in law.

⁶ Johannesburg Consolidated Investment Co Ltd v Mitchmore Investments (Pty) Ltd and Another 1971 (2) SA 397 (WLD) 404 E-F

34. It was submitted by the applicant that it can recover its loss once judgment is obtained. In the absence of the relief now sought, the applicant would face the real prospect of succeeding in its claim but being left with an empty judgment.

35. It was stated in the Highveld Steel judgment that: "... a practical problem threatens the efficacy of the remedy afforded by the section ... Furthermore, it has to be accepted as a matter of logic that it is only in a few cases that an employer will have obtained a judgment against its employee by the time the latter's employment is terminated because of the lengthy delays in finalizing cases in the justice system. The result therefore is that an employer will find it difficult to enforce an award made in its favour by the time judgment is obtained against him."

36. I conclude that the absence of an adequate or enforceable alternative remedy is clearly established by the applicant.

37. In the result the following order is made:

1. The applicant's non-compliance with the Uniform Rules of Court pertaining to forms and service is condoned, and the matter is heard as one of urgency.
2. The first respondent the Bidvest South Africa Retirement Fund, is interdicted and restrained from making any payments, whether by way of a lump sum, monthly annuity, or otherwise, to:
 - 2.1 The second respondent, Mr Adrianus Plomp (membership number: 2[...]; and
 - 2.2 The third respondent, Ms Lorna Anne Plomp (membership number: 2[...]); from the first respondent's fund or any associated benefit or entitlement, pending the final determination of the action proceedings to be instituted by the applicant within 30 (thirty) days from the date of this order.

3. The second and third respondents are ordered to pay the costs of the application on a party and party scale B, jointly and severally, the one paying the other to be absolved.
- 4.

JJ STRIJDOM
JUDGE OF THE HIGH COURT OF SOUTH-AFRICA,
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the applicants:

Adv LK van der Merwe

Instructed by:

Orelowitz Inc Attorneys

For the first to sixth respondents:

Adv CR Dames

Instructed by:

NDBV Inc Attorneys