



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2025-119564

- (1) REPORTABLE: **NO.**
(2) OF INTEREST TO OTHER JUDGES: **NO.**
(3) JUDGMENT : **24 AUGUST 2025**

Frank Snyckers
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In the matter between –

LETAU, NTHABISENG

Applicant

And

FUNDS AT WORK UMBRELLA PENSION FUND

First Respondent

MOMENTUM METROPOLITAN LIMITED

Second Respondent

SOUTH AFRICAN AIRWAYS TECHNICAL (SOC) LTD

Third Respondent

***By transmission of this judgment by email and uploading on Court Online /
Caselines the judgment is deemed to be delivered***

JUDGMENT ON LEAVE TO APPEAL

SNYCKERS AJ

INTRODUCTION

[1] The applicant (Letau) brought an application in urgent court, launched on 22 July 2025, set down for 29 July 2025, affording the respondents a day to answer the application.

[2] The application was for final interdictory relief. The relief sought was to declare unlawful the decision of the first respondent pension fund, communicated on 4 June 2025, to withhold Letau's pension benefits in terms of section 37D of the Pension Funds Act 24 of 1956, and directing the fund to pay over the pension within 5 days. The founding papers spanned some 110 pages.

[3] The application was, contrary to the applicable directives, not uploaded onto Caselines. By the time the application was called, on 29 July 2025, the third respondent (the employer, SAAT) had on 28 July 2025 uploaded the application to Caselines and had answered the application also on 28 July 2025.

[4] I read all the papers that had been filed in the application before the matter was called on 29 July. I mention this because of the suggestion in the leave to appeal application that I had not done so. When the matter was called, SAAT was represented by senior and junior counsel. Letau was represented by Mr *Alcock*.

Mr *Alcock* sought an indulgence for the matter to stand down to Friday 1 August and for Letau to file a replying affidavit which I was told could be done by 12.00 on Wednesday 30 July. The matter was stood down on 29 July 2025 to 1 August 2025, for Letau to submit a replying affidavit by 12.00 on Wednesday 30 July. Letau was directed to address inter alia the failure to have complied with the directives relating to uploading applications on Caselines to ensure their ability to be heard in urgent court. The costs of the day of 29 July were reserved.

[5] A replying affidavit was filed at 14.32, some two and a half hours late, on Wednesday 30 July.

[6] I read the replying papers before the matter was argued, and also heads of argument that SAAT had uploaded on Caselines. Again, I mention this because the application for leave to appeal suggests, incorrectly and with no foundation, that I had not read all the papers.

[7] The matter was argued for most of the morning on Friday 1 August 2025, in a week in which it contended for attention with 32 other urgent applications that had found their way onto my roll in that week and preceding weekend. I gave judgment *ex tempore* after argument, dismissing the application with costs on an attorney and client scale, including the reserved costs of 29 July. I gave my reasons *ex tempore*.

[8] My reasons concentrated on the fact that no case whatsoever had been made out in respect of one essential aspect of final interdictory relief – namely the absence of any other alternative remedy, and on the closely aligned fact that the only justification that had been given for Letau's urgently approaching a

court, instead of availing herself of the statutory remedies available to her under the Pension Funds Act and Financial Services Regulation Act, and with the extreme degree of urgency employed by her, was her financial plight that entailed her creditors closing in on her, a justification that was entirely inadequate in the circumstances, and was also self-created. The reason given in my *ex tempore* judgment for why it was self-created was because Letau had resigned from the employment of SAAT in January 2025, instead of attending the disciplinary hearing that had been scheduled for her to attend to the concerns that had led to the withholding of her benefits by the fund, and that she had been suspended on full pay until her resignation.

SUGGESTION THAT NOT ALLOWED TO ADDRESS MERITS

[9] The application for leave to appeal inaccurately says I did not allow Letau's counsel to address me on the merits. I had in fact debated the two most important aspects of the merits both with Letau's counsel, Mr *Alcock*, and with Mr *Blou*, who appeared with Mr *Ndlovu* for SAAT. These related to the following two questions:

(a) whether withholding of a pension under s37D, on the authority of *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen* 2009 (4) SA 1 (SCA), required legal proceedings to be actually pending before a court, for such a withholding to be lawful – Mr *Alcock* submitted that pending legal proceedings were a prerequisite and Mr *Blou* submitted they were not – I was taken to the facts in *Highveld Steel* during the hearing (where I had access to the judgment via Jutastat), and Mr *Blou* correctly submitted that,

both on the facts and on the reasoning employed in *Highveld*, it was not a prerequisite for legal proceedings to be pending to render a withholding decision under s37D lawful, and that in fact in most cases this would not be possible by the time the withholding was required, on the reasoning in *Highveld*;

(b) whether the ‘misconduct’ referred to in the section was to be read *eiusdem generis* with the references to fraud and dishonesty, as importing such an element as a requirement, to which Mr *Blou* conceded in the affirmative, and whether, despite the fact that the charges in the charge sheet advanced against Letau had not expressly referred to fraud or dishonesty (an aspect of the merits Mr *Alcock* specifically pressed on me), the material that served before the fund, as set out in the answering affidavit, did, which was confirmed by Mr *Blou*, not disputed by Mr *Alcock* in reply, and confirmed by a consideration of the answering papers employing the tests applicable to motion proceedings for final relief.

REASONS INADEQUATE

[10] It is true, however, that my reasons expressed in my *ex tempore* judgment did not traverse the merits. This was for the simple reason that doing so would have been entirely *obiter*, in circumstances where an essential element of final interdictory relief had not been made out.

[11] I do not read the recent judgment of the Constitutional Court in *Vodacom (Pty) Ltd v Makate & Another* 2025 JDR 3389 (CC) as laying down a principle or rule that a judge at first instance may not confine his or her judgment and reasons to a decisive element in the case before him or her, without traversing all other aspects that are rendered *obiter* by the decisive element. Mr *Shamase*, who appeared for Letau in the application for leave, that was argued from 10:00 uninterrupted until lunch time on Friday 22 August, correctly did not suggest otherwise.

WRONG TEST APPLIED – ALTERNATIVE REMEDY

[12] The application for leave to appeal, and the argument on it, suggested that I had incorrectly applied a test, namely the need for the exhaustion of alternative remedies, that was applicable to review applications, which this was not.

[13] This entirely misconstrued the relevance of the availability of alternative remedies in the case and in my reasons offered.

[14] Letau sought final interdictory relief on motion, by way of the utmost urgency (giving the respondents a day in which to answer). To succeed on this, a strong case would be required that there was no adequate alternative remedy available other than to approach the court for final interdictory relief (and to do so with the utmost urgency). Without making out such a case, a final interdict was a non-starter.

[15] This was why I pressed on Mr *Alcock* at the hearing on 1 August the need for him to justify Letau's not having availed herself of the ability to approach the Pension Funds Adjudicator with a complaint about the fund's decision to withhold, instead of approaching a court directly, and on such terms of extreme urgency. His reluctance to answer had me point out to him that it was important to me that he give me his full answer to this, as this was the issue in his case that most concerned me.

[16] Mr *Alcock* offered two justifications only:

(a) the authority of *Cape Town Municipality v South African Local Authorities Pension Fund & Another* 2014 (2) SA 365 (SCA), a decision that was handed up and debated during the hearing, in particular para 29 in which it was pointed out that the courts and the Pension Funds Adjudicator enjoyed concurrent jurisdiction and that once the court's jurisdiction had been engaged, that of the Adjudicator stood to defer; and

(b) the financial plight said to be faced by Letau.

[17] The decision in *Cape Town Municipality* does not address the problem that faced Letau. The problem is the availability of adequate alternative relief from the Pension Fund Adjudicator. This is a serious problem for an interdict, in particular a final one such as sought in this case, let alone one sought on such extreme urgency. The existence of concurrent jurisdiction does not address this problem at all, nor does it render final interdictory relief from a court, sought on an extremely urgent basis, appropriate in the teeth of the existence of such

alternative avenues to be able to achieve the same relief as that sought from the court.

[18] The financial plight was also insufficient. Letau's founding affidavit indicated that at some point, not identified as to when, Letau approached persons at the Adjudicator's office who advised that the process before the Adjudicator would take four months to be resolved. No documents were attached in this regard. The affidavit stated that Letau had been suspended for the better part of 2024, on full pay, pending a threatened disciplinary hearing that dragged its feet in being called. After Letau initiated a complaint at the CCMA, she was then called to attend a hearing, which was postponed to January 2025. During all this time she was suspended on full pay. She resigned instead of attending the hearing. The full reason for the resignation is captured thus in her founding affidavit:

"Given the amount of undue stress that I had endured regarding the whole matter I elected to not attend the hearing I instead resigned from the employ of the Third Respondent."

[19] In the circumstances, the charge in the application for leave to appeal that *"the learned judge failed to analyse the Applicant's reasons for resigning which reasons are justiciable in law"* is puzzling, to put it at its mildest.

[20] In the heads of argument uploaded before the leave application was argued, this is expanded upon as contending that a case had been made out for constructive dismissal, and that this ought to have been considered in the

judgment. The founding affidavit breathed not a word about constructive dismissal. It mentioned only “*stress*” in the context of the resignation, the full explanation of which is set out above. There had also not been any complaint of a constructive dismissal at any point between Letau’s resignation and the hearing of the leave to appeal application. There is no merit at all in this contention.

[21] In the heads on leave to appeal, and before me in argument, I was referred to the judgment in *Voltex (Pty) Ltd v Bidvest South Africa Retirement Fund & Others* [2025] ZAGPPHC 368 (GP). In that case, the employer sought urgent interim relief against a pension fund which was on the point of paying out a pension, for the funds not to be paid out pending the determination of an action to be instituted by the employer. Strijdom J granted the interim relief. The submission before me was that Strijdom J had not required the employer to exhaust remedies such as approaching the Pension Funds Adjudicator, and why should an employee then be burdened with such a requirement.

[22] The respective positions concerning adequate alternative relief in *Bidvest* and here differ starkly. In *Bidvest*, the employer was faced with a fund that was on the point of paying out, and one that had expressly indicated it would do so unless compelled by a court order not to do so. This weighed heavily in the assessment by Strijdom J of the existence of an adequate alternative remedy.¹ It could not seriously be contended that the employer in *Bidvest* could obtain adequate redress from the Pension Funds Adjudicator to

¹ *Bidvest* paras 30 to 36.

avoid the imminent and irreparable harm that the fund was threatening to inflict by paying out the funds.

[23] In the instant case, one is not dealing with a preservation of the *status quo* as in *Bidvest*, nor with relief that cannot be obtained from the Pension Funds Adjudicator, but with final relief ordering the fund to pay out the pension. That relief is equally available from the Pension Funds Adjudicator. It is only the ostensible urgency of the need for the pay-out that could conceivably render such alternative relief inadequate. Which is why it was important to consider the self-created nature of that urgency in the circumstances.

[24] The matter of urgency in the present case is accordingly tightly bound up with the issue of an alternative remedy. On the papers, Letau had already threatened in May to approach a court if her pension were not paid out to her. This threat was repeated in early June, just before the decision, and after engagement with the fund on the pending decision. The fund's decision to withhold was communicated on 4 June 2025. This application was launched almost two months later, affording the respondents a day in which to answer. I have already alluded to the complete failure on the part of Letau's team to secure a Caselines file for the matter, this having been procured by the employer's team on 28 July. Technical difficulties are blamed for this in the replying affidavit. The matter was enrolled in such a fashion that the likelihood that it would be properly answered and heard was minimal. I read the papers as they developed, and heard the matter, for the best part of the morning of 1 August. The employer answered and dealt with it as best it could. This was a significant indulgence to be afforded to any applicant in the circumstances. On

the governing directives, a striking with an order *de bonis propriis* would have been entirely justified.

[25] I pressed Mr *Alcock* at the hearing to offer a justification for coming to court on such a timetable, and in particular affording the respondents one day to answer the application. His justification for the urgency was Letau's plight caused by her creditors (caused by her resignation). As for the justification for affording the respondents one day in which to answer, Mr *Alcock* offered by way of justification only that this was his usual practice. I need not belabour with indignant superlatives the extent to which this was not an adequate justification.

[26] At the hearing for leave to appeal, Mr *Shamase* submitted that *Luna Meubels*² laid down a rule that one needed to bring an urgent application on at least seven days' notice, and that, apart from saying a respondent had to be afforded at least two hours to answer, there were no rules as to the time needed to be afforded to a respondent to answer. The submission was that the application complied with these rules.

[27] It is unnecessary to belabour the degree to which this misconstrues the principles applicable to making out and justifying a case for urgency. One needs to justify the degree of urgency employed, including the time chosen to afford the respondent to answer. This was not done here. There was no attempt at all to do so here.

[28] I am of the view that there is no reasonable prospect that an appellate court could find that a proper case had been made out for the absence of an

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin & another* 1977 (4) SA 135 (W).

adequate alternative remedy, in the circumstances of this case, an essential element in the final interdictory relief sought by Letau.

[29] There is therefore no reasonable prospect that Letau would succeed on appeal.

MERITS

[30] If I were persuaded that there was a reasonable prospect that another court would find, on the tests applicable on motion for final relief, that Letau had established a case that the fund was not entitled to withhold her pension under s37D and the *Highveld Steel* test, I may have considered granting leave despite the weakness of a case for the absence of an adequate alternative remedy.

[31] This was also why I pressed the two issues on the merits referred to in paragraph 9 above at the hearing on 1 August. Had it been so, for example, that a legal prerequisite for lawful withholding had clearly and undeniably been absent, that might have been a heavy factor to consider despite the presence of an adequate alternative remedy (i.e. despite the fact that such a case could also be presented to the Pension Funds Adjudicator). This, however, was not the case.

[32] At the hearing on 1 August, Mr *Blou* also pointed out that, for Letau to succeed on the merits, she would have to succeed, in the teeth of *Plascon-Evans*, to show that the fund could not reasonably have decided to withhold her pension. It would not be sufficient for her to show that, all things and all evidence

considered, the correct assessment would be a decision not to withhold. Mr *Alcock* did not take issue with this submission in reply.

[33] The issue of the existence of an alternative remedy in approaching the Pension Funds Adjudicator also brings to the fore the different tests that would be applicable in such a complaint and in the adjudication of a demand for a final interdict in court. The Pension Fund Adjudicator would be able to reconsider the decision of the fund to withhold, and be persuaded by evidence that it ought not to withhold. This was then in turn subject to an appeal, in the form of a full re-hearing, to the Financial Services Tribunal or to a court, again assessing the evidence for and against a withholding of the pension. An application to court for a final interdict, however, would need to make out a clear right that the fund could not lawfully withhold the pension.

[34] On the application of the tests applicable in motion proceedings, there is in my view no reasonable prospect that an appellate court could find that a clear case sufficient for final interdictory relief had been established, that the fund was not entitled, with the material that the answering affidavit set out as having been placed before the fund, to have exercised its discretion to withhold the pension under s37D.

COSTS

[35] I have set out above some respects in which the application was, objectively viewed, brought vexatiously urgently. Quite apart from the fact that the application was brought almost two months after the decision it attacked, and enrolled for hearing a week later, there could never have been a justification

for affording the respondents a day in which to answer the application. The manner of its prosecution was such as to cause maximum prejudice to the convenience of the employer to answer it and to the court to deal with it properly. It would in my view have been entirely justified to grant a punitive order *de bonis propriis* in the circumstances, when regard was had to the directives applicable to this court, and also in particular to the justification that had been offered at the hearing for having afforded the respondents a day to answer.

[36] In the exercise of my discretion in respect of costs, I believed there to be more than adequate justification for an order on an attorney and client scale,³ including for the costs reserved for the day of 29 July. I was not inclined to make an order *de bonis propriis*, nor was one sought. This is something that can be taken up between Letau and her attorneys.

[37] I do not believe there is a reasonable prospect that an appellate court would interfere with that cost order in these circumstances.

FINAL OBSERVATIONS

[38] The application for leave to appeal is laced with a degree of gratuity, and even menace,⁴ that is highly unfortunate and entirely unnecessary. It makes unwarranted assertions about my not having read the application as a whole, perhaps because of its own unfair and misguided assessment arising from the

³ The additional reference to scale C is inapplicable in an attorney and client award.

⁴ “[T]he learned judge spectacularly failed...”.

degree to which the manner of its prosecution had made such a task more difficult than it would otherwise have been. It alleges, for example, incorrectly, a failure to have allowed engagement on the merits when there was engagement on the merits, as an assessment of the transcript would reveal.

[39] At the hearing of the application for leave to appeal, Mr *Shamase* advanced none of the grounds suggesting that there had not been a fair hearing, or that there had been a total failure of mind. I must also additionally record my appreciation of the fact that Mr *Shamase*'s presentation of the application on 22 August was exemplary in its conduct. While I was not persuaded that leave to appeal ought to have been granted, I was grateful, in the circumstances, for the manner in which Mr *Shamase* conducted the application on 22 August 2025.

[40] In the circumstances, the application for leave to appeal is dismissed with costs, on scale B, including the costs of two counsel where engaged.

Frank Snyckers

SNYCKERS AJ

For applicant: S Shangase

Instructed by: Shamase Ramotswedi Attorneys, Alberton

For third respondent: J Blou SC
MN Ndlovu

Instructed by: Werksmans, Sandton