

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022-4843

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
8 August 2025	
DATE	SIGNATURE

In the matter between:

THEMBISILE INGRID MABUZA

Applicant

and

SANLAM LIFE INSURANCE LIMITED

First Respondent

GOVERNMENT EMPLOYEE PENSION FUND

Second Respondent

JUDGMENT

CRUTCHFIELD J

- [1] The applicant, Thembisile Ingrid Mabuza, seeks relief in terms of an amended notice of motion in the following terms:

- a. That the transfer of the applicant's resignation benefit in the amount of R506 434.19 from the second respondent to the first respondent on 31 May 2019 be set aside;
 - b. That the first respondent, Sanlam Life Insurance Limited, pay the resignation benefit of R506 434.19 ("the resignation benefit"), together with interest thereon to the second respondent, the Government Employee Pension Fund ("the Fund");
 - c. That the second respondent process afresh the applicant's resignation from the second respondent together with ancillary relief thereto.
- [2] The applicant did not appear at the hearing of the matter before me on 4 August 2025, notwithstanding the second respondent having served the notice of set down in respect of the hearing on the applicant's attorneys of record. Service by email between the parties took place by agreement between them.
- [3] The applicant issued the application during February 2022. Subsequent to the applicant failing to deliver a replying affidavit and heads of argument, the second respondent readied the matter for hearing and placed the matter on the roll. The first respondent delivered a notice to abide the decision of this Court subsequent to the applicant amending the notice of motion to reflect the relief set out above.
- [4] The second respondent, the Fund, persists in its opposition to the application and seeks an order that the matter be dismissed with costs on scale B. The second respondent is a pension fund duly registered as such in terms of the Government Employees Pension Law, 21 of 1996. The second respondent opposes the application on the basis that the amended relief that the applicant seeks conflicts with the rules of the second respondent and is not capable of enforcement. The second respondent describes the amended relief as "incompetent, misdirected and unsustainable".
- [5] The second respondent is governed and bound by the provisions of the Government Employees Pension Law, 1996 and the rules of the second

respondent. Any act outside of the Act or rules by the second respondent will be *ultra vires* and void. So too are members of the second respondent or any party bringing a claim against the second respondent, bound by the provisions thereof.

- [6] The facts of the application, briefly stated, are that the applicant was previously employed by the Department of Communications ("the Department"), pursuant to which the applicant became a member of the Fund from 1 December 2011. The applicant's employment with the Department terminated due to her resignation, on 31 December 2018. As a result of the termination of the applicant's employment with the Department, the applicant's membership of the Fund ended. Accordingly, the applicant notified the second respondent of her intention to withdraw from the Fund and to transfer her actuarial interest in the Fund to an approved retirement fund underwritten by Sanlam.
- [7] The applicant signed the required documentation as did the representative of the Department. The second respondent processed the applicant's termination of membership from the Fund during February 2019.
- [8] The applicant chose to transfer the full amount of her benefit to an approved external determined fund with no benefit being paid to the applicant. The second respondent effected payment of the applicant's benefit to Sanlam on 29 May 2019.
- [9] Subsequently the applicant sought to obtain the entire benefit alternatively a portion thereof, for her use. In accordance therewith, the applicant claims the relief in the amended notice of motion in terms of this application.
- [10] The applicant, by her signature of the necessary forms in respect of her resignation from the Fund and the transfer of her benefit, indicated that she understood the options available to her and agreed that her choice of option B was irrevocable after the date of termination of her service with the Department.
- [11] The signature of a representative of the Department to the relevant documentation indicated that the employer declared that the Department had

provided the applicant member with explanatory guidelines regarding her withdrawal options. The applicant and a representative of the Department both signed the necessary forms.

- [12] The applicant, in addition, provided the second respondent with the required details of the approved fund to which the applicant wished the second respondent to transfer her benefit in the Fund.
- [13] The applicant acknowledged by her signature of the form, that she had been informed of the conditions and implications of her choice to transfer her actuarial interest to an approved fund.
- [14] The second respondent duly processed the transfer of the applicant's actuarial interest in terms of the applicant's election. That election by the applicant was pursuant to the applicant's resignation from the Department and that election by the applicant was binding and irrevocable.
- [15] The applicant, in terms of the relief claimed by her in the amended notice of motion, envisages the transfer of the applicant's resignation benefit of R506 434.19 together with the interest thereon, from the first respondent to the second respondent and that the second respondent thereafter processes the applicant's resignation from the Department afresh.
- [16] The relief sought by the applicant conflicts with the provisions of the Government Employees Pension Law ("the GEP Law") and the rules thereunder, both of which bind the second respondent and the applicant in terms of s 29.5 of the GEP Law.
- [17] Prior to the applicant's resignation from the Department, the second respondent operated within a tripartite relationship comprising the applicant *qua* member and the employer, the Department.
- [18] The second respondent is a defined benefit fund, the receipt of funds by the second respondent is pursuant to the involvement of the employer. The second respondent cannot, in the absence of the employer, which is not a

party to this application, receive funds as envisaged by the applicant in the amended notice of motion from the first respondent.

- [19] The applicant's election in respect of her pension benefit, upon her resignation, was irrevocable. The applicant acknowledged her awareness thereof by way of her signature to the documentation aforementioned.
- [20] The second respondent's status as a defined benefit fund means that the second respondent receives money from employers, in this case the Department. The second respondent cannot receive funds from the first respondent. The second respondent does not have a mechanism in its rules enabling it to receive funds from the first respondent. The second respondent processed the payment of the applicant's benefit in terms of the documents received from the Department and signed by the applicant and on behalf of the Department.
- [21] The second respondent cannot process afresh the applicant's resignation and her actuarial interest given that it has been more than six years since the applicant withdrew from the second respondent and the second respondent processed her transfer of her actuarial interest.
- [22] The applicant can only resign from the Department once and withdraw from the Fund pursuant to that resignation, once. It is not possible for the Fund, a defined benefit fund, to go back in time, more than approximately six years, and process afresh the applicant's actuarial interest. In addition, the Department would have to co-sign the relevant documentation, which it has not done. In any event, that is not the relief that the applicant seeks and the Department is not a party to this application.
- [23] The second respondent, in order to give effect to the relief that the applicant claims, would have to readmit the applicant as a member of the second respondent. The readmission of the applicant into the Fund, as a member of the second respondent, can only be effected through a government employer, thereby affording the applicant "*government employee*" status as required for eligibility of admission into the Fund.

- [24] There is no basis on the facts as they stand currently, for the applicant to be readmitted as a member of the second respondent. The applicant is not employed by a participating employer and the applicant's previous employer, the Department, is not a party to the proceedings.
- [25] The second respondent's rules comprise delegated legislation. The GEP Law and the rules are binding on the Fund, its members and any employer. See in this regard *Chemical Industries National Provident Fund v Sasol Limited*¹ and *Gerson v Mondi Pension Fund & Others*². The rules do not permit the second respondent to receive the envisaged funds from the first respondent and process the applicant's resignation benefit afresh.
- [26] The second respondent, if it gives effect to the relief sought by the applicant, such conduct would amount to an illegality.
- [27] The second respondent can only act within the ambit of its rules. Trustees of the Fund may not act outside of the rules. If the power is not conferred by the rules, the Fund cannot conduct itself outside of those rules. See in this regard *Tek Corporation Fund & Others v Lorentz*³. The rules are delegated legislation. Any conduct outside of the second respondent's rules would amount to an illegality.
- [28] Accordingly, the relief sought by the applicant is not capable of compliance, would not be effective and not capable of execution as required of any court order. Such an order would violate the requirements of valid court orders as articulated by the Constitutional Court in *Eke v Parsons*.⁴
- [29] Accordingly, by reason of the abovementioned, the application stands to be dismissed with costs and I intend to grant such an order. In respect of the scale of costs, the second respondent seeks costs on scale B. The second respondent's opposition to the application was necessary, of assistance to this Court, of some complexity and importance given that the relief claimed by the applicant conflicts with the rules of the Fund and the GEP Law. Accordingly,

¹ *Chemical Industries National Provident Fund v Sasol Limited* 2014 (4) SA 205 (GJ) at [43].

² *Gerson v Mondi Pension Fund & Others* 2013 (6) SA 162 (GST) at [9].

³ *Tek Corporation Fund & Others v Lorentz* 1999 (4) SA 884 (SCA) at 889G.

⁴ *Eke v Parsons* 2016 (3) SA 37 (CC) at [64].

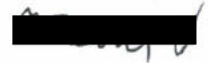
costs on scale B are justified by the second respondent's opposition and the nature of the matter.

[30] In respect of the second respondent's request for condonation for the late delivery of its answering papers, the second respondent sets out the reasons why the second respondent's answering affidavit was delivered out of time. Those reasons are reasonable and sufficient for the purposes of condonation in the circumstances of this application. Accordingly, I grant condonation for the late delivery of the second respondent's answering affidavit.

[31] By reason of the aforementioned, I grant the following order:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the application on scale B.
3. Condonation is granted to the second respondent in respect of the late delivery of the second respondent's answering affidavit.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

No appearance.

For the First Respondent:

No appearance.

For the Second Respondent:

Adv L Peter instructed by Norton Rose
Fullbright South Africa.

Date of the hearing:

4 August 2025.

Date of the judgment:

8 August 2025.