

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 132345/2023

(1) REPORTABLE: YES/NO

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

(3) REVISED YES/NO

SIGNATURE

DATE: 10 October 2025

In the matter between:

THE DISCOVERY LIFE PROVIDENT UMBRELLA FUND First applicant

DISCOVERY LIFE LIMITED Second applicant

and

THE FINANCIAL SERVICES TRIBUNAL First respondent

P.J. VELDHUIZEN N.O. Second respondent

THE PENSION FUNDS ADJUDICATOR Third respondent

BHEKISIWE BESLINA SHANDU Fourth respondent

JUDGMENT

P.A. SWANEPOEL, AJ

Introduction

[1] This is an application by the first and second applicants in which they seek the review and setting aside of the decision by the Financial Services Tribunal (“the Tribunal”) dated 01 September 2023, in terms whereof the Tribunal concluded that the first and second applicants lack the necessary *locus standi* to make application to the Tribunal in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 (“the FSRA”) against a decision taken by the third respondent (the Pension Funds Adjudicator) (“Adjudicator”) in terms of section 30M of the Pension Funds Act, 24 of 1956 (“the PFA”).

[2] The first applicant is Discovery Life Provident Umbrella Fund (“the Fund” or “first applicant”) and is registered and approved and subject to the provisions of the PFA.

[3] The second applicant is Discovery Life Limited (“Discovery Life” or “second applicant”), the appointed section 13B of the PFA administrator, which provides administration services to the Fund.

[4] At the hearing of the opposed application, counsel for the applicants (correctly in my view) conceded that no relief was sought on behalf of the second applicant, in circumstances where the deponent to the applicants’ founding affidavit (Mr. Wayne Hiller van Rensburg, the principal officer of the Fund), clearly only indicated that he is authorised to depose to the affidavit on behalf of the Fund. Counsel for the applicants and the fourth respondent both indicated during oral argument that the involvement of the second applicant, as a cited party to the proceedings, did not bring about legal costs and that, in the circumstances, irrespective of the outcome of the matter, no costs order should follow as a consequence of the fact that the second applicant was included as a party to the proceedings.

[5] The Adjudicator is the statutory ombud as defined in section 1(1) of the FSRA and is established as such in terms of the PFA.

[6] The fourth respondent is Ms. Bhekisiwe Beslina Shandu, the complainant in the complaint referred to the Adjudicator in terms of section 30A of the PFA.

[7] It is common cause that the fourth respondent is the mother of Mr. Celenkosini Sikhakhane, the late member of the Fund, who passed away on 10 August 2020 (“the deceased”). The deceased was not married and the Fund was informed that the deceased had one son, Mr. J[...] M[...] (“J[...]”), aged 6 at the time.

[8] It is further common cause that the fourth respondent is the deceased’s mother, whom he took care of during her lifetime by giving her R4 000 per month cash in hand. The Fund established during an investigation performed in terms of section 37C of the PFA (which concerns the disposition of pension benefits upon the death of a member) that the fourth respondent was at the time 61 years old and unemployed. The Fund has further established that J[...]’s mother indicated that the deceased would give her R800 per month for the maintenance of J[...] and further that J[...] was on the deceased’s medical aid. It is also of relevance to mention that the Fund established as part of its investigation that the deceased’s only financial dependents were J[...] and his mother, the fourth respondent.

[9] As part of the Fund’s obligations under section 37C of the PFA, it recommended that the fourth respondent is to receive 60% of the deceased’s pension benefits whilst J[...] is entitled to 40% thereof.

[10] Pursuant to the Fund’s section 37C allocation and recommendation, the fourth respondent, as complainant, submitted as part of her complaint to the Adjudicator that there ought to be no allocation to the minor child, J [...], in circumstances where the mother of J[...] (who is not a party to these proceedings) unequivocally indicated that she made no claim for any of the deceased’s pension benefits and further that the deceased was not the biological father of J [...], and that she (the mother) will not consent to paternity tests as there is no need for such tests in circumstances where she already stated under oath that J[...] is not the biological child of the deceased.

[11] Thus, in these circumstances the complainant’s complaint to the Adjudicator was considered. It was amongst others held by the Adjudicator that the board of the Fund failed to conduct a thorough investigation and consequently did not take into account relevant factors and ignored factors to reach an equitable distribution, and further that “[T]he board’s benefit decision stands to be set aside” (para 5.14 of the

Adjudicator's determination dated 30 March 2023). The Adjudicator then proceeded to set aside the decision of the board of the Fund in allocating the death benefit and ordered the Fund to carry out a paternity test in respect of J[...] with the necessary consent from his mother within eight weeks of the determination.

[12] The Adjudicator further ordered that in the event of the necessary consent for a paternity test not forthcoming, the board must review its decision and exclude J[...] from the allocation of the death benefit, and in the event of a paternity test consent being provided and paternity being confirmed in respect of the deceased, that the board should consider J[...] in the allocation of the death benefit as the legal dependent of the deceased. Further, should the paternity test result exclude the paternity of the deceased, the board should review its decision in respect of the allocation of the death benefit and establish the extent of J[...]’s financial dependency of the deceased as a factual dependent.

[13] The Fund and the second applicant made application to the Tribunal for a reconsideration of the Adjudicator's decision. Notably, in terms of section 230(1)(b) of the FSRA, a reconsideration of a decision in terms of Part 4 of that Act constitutes an internal remedy as contemplated in section 7(2) of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").

[14] It is against the decision of the Tribunal dated 01 September 2023 (in terms whereof it was held that the applicants' application be dismissed on the basis that they lack the necessary *locus standi* to bring the application) that the present relief sought by the first applicant is aimed.

[15] The applicants, in their notice of motion dated 13 December 2023, also sought declaratory relief to the effect that "... *the purported decision of the Second Respondent (Mr. P J Veldhuizen N.O., a member of the Tribunal who signed the aforementioned decision on behalf of the Tribunal) is unlawful and ultra vires in that it was not made by a panel lawfully constituted in terms of section 234 of the FSRA*". It bears mentioning that counsel for the applicants indicated during oral argument that the applicants do not persist with that relief.

[16] In addition to the aforementioned, the applicants' notice of motion (in prayer 3) contemplates reconsideration and review and setting aside relief in respect of the decision of the Adjudicator dated 30 March 2023 in which she simultaneously dismissed the complaint against the first applicant and yet proceeded to review and set aside the decision of the first applicant, and in the alternative to such relief, that the matter be referred back to a properly constituted panel of the Tribunal *"in order for it to properly deal with the Applicant's [sic] reconsideration application"*.

[17] Counsel for the applicants conceded during argument that the question regarding the *locus standi* of the applicants to make application for reconsideration to the Tribunal, under the rubric of section 230 of the FSRA, will be dispositive of the present application, on the basis that the application falls to be dismissed if it is to be held that the applicants indeed lacked the requisite *locus standi* to seek reconsideration by the Tribunal.

[18] In the founding affidavit to the present application it is alleged (paras 24 to 31 thereof) that the Tribunal's decision was arbitrary and irrational. This attack is based on the applicants' contention that in other recent reconsideration application outcomes the Tribunal *"accepted that a pension fund and its administrator have locus standi to challenge a decision made by the Adjudicator in relation to the distribution of death benefits in terms of section 37C of the PFA and proceeded to uphold the reconsideration application by ... (a mentioned retirement annuity fund)"*. In this respect it is contended in the founding affidavit that such inconsistency affects the confidence that the public might have and that, as a *"creature of statute"*, the Tribunal is subject to the principle of legality and must act fairly, lawfully and rationally at all times.

[19] It remains therefore to be determined whether the applicants' contentions regarding its asserted *locus standi* in respect of the section 230 application for reconsideration by the Tribunal (in terms of the FSRA) are correct.

19.1 Although the Fund bemoans the correctness of the Adjudicator's findings (in particular insofar as it was held by the Adjudicator that the fourth respondent's complaint cannot succeed and that thereafter the Adjudicator proceeded to

uphold the complaint by reviewing and setting aside the Fund's decision), it remains necessary to consider and pronounce upon the *locus standi* of the applicants in their application for reconsideration to the Tribunal.

- 19.2 The first part of the Fund's contention is focused on alleged inconsistency by the Tribunal, with reference to other (recent) decisions in which it is asserted by the Fund that the Tribunal held that the Fund indeed had the requisite *locus standi* (founding affidavit, paras 24 to 31).
- 19.3 In paragraph 54 of the founding affidavit reference is made to section 235 of the FSRA, which provides that any party to proceedings in an application for reconsideration of a decision (by *inter alia* the Adjudicator) who is dissatisfied with an order of the Tribunal, may institute proceedings for a judicial review of the order in terms of PAJA or any applicable law. Although this right can hardly be disputed, it remains to be determined whether the applicants had the requisite *locus standi*, in the first instance, to make application for reconsideration to the Tribunal of the Adjudicator's decision.
- 19.4 In the founding affidavit it is further asserted (at para 64) that: *"(T)he FSRA does not define an aggrieved person but a person is defined to include a 'natural person or a juristic person, and includes an organ of state'".*
- 19.5 On this basis it is alleged in the founding affidavit that the Fund, being a juristic person, *"thus falls squarely within this definition and if aggrieved with the Adjudicator's determination is thus empowered, as provided for in section 230, to have the determination be considered by the ..."* Tribunal. This allegation is purportedly bolstered by the contention that indeed the first applicant (as a private entity whose decision was reviewed and set aside by the Adjudicator and has in turn been directed to expend time and resources in conducting paternity tests and directed to make a fresh decision on the basis of those tests), is indeed a person aggrieved by the decision of the Adjudicator.

[20] The first, second and third respondents (the Tribunal, Mr. P.J. Veldhuizen N.O., who signed the Tribunal's decision on its behalf and the Adjudicator) do not oppose any of the relief sought in the present application. The fourth respondent is legally represented and has delivered an answering affidavit.

[21] In the fourth respondent's answering affidavit, her first focus is related to the applicants' erstwhile attack on the alleged improperly constituted tribunal. As mentioned hereinabove, counsel for the first applicant indicated that it does not proceed with the declaratory relief sought in prayer 2 of its notice of motion.

[22] Other than the aforementioned, the fourth respondent, in her answering affidavit, failed to squarely address the issue of the applicants' *locus standi* in their application for reconsideration to the Tribunal.

[23] It is provided in section 230(1)(a) of the FSRA that:

“A person aggrieved by a decision may apply to the Tribunal for a reconsideration of the decision by the Tribunal in accordance with this part.”

[24] In terms of section 230(1)(b) a reconsideration of a decision in terms of Part 4 of that Act constitutes an internal remedy as contemplated in section 7(2) of the PAJA. In section 7(2)(a) of the PAJA it is provided that (subject to section 7(2)(c)) *“no court or tribunal shall review an administrative action in terms of that Act unless any internal remedy provided for in any other law has first been exhausted”*.

[25] The first applicant contends that it was a “person aggrieved” by the decision of the Adjudicator in terms of section 30M of the PFA and that it therefore has *locus standi* to apply for reconsideration to the tribunal under section 230(1) of the PFA.

[26] In considering whether the first applicant is indeed an aggrieved person in the circumstances of this matter, I find myself in respectful agreement with the reasoning set forth by the deputy chairperson of the Tribunal as contained in the *“reasons in terms of Uniform Rule 53(1)(b)”*. Therein the deputy chairperson referenced the decision by the then Appellate Division (now the Supreme Court of Appeal) in *Francis George Hill Family Trust v SA Reserve Bank* 1992 (3) SA 91 (AD). In that matter, although in a different context (notably that of a shareholder of a private company dissatisfied with the attachment of money held in the bank account of the private company concerned, and seeking to derivatively challenge the attachment by the South African Reserve Bank of the private company's money), held that the

words “*person aggrieved*” signify someone whose legal rights have been infringed, thus “*a person harboring a legal grievance*” (*Francis George Hill Family Trust* judgment at 102C-F), and that a pecuniary interest is insufficient to qualify.

[27] In this sense it becomes necessary to consider the bases upon which the applicants’ asserted *locus standi* in their founding affidavit deposed to by the first applicant’s principal officer.

[28] The fact that any party to proceedings (in an application for reconsideration of a decision) who is dissatisfied with the order of the Tribunal may institute proceedings for a judicial review of the order in terms of the PAJA or any applicable law, should be contrasted with the particular *locus standi* provision contained in section 230 aforementioned. In terms of the latter section, it is provided (as already indicated) that a “person aggrieved” by a decision may apply to the tribunal for a reconsideration of the decision by that tribunal in accordance with Part 4 (reconsideration of decisions).

[29] Although the definition of the word “person” in section 1 of the FSRA includes a natural person or a juristic person and includes an organ of state, it remains to be determined whether the Fund (first applicant) is indeed “a person aggrieved by a decision” as contemplated in section 230(1)(a) of that Act.

[30] In their founding affidavit, as regards the *locus standi* of the Fund, the applicants focused their attention on their purported *locus standi* in the present application. They did so in paragraph 54 of the founding affidavit where it is stated:

“In terms of section 235 of the FSRA, any party to proceedings on an application for reconsideration of a decision who is dissatisfied with an order of the FST [a reference to the Tribunal in the present matter] may institute proceedings for a judicial review of the order in terms of PAJA or any applicable law.”

[31] In the subsequent paragraphs contained in the applicants' founding affidavit, it focused on their dissatisfaction with the Adjudicator's determination and the Fund's particular dissatisfaction with the Adjudicator's decision.

[32] The highwater mark of the submissions made on behalf of the applicants, in relation to their asserted *locus standi* in their application for reconsideration made to the Tribunal, is contained in paragraphs 64 to 67 of their founding affidavit:

- “64. The FSRA does not define an aggrieved person but a person is defined to include a ‘natural person or a juristic person, and includes an organ of state’.
65. The Fund being a juristic person thus falls squarely within this definition and if aggrieved with the Adjudicator's determination is thus empowered, as provided for in section 230, to have the determination reconsidered by the FST.
66. In any event, it cannot be sensibly suggested that a private entity whose decision has been reviewed and set aside and has in tum [sic] been directed to expend time and resources conducting unnecessary paternity tests and making a fresh decision on the basis of those tests is not capable of being aggrieved by such a decision.
67. The finding by the Second Respondent that the Fund does not qualify as an aggrieved person therefore constitutes an error of law and materially influenced his decision.”

[33] In addition, in paragraph 68 of their founding affidavit, it was stated on behalf of the applicants as follows:

“In terms of section 235 of the FSRA a party to the proceedings before the FST for reconsideration may institute proceedings for a judicial review of the FST's order in terms of the PAJA or any other applicable law which this application is.”

[34] As stated above, one must distinguish between the right of a person aggrieved by a decision of the Adjudicator to apply to the Tribunal for reconsideration

of the decision by the Tribunal (on the one hand) and the right of a party to proceedings on application for reconsideration of a decision who is dissatisfied with an order of the Tribunal in terms of section 235 to institute proceedings for judicial review of the order (on the other hand). Put otherwise, it is of no assistance to the applicants to argue that their *locus standi* to institute proceedings for judicial review of an order of the Tribunal serves to qualify the applicants (in the first instance) to make application to the Tribunal for reconsideration of a relevant decision, as contemplated in section 230(1)(a) of the FSRA.

[35] Furthermore, I find that the applicants have failed to show that they (and in particular the first applicant) have a legal interest in the allocation and the determination made by the Adjudicator. It follows therefore that the question whether the applicants qualified, in the first instance, as contemplated in section 230(1)(a) of the FSRA, to apply to the Tribunal for a reconsideration of the decision by the Adjudicator, must be answered in the negative. In my view, the Tribunal correctly dismissed the applicants' application for reconsideration on the basis that they lacked the necessary *locus standi*.

[36] The review relief sought in terms of prayer 3 of the applicants' notice of motion is patently premature insofar as it seeks to (as against the Adjudicator) short circuit the statutory prescribed sequence of events as described in paragraph [24] above.

[37] It follows that the relief sought in prayers 1 and 3 of the applicants' notice of motion cannot be granted. As mentioned hereinabove, the applicants did not persist with the declaratory relief sought in prayer 2 of their notice of motion, the effect of which is that the alternative relief sought in prayer 4 (referring the matter back to a properly constituted panel of the Tribunal) falls by the wayside.

Order

[38] In the circumstances I grant an order in the following terms:

1. The applicants' application is dismissed.

2. The first applicant is ordered to pay the fourth respondent's costs. The scale of fees contemplated by sub-rule (3) of Uniform Rule 67A shall be Scale A, as contemplated in Uniform Rule 69(7).

P.A. SWANEPOEL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulating to the parties and/or the parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 17h55 on 10 October 2025.

Date of hearing : **05 May 2025**
Date of judgment : **10 October 2025**

Appearances:

Counsel for applicants : Kameel Magan
Attorneys for applicants : Shepstone & Wylie Attorneys

Counsel for fourth respondent : M Webstock
Attorney for fourth respondent : JC van der Merwe Attorneys