



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

Not reportable

Case no: 2916/2024

In the matter between:

THE MEC: FREE STATE DEPARTMENT FOR HEALTH

APPLICANT

and

MOTSUMI KRISJAN POLORI

FIRST RESPONDENT

PHOKO FRANCIS STUURMAN

SECOND RESPONDENT

GOVERNMENT EMPLOYEES PENSION FUND

THIRD RESPONDENT

GOVERNMENT PENSIONS ADMINISTRATION AGENCY **FOURTH RESPONDENT**

Neutral citation: *MEC: Free State Department for Health v Polori and Others*
(2916/2024) [2025] ZAFSHC 343 (31 October 2025)

Coram: Daffue J

Heard: 21 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 31 October 2025.

Summary: Application by employer to interdict pension fund from paying pension benefits to two former employees pending finalisation of action to claim damages – section 37(D)(1)(b) of the Pension Funds Act 24 of 1956 relied upon – employer averring fraud, corruption and/or theft by former employees in allowing payments to third parties not entitled thereto – requirements for an interim interdict proven against one former employee only.

ORDER

1 The third and fourth respondents are interdicted from paying out the entire pension benefit interest of the first respondent, Motsumi Krisjan Polori, pending finalisation of the action instituted by the applicant under case number 4240/2025.

2 The first respondent shall pay the applicant's costs of the application pertaining to him, including the wasted costs of 12 June 2025, inclusive of the fees of counsel on scale A.

3 The applicant's application against the second respondent, Phoko Francis Stuurman, is dismissed with costs, excluding the wasted costs occasioned by the postponement of 12 June 2025.

JUDGMENT

Daffue J

Introduction

[1] This is an application by the MEC: Free State Department for Health (hereinafter referred to as the applicant) in terms whereof the applicant initially sought the following relief, quoted *verbatim*:

‘1. That the third and fourth respondents be restrained and interdicted from paying out the entire pension benefit interest held by the third and/or fourth respondents and standing to the Pension Fund credit of the first and second respondents pending the action to be instituted by the applicant against the first and second respondents in this Honourable Court;

2. The applicant is ordered to complete its investigation and to institute the action proceedings to recover its loss from the first and second respondents as a result of theft and/or fraud committed against the applicant by the first and second respondents within 90 days from the date of this order;

3. In the event of the failure fails to institute action proceedings against the first and second respondents, either party may approach this Honourable Court on the same papers

(supplemented as is necessary) for a reconsideration of the order.

4. The costs of this application are to be paid by any respondent/s who opposes this application, jointly and severally, the one paying the other to be absolved.
5. Such further and/or alternative relief as this Court deems meet.'

[2] Messrs Motsumi Krisjan Polori (Mr Polori) and Phoka Francis Stuurman (Mr Stuurman), two former employees of the Free State Department of Health, are cited as first and second respondents respectively. They oppose the relief sought. The third and fourth respondents are the Government Employees Pension Fund and Government Pensions Administration Agency respectively. The latter two respondents abide the Court's decision.

Some preliminary issues

[3] It became clear during oral argument that the applicant had indeed issued summons recently against Messrs Polori and Stuurman out of the High Court under case number 4240/2025. The summons has been served on both. I accept that the action proceedings will be defended. During oral argument, Mr Yawa on behalf of the applicant sought an appropriate amendment of paragraph 1 of the notice of motion which was not opposed. This was granted. Paragraphs 2 and 3 have become irrelevant. The only other aspect to be considered is the costs of the application.

[4] Mr Litheko submitted during oral argument on behalf of Mr Stuurman, as canvassed in his answering affidavit, that the applicant's deponent, Mr Thabang Alfred Molise, was not authorised to depose to the affidavits on behalf of the applicant. Reliance was placed on the wording of the letter of authority annexed as annexure FA2 to the founding affidavit. This letter dated 4 September 2024 and signed by the Head of the Department of Health, Mr Mahlatsi, informed Me Moleko of the Office of the State Attorney, Bloemfontein that Mr Molise had been duly authorised to depose to an answering affidavit in the application that Mr Polori brought earlier against the Department of Health under the very same application number. During oral argument, another letter dated 2 September 2024, was presented to the Court to counter Mr Litheko's submissions. In this letter the Department of Health granted authority to Mr Molise to depose to affidavits in the application against Messrs Polori and Stuurman.

[5] Mr Molise made the point in the founding affidavit that he was personally involved in the investigation of misconduct allegedly committed by Messrs Polori and Stuurman and that he was also responsible for 'initiating their disciplinary hearing'. He is the Deputy Director: Labour Relations of the Department of Health, acting in that capacity with effect from 23 July 2024. Therefore, he deposed to factual issues allegedly falling within his personal knowledge. The cogency of his version will be considered in due course, but there is no reason to turn a blind eye thereto.

[6] Mr Litheko's submission related to Mr Molise's authorisation to depose to the affidavits and not to the applicant's instructions to the State Attorney to appear on its behalf in these proceedings. It is trite that the Office of the State Attorney represents provincial departments such as the applicant in litigation. Mr Molise was called upon to present evidence. He is a witness and was not required to be authorised to present his testimony. The point taken is without substance.

[7] A strange occurrence should be recorded. Mr Polori initially instituted proceedings under the same application number, *ie* 2916/2024, against the MEC: Free State Department of Health (the present applicant) in terms whereof he sought an order directing the MEC to process his pension claim immediately. This application was issued on 27 May 2024. Four months later, the answering affidavit deposed to by Mr Molise on behalf of the MEC, was filed. On 22 November 2024 the present application was served on Messrs Polori and Stuurman.

[8] The applicant acted irregularly; the MEC should have either issued a new application under a different application number or filed a counter-application in the application brought by Mr Polori. In the latter instance, the MEC could have applied for the joinder of Mr Stuurman, the Government Employees Pension Fund and its Administration Agency. This did not happen, but a so-called new and fresh application was issued under the same application number. The MEC who is cited as respondent in Mr Polori's application, is now the applicant under the same application number. I referred to this strange and irregular procedure during oral argument, but was requested to ignore the documents filed in Mr Polori's application. In my view, I cannot turn a blind eye to the evidence presented in that application and will consider the aspects raised. Mr Polori filed an answering affidavit to which the applicant replied in the application to be adjudicated

by me. The same applies to Mr Stuurman.

The issue to be adjudicated

[9] The issue is whether the applicant as a former employer of Messrs Polori and Stuurman has proven the requirements for an interim interdict insofar as it relies on s 37(D)(1)(b) of the Pension Funds Act 24 of 1956.

[10] Section 37(D)(1)(b), relied upon by the applicant, reads as follows:

'(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-

(i) . . .

(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 51 of 1977), from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;

(i) the member has in writing admitted liability to the employer; or

(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 51 of 1977),

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned; . . .'

[11] It should immediately be pointed out that Messrs Polori and Stuurman have not admitted liability in writing towards the applicant and no judgment has been obtained against them in a court of law. That does not mean that the applicant is without recourse. The Supreme Court of Appeal has authoritatively stated in *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen*¹ (*Highveld Steel*) that the wording of s 37(D)(1)(b) would

¹ *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen* [2008] ZASCA 164; 2009 (4) SA 1 (SCA);

render an employer's protection meaningless. Therefore, to give effect to the intention of the legislature, the wording must be interpreted purposively to include the power of the pension fund to withhold payment of a member's pension benefits pending determination or acknowledgement of the member's liability. Consequently, the court held that the Fund in that case had a discretion to withhold payment of the respondent's pension benefit in the circumstances and that 'such discretion was properly exercised in view of the glaring absence of any serious challenge to the appellant's detailed allegations of dishonesty against the respondent.'²

[12] I accept that the High Court has the power to interdict a pension fund to pay out pension benefits of its members pending institution and finalisation of an action by an employer to claim damages from the former employee and member of the pension fund. Therefore, it is appropriate to consider whether the applicant has proven the four requisites for an interim interdict *in casu*.

Requirements for an interim interdict: an evaluation of the evidence and submissions

[13] Having accepted that the applicant has the necessary *locus standi* to apply for an interim interdict in the circumstances, the applicant has to satisfy the Court in respect of the following four requirements:

- a. a *prima facie* right;
- b. a reasonable apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- c. balance of convenience in favour of the granting of the interim interdict; and
- d. the absence of any other satisfactory remedy.

[14] The different requirements should not be considered separately, or in isolation, but in conjunction with one another in order for the court to exercise its discretion in favour of the grant of interim relief.³ The stronger the prospect of success, the less need there is for the balance of convenience to be in favour of the applicant and *vice versa*. The *prima facie* right needs to be established upon a balance of probabilities. Much has been said in numerous judgments as to the phraseology used to describe the first requirement. I am

[2009] 2 All SA 225 (SCA); (2009) 30 ILJ 1533 (SCA).

² *Ibid* para 19 read with para 20.

³ *City of Tshwane Metropolitan Municipality v Afriforum and Another* [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) paras 49-76.

satisfied that it is trite: the right in order to obtain an interim interdict should be '*prima facie* established though open to some doubt'.

A prima facie right

[15] I deem it necessary to briefly deal with the factual versions provided by the parties. Messrs Polori and Stuurman were arrested in September 2021 under Park Road Cas number 695/02/2016. They were granted bail. The initial number of accused persons and the charges put to them differ from the criminal proceedings eventually instituted in the High Court. In this Court, Mr Polori is accused 2 and Mr Stuurman accused 24. There are 25 accused persons. A total number of 322 counts has been put to the accused, although not all counts are applicable to all the accused. Some of the accused persons initially charged have pleaded guilty and have been sentenced.

[16] Lieutenant Colonel S Khoele (Col Khoele) deposed to an affidavit on 21 September 2021 in support of an application for warrants of arrest in respect of Messrs Polori and Stuurman, as well as other suspects. He made serious allegations in respect of both. Four entities, Tsa Rona Consultancy, Land Breeze of which Mr Mavusa Kwababa is a director, Amakholwa Consultancy and Training and Zen Communications were by far the biggest receivers of alleged unlawful payments. Col Khoele stated in paragraph 10.1.1 of his affidavit that Mr Stuurman 'captured, verified and confirmed the veracity of transactions' whilst knowing that 'no services were rendered to the department'. He was also involved, so Col Khoele alleged, in the creation of invoices in support of fraudulent claims and 'received payments from one of the entities that received the fraudulent payments...' It turned out later that he was probably referring to Mr Polori. I shall return to this aspect in a moment when I deal specifically with the applicant's relief against Mr Polori. Nobody has until now alleged, *ex facie* the record, any collusion with Mr Stuurman and/or that they had received payments generated by him.

[17] On 7 November 2023 Mr Stuurman gave notice of his intention to resign on 31 January 2024. The applicant tried to make out a case that he did so to avoid disciplinary action. It is alleged that there was an attempt to serve the charge sheet pertaining to a disciplinary hearing on Mr Stuurman on 1 December 2023, but that he refused to accept it. I am satisfied that the applicant has failed to put admissible evidence before the Court in this regard. The version relied upon is not only hearsay, but the document relied upon

is contradicting the applicant's hearsay version. Firstly, it is alleged in the charge sheet that Mr Stuurman had concluded two illegal transactions with Mr Kwababa of Land Breeze Trading 623 in January 2015, but when the amounts are considered, these transactions relate to Mr Kwababa's guilty plea wherein he incriminated Mr Polori as will be shown herein later.

[18] Secondly, the version that Mr Stuurman refused to sign for receipt of the charge sheet is rejected. The persons who signed the document – apparently to be called as eyewitnesses if required – stated under their signatures that Mr Stuurman 'understands the contents of the letter [not the charge sheet] handed to him.' Yet, another person, apparently one Matshae, recorded under his signature that the recipient 'refused to acknowledge receipt of the charge sheet.' This contradiction is not explained by anybody. Thirdly, Messrs Polori and Stuurman are apparently charged with the same alleged misconduct, but the applicant did not try to hold one disciplinary hearing against both. In fact, Mr Stuurman was identified as a witness for the employer and called upon to testify in Mr Polori's disciplinary hearing. I refer to a letter addressed to Mr Stuurman dated 25 January 2024. The applicant stated therein that Mr Stuurman deposed to an affidavit before Col Khoele regarding 'the same charges that are brought against Mr Polori.'

[19] If Mr Stuurman was to be charged as the applicant wants me to believe, it is strange that he was requested to make himself available as a witness in the intended disciplinary hearing of Mr Polori. Mr Stuurman would have testified in that hearing, but on the date of the hearing, Mr Polori could not attend due to death in his family. The hearing had to be postponed. On the adjourned date, Mr Polori resigned with immediate effect and therefore, no disciplinary hearing proceeded against him.

[20] I have no reason not to accept the version of Mr Stuurman on a balance of probabilities, *ie* that he was neither informed of the alleged disciplinary action against him, nor was there an attempt to serve the charge sheet on him. It is apparent, unlike the case of Mr Polori, that Mr Stuurman's immediate head did not make any reference on his resignation letter that he was subject to a disciplinary hearing or investigation. Unlike several other employees, including Mr Polori, Mr Stuurman was not placed on precautionary suspension at any stage at all.

[21] Although Mr Stuurman is still an accused in the criminal trial pending in the High Court, the National Director of Public Prosecutions (the NDPP) decided not to cite him as a party in the proceedings to preserve property of several people instituted under case number 1448/2025. Mr Polori was cited as first defendant and his brother, Mr TJ Polori (an allegation denied by Mr Polori) as ninth defendant. A certain Mrs Polori was cited as first respondent. In total, nine defendants and four respondents were cited. On 27 March 2025, Mbhele AJP granted a preservation order against the defendants and respondents in terms whereof their assets were attached. Mr Polori admitted the attachment of his assets. In my view, the NDPP's litigation is a clear indication that, after many years of investigations, she and her team decided that they did not have a *prima facie* case against Mr Stuurman. There is no acceptable reason why Mr Stuurman was not joined as a party in those proceedings, other than that the NDPP was satisfied that they would not succeed against him.

[22] It is also important to reiterate that Mr Stuurman made a detailed statement as mentioned above. He fully explained precisely what he did and on whose instructions he operated. He denied any misconduct, but he pointed fingers to Mr Polori as his immediate senior at a certain stage. Contrary to the applicant's case, Mr Stuurman states that he was never employed in the finance section of the Department, but in the HR section thereof. The applicant has now changed its version. It is indeed alleged in the summons that Mr Stuurman was employed in the HR section and not in finance.

[23] I am satisfied that no *prima facie* case has been proven against Mr Stuurman. When I deal with the other three requirements for an interim interdict, I will not deal with Mr Stuurman's situation, save to mention the following. Even if I was inclined to accept that the applicant has proven the first and even the second requirement for an interim interdict, I would have been loath to accept that the balance of convenience favours the applicant. In this regard I rely on what the Supreme Court of Appeal stated in paragraph 20 of *Highveld Steel*⁴. Mr Stuurman is not a young man and he urgently needs access to his pension benefits. He has been in the Department's employ for nearly 20 years. The criminal case has been dragging on for years. The end is not nigh. Fairness and a balancing of competing interests would tip the scale in his favour.

⁴ Fn 1 *supra*.

[24] Mr Polori's case is on a different footing. A co-accused of Messrs Stuurman and Polori has already pleaded guilty and has been sentenced. This is Mr Mavuso Kwababa, mentioned earlier. He explained his relationship with Mr Polori in his s 112(2) statement in terms of the Criminal Procedure Act 51 of 1977, which was accepted by the prosecution. The applicant relies on that version in this application. Mr Kwababa testified that on 15 January 2015 the Department deposited an amount of R375 600 into his account and on 3 February 2015 another amount of R328 650. In both instances Mr Polori communicated with him and the parties arranged that cash be withdrawn from Mr Kwababa's account which was handed over to Mr Polori. Mr Kwababa retained in his account R79 600 in the first instance and R84 650 in the second instance as agreed with Mr Polori. Mr Polori denies this version, stating that he does not know Mr Kwababa at all. Although it is improbable that Mr Kwababa would falsely incriminate Mr Polori, I do not have to make any finding in this regard, save to say that neither this person, nor anybody else, has incriminated Mr Stuurman *ex facie* the admissible evidence presented to the Court.

[25] Mr Polori's version why he did not participate in the disciplinary proceedings instituted against him does not hold water. It is far-fetched. According to him, his legal representative coerced him to resign, rather than to face the disciplinary hearing. His version that his resignation 'was not a voluntary act' as he 'wanted to sit in [his] hearing' is improbable, if not false. I am satisfied that the applicant has proven the first requirement in respect of Mr Polori. In fact, a strong *prima facie* case has been made out against him.

Irreparable harm

[26] The second requirement for an interim interdict must now be considered. The test in regard to irreparable harm is an objective one.⁵ There can be no doubt that Mr Polori is unemployed, that he is presently involved in a criminal trial in the High Court where he is one of several accused relating to damages caused to the applicant due to alleged criminal acts committed by the accused persons. He submitted during oral argument that he is 50 years old, that both he and his wife are unemployed and that he needs his pension fund proceeds for a living. He has no other income and only a few movable assets. An order in his favour will obviously cause irreparable harm to the applicant who

⁵ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] ZASCA 78; [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA) para 21.

will not be able to execute successfully on receipt of any judgment in its favour. The civil case will not be heard before 2027 and may then be postponed if the criminal case is still pending by then. Logic dictates that not much of the pension benefits, if anything at all, will be available at such stage. The second requirement has been proven.

Balance of convenience

[27] The balance of convenience must be considered by weighing the prejudice to the applicant if the interlocutory interdict is refused, against the prejudice to Mr Polori if it is granted. I accept that Mr Polori will suffer financially if the interdict is granted, but contrary thereto, the applicant's entitlement to relief cannot be disregarded. Relief is sought on behalf of a provincial department and in the interest of the public purse. In any event, the stronger the prospects of success, the less need there is to consider whether the balance of convenience favours the applicant. As indicated, I am satisfied that the applicant has made out a strong *prima facie* case against Mr Polori.

No other satisfactory remedy

[28] It is not necessary to say more about the absence of another adequate satisfactory remedy. An action has already been instituted to claim relief from Mr Polori. The summons has been served recently. I do not know whether the two defendants in that action have filed their pleas. As mentioned, at best for the parties, this civil action will not be heard in the High Court before 2027. There are no other means that could have been utilised by the applicant to prevent payment of Mr Polori's pension fund benefits to him. I may add that the third and fourth respondents have filed a notice to abide the judgment of this Court, but in my view and in the absence of any indication that these two respondents would refrain from paying the pension benefits to Mr Polori, the applicant was fully entitled to launch these proceedings as the only adequate satisfactory remedy available.

Conclusion

[29] I conclude that no case has been made out against Mr Stuurman, but the applicant has proven all four requirements for an interim interdict in respect of Mr Polori. Therefore, the applicant is entitled to the relief claimed against him. As the successful party, the applicant is also entitled to the costs of the application against Mr Polori. The application against Mr Stuurman stands to be dismissed. As the successful party, he is entitled to the payment of his costs. In both cases there is no reason why the court should deviate from

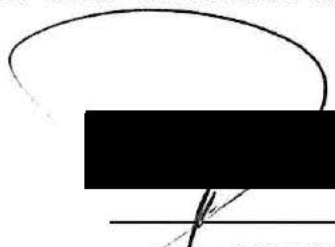
the general principle that costs should follow the cause.

[30] The wasted costs of 12 June 2025 shall be considered. Mr Polori caused the postponement on 12 June 2025. He should accept responsibility for payment of such costs to the applicant. Mr Stuurman cannot blame the applicant for those wasted costs. He is entitled to the costs of the application, excluding such wasted costs occasioned by Mr Polori.

Order

[31] The following orders are issued:

- 1 The third and fourth respondents are interdicted from paying out the entire pension benefit interest of the first respondent, Motsumi Krisjan Polori, pending finalisation of the action instituted by the applicant under case number 4240/2025.
- 2 The first respondent shall pay the applicant's costs of the application pertaining to him, including the wasted costs of 12 June 2025, inclusive of the fees of counsel on scale A.
- 3 The applicant's application against the second respondent, Phoko Francis Stuurman, is dismissed with costs, excluding the wasted costs occasioned by the postponement of 12 June 2025.



J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the applicant: EB Yawa

Instructed by: State Attorney, Bloemfontein.

For the first respondent: In person

For the second respondent: M Litheko

Instructed by: Litheko Motsoeneng Inc, Bloemfontein.