

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-0100962

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
20 November 2025	
DATE	SIGNATURE

In the matter between:

SASOL SOUTH AFRICA LIMITED

(Registration Number: 1968/013914/07)

Applicant

and

SASOL PENSION FUND

First respondent

ALEXANDER FORBES FINANCIAL SERVICES

(PTY) LTD

Second respondent

THE PENSION FUNDS ADJUDICATOR

Third respondent

NONZOLELO CORDELIA MBAKAZA

Fourth respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 20 November 2025

J U D G M E N T

LIEBENBERG AJ:

INTRODUCTION

[1] Pension benefits are sacrosanct, enjoying strong statutory protection against creditors.¹ It is only in explicitly sanctioned circumstances that deductions may lawfully be made from pension benefits. One such set of sanctioned circumstances is catered for in section 37D(1)(b)(ii) of the Pension Funds Act² (*"the Act"*) to safeguard an employer as against damages caused by an employee because of theft, dishonesty, fraud or misconduct by the member.

[2] Premised on these provisions, the applicant, Sasol South Africa (*"Sasol"*), obtained interim relief, in the form of a rule *nisi* granted on 25 January 2025. The matter came before this Court on the return date. Sasol seeks confirmation of the rule nisi which will serve to interdict and restrain the first respondent, the Sasol Pension Fund (*"the Fund"*), from paying out to the fourth respondent, Ms

¹ *SA Metal Group (Pty) Ltd v Jeftha* 2020 JDR 2379 (WCC) para 9 (*"Jeftha"*).

² Act 24 of 1956.

Mbakaza, who is a former employee of Sasol, and a member of the Fund, the pension benefits standing to her credit, pending finalisation of the prosecution of criminal charges Sasol laid against Ms Mbakaza, and a civil action instituted by Sasol against Ms Mbakaza, her husband, the fifth respondent and others, whichever occurs first.

[3] Unfortunately, neither the Fund nor its administrator (the second respondent) entered into the fray.

[4] For purposes of this judgment, “*the respondents*” must be taken as a reference to Ms Mbakaza and her husband, Mr Manyoni jointly.

BACKGROUND

[5] What follows is a summary of events;

[6] Ms Mbakaza was employed by Sasol as Area Manager: Carbo-Tar Production, Processing Refining Production East, at its operations in Secunda. By virtue of her employment, Ms Mbakaza became a member of the Fund.

[7] By notice dated 13 May 2024, Sasol advised Ms Mbakaza of its intention to suspend her from service pending a disciplinary process, based on it “*investigating serious allegations related to dishonest conduct*”, including fraud, money laundering, bribery and corruption. Having failed to make any representations, Ms Mbakaza was suspended with immediate effect.

[8] Ms Mbakaza gave notice of her resignation on 18 June 2024. She did not take kindly to Sasol’s description of her resignation as being “pre-emptive” in an attempt to avoid the disciplinary proceedings which had yet to commence and

explained that her resignation followed upon ill-health she suffered because of the manner in which Sasol's treated her, without detailing the alleged ill-treatment. Whatever the reason might be, Ms Mbakaza did not attend any disciplinary hearing.

[9] On 27 June 2024, Sasol launched urgent proceedings under two case numbers against the respondents (and others) in the Mpumalanga Division of the High Court (Middleburg) for orders freezing monies allegedly stolen from Sasol, held in the bank accounts of or controlled by the respondents (*"the related companies"*) those proceedings. The answering affidavit, deposed to by Ms Mbakaza on one of these matters, forms an annexure to the founding affidavit before this Court. The parties disagree on the state of these proceedings, but seemingly Sasol did not persist with the relief sought initially.

[10] In July or August 2024, Sasol laid criminal charges against Ms Mbakaza. As yet, no arrests have been made.

[11] By letter dated 30 August 2024, Sasol addressed the Fund, requesting the latter to withhold payment of Ms Mbakaza's pension benefits. In October 2024, the Fund made the decision to accede to the request to withhold payment. At the time, the value of Ms Mbakaza's pension benefits was R 2 725 285.54.

[12] In early September 2024, the National Prosecuting Authority (*"the NPA"*) sought and obtained preservation orders in terms of section 38 of the Prevention of Organized Crime Act³ over more than R 17 million in banking accounts of two

³ Act 121 of 1998.

companies controlled by (at least) Mr Manyoni, also citing Ms Mbakaza. These proceedings remain pending in the Mpumalanga Division.

[13] On 9 January 2025 Ms Mbakaza lodged a complaint against the Fund with the Pension Fund Adjudicator. On 17 January 2024, the Fund obtained an opinion from its attorneys, which it shared with Sasol.

[14] On 25 January 2025 Sasol's internal legal advisor met with representatives of the Fund, when the latter advised that it would be paying Ms Mbakaza her pension benefits. It is this decision of the Fund to backtrack on its previous decision to withhold payment of Ms Mbakaza's pension benefits, that forms the basis for the interim interdict sought. Sasol contends that the Fund's about-turn was not exercised reasonably in that the Fund failed to afford Sasol the opportunity to be heard prior to making its decision.

[15] Discontent with the Fund's fresh stance, Sasol was galvanised into launching the present application which gave rise to the interim order of 3 February 2025 of this Court.

[16] On 21 February 2025 Sasol issued summons out of the Mpumalanga Division (Middelburg) against Ms Mbakaza, Mr Manyoni and 11 others for damages allegedly suffered in an aggregate of R 48 242 500.00, based on a claim premised in fraud; a claim premised on a conflict of interests and a disgorgement of profits, and a claim premised on corruption and receipt of "kickbacks" (*"the civil action"*).

[17] Unsurprisingly, Ms Mbakaza denies any wrongdoing. She and Mr Manyoni defended all the litigation referred to, including the civil action.

[18] It does not fall on this Court to determine the probabilities of the applicant's success in the civil action – that, the trial court must determine in due course.

The only determination to be made by this Court is whether Sasol is entitled to the interim interdict it seeks.

THE LEGAL PRINCIPLES

The interim interdict

[19] The jurisdictional prerequisites for an interim interdict are trite. The onus rests on an applicant to demonstrate that (i) it has a *prima facie* right which it seeks to protect; (ii) a well-grounded apprehension of irreparable harm if the interdict is not granted; (iii) that the balance of convenience favours it; and (iv) that it does not have another satisfactory remedy.⁴ Even when an applicant meets these requirements, the Court is endowed with a true discretion to refuse the interim interdict.⁵

[20] Different considerations apply when the *prima facie* right which is sought to be protected is “*quasi-vindictory*”, in the sense that it relates to a claim of money that is identifiable or earmarked as a particular fund to which the applicant claims to be entitled,⁶ or to a claim for delivery of specific property under some legal right to obtain possession. In such instances an applicant need not allege

⁴ *Setlogelo v Setlogelo* 1914 AD 221.

⁵ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC) at paras 47 and 48.

⁶ *Stern and Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 811F–G, per Millin J: “It is quite true that money, like any other species of property, may be interdicted; but then it must be shown that the money to be interdicted is identifiable with or ear-marked as a particular fund to which the plaintiff claims to be entitled.” Also *Absa Bank Ltd v Intensive Air (Pty) Ltd* 2011 (2) SA 275 (SCA) para 24; ; *Hensen + Genwest v Corporate Selection Umbrella* [2023] ZAGPJHC 100 para 19 (“*Hensen + Genwest*”).

irreparable loss which is rebuttably presumed to be irreparable nor need the applicant show that it has no other satisfactory remedy.⁷

The regulatory framework in relation to Ms Mbakaza's pension benefits

[21] Interdicts are based on rights, and whether an applicant has a protectable right is a matter of the substantive law.⁸ This presupposes that at first instance, an applicant must demonstrate the nature and source of the legal right its seeks to protect. Sasol asserts a *prima facie* right premised on the provisions of section 37D(1)(b)(ii) of the Act which reads:

“A registered fund may 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) 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),

⁷ *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) paras 27 to 33 (and the cases cited there). Also *Saharawi Arab Democratic Republic v Owners & Charterers of the Cherry Blossom* 2017 (5) SA 105 (ECP) para 49; *Hensen + Genwest* above at para 20.

⁸ *Dyalo v Mnquma Local Municipality and Another* (8490/2016) [2016] ZAECHMC 36 (9 September 2016) para 9, albeit in the context of a final interdict.

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.”

[22] As it is obliged to do, the Fund adopted Rules. In order to give effect to the terms of the section 37D(1)(b)(ii) of the Act, Rule 9.5(3) of the Fund’s Rules make provision for the following:

“(3) Notwithstanding any other provisions of the RULES, in order to give effect to the provisions of this Rule:

- (a) the TRUSTEES may where an EMPLOYER has instituted legal proceedings in a court of law and/or laid a criminal charge against the MEMBER concerned for compensation in respect of damage caused to the EMPLOYER as contemplated in Section 37D of the ACT, withhold payment of the benefit until such time as the matter has been finally determined by a competent court of law or has been settled or formally withdrawn; provided that
 - (i) the amount withheld shall not exceed the amount that may be deducted in terms of Section 37D(b)(ii) of the ACT;
 - (ii) the TRUSTEES in their reasonable discretion are satisfied that the EMPLOYER has made out a *prima facie* case against the MEMBER concerned and there is reason to believe that the EMPLOYER has a reasonable chance of success in the proceedings that have been instituted;
 - (iii) the TRUSTEES are satisfied that the EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings;
 - (iv) once the proceedings have been determined, settled or withdrawn, any benefit to which the MEMBER is entitled is paid forthwith; and
 - (v) the TRUSTEES, at the express written request of a MEMBER whose benefit is withheld, may, if applicable and practical, permit the value of the MEMBER’S benefit as at the time of such request to be isolated, in whatever manner the TRUSTEES believe

appropriate, from the possibility of a decrease therein as a result of poor investment performance.”

[underlining added]

[23] In *Highveld Steel & Vanadium Corporation Ltd v Oosthuizen*⁹ it was held that a plain reading of section 37D(1)(b)(ii) highlights that its underlying object is to offer protection to an employer’s right to pursue recovery of monies misappropriated by an employee, which right, in the normal course of events, is likely to eventuate only later.¹⁰ Accordingly, by adopting a purposive interpretation, the section envisages a fund exercising its discretion in favour of withholding an employee’s pension pending final determination of such employee’s liability.¹¹ Thus, an employer’s right to request the withholding of payment is not dependent on an employee’s actual liability.

[24] In exercising the discretion to withhold or not withhold pension benefits, a fund must bring to bear the approach of a fair-minded and reasonable arbitrator (*arbitrio boni viri*).¹² In appropriate circumstances, this may entail affording the other party the opportunity to be heard to ensure the application of an objectively reasonable standard,¹³ albeit that there may be cases when even a procedurally unfair decision to withhold pension benefits does not necessarily lead to setting aside of the decision.¹⁴

⁹ 2009 (4) SA 1 (SCA) (“*Highveld Steel*”).

¹⁰ *Highveld Steel* above at para 16.

¹¹ *Highveld Steel* above at paras 17 - 19.

¹² *NBS Boland Bank Ltd v One Berg River Drive CC and Others; Deeb and Another v Absa Bank Ltd; Friedman v Standard Bank of SA Ltd* 1999 (4) SA 928 (SCA) para 25; *Juglal NO v Shoprite Checkers (Pty) Ltd ta OK Franchise Division* 2004 (5) SA 248 (SCA) para 26; *Hansen + Genwest* at para 30..

¹³ *Borwa Financial Services (Pty) Ltd and Another v Pension Funds Adjudicator and Another* (PFA1/2023) [2023] ZAFST 49 (21 April 2023); *Enigma Solutions (Pty) Ltd v Solomon and Others* (PFA53/2023) [2023] ZAFST 156 (19 November 2023)

¹⁴ *Tongaat Hulett Sugar South Africa Limited v Tongaat Hulett Pension Fund 2010 and Others* (AR27/2022) [2023] ZAKZPHC 34 (3 March 2023).

Factual disputes

[25] In *National Treasury v Opposition to Urban Tolling Alliance*¹⁵ the Constitutional Court, referring to the test formulated in *Setlogelo*¹⁶, as refined in *Webster v Mitchell*¹⁷ and modified in *Gool*,¹⁸ held:

“[45] It seems to me that it is unnecessary to fashion a new test for the grant of an interim interdict. The *Setlogelo* test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts in busy magistrates’ courts and high courts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.

[46] Two ready examples come to mind. If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.”

[26] It follows that Sasol will be entitled to a confirmation of the rule *nisi*, if it can establish:

¹⁵ 2012 (6) SA 223 (CC) at 231C-E (“*OUTA*”).

¹⁶ *Setlogelo v Setlogelo* 1914 AD 221.

¹⁷ 1948 (1) SA 1168 (W) at 1189.

¹⁸ *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 688D-E.

[26.1] A *prima facie* right, open to some doubt, that Ms Mbakaza, by reason of any theft, dishonesty, fraud or other misconduct, will be ordered to pay Sasol a sum of damages which exceed the value of her pension benefits; and

[26.2] That the Fund, not acting like a fair-minded reasonable person, unreasonably reneged on its initial decision to withhold Ms Mbakaza's pension benefits; and

[26.3] That the balance of convenience favours the withholding of Ms Mbakaza's pension benefits in the interim.

ANALYSIS

Should the Court accept Ms Mbakaza's supplementary affidavit?

[27] Without leave of the Court, Ms Mbakaza and Mr Manyoni delivered a supplementary affidavit on 8 August 2025, introducing evidence (i) to gainsay the allegations of her having fraudulently misrepresented the necessity for external storage services; and (ii) contending that Sasol did not comply with the Fund's guidelines and timeframes relevant to its request to the Fund to withhold Ms Mbakaza's pension benefits.

[28] The new matter Ms Mbakaza seeks to introduce evidence in respect of (i) above which she obtained from undisclosed third parties on or about 29 July 2025. Much of the evidence is the format of emails containing illegible screenshots of Excel spreadsheets. She explained that, since her resignation she did not have access to her laptop containing the material, and therefore could not disclose it

previously. Requesting that this Court should exercise its discretion in favour of allowing the supplementary affidavit, Ms Mbakaza stated that:

[28.1] The material she seeks to introduce is relevant to the issues for determination in the main application;

[28.2] The Court should adopt a measure of flexibility, taking into account all the relevant facts and circumstances;

[28.3] She provided a satisfactory explanation for seeking to introduce the material late, which negates *mala fides* or culpable remissness on her part; and

[28.4] Exceptional circumstances exist rendering the admission of the supplementary affidavit fair.

[29] Sasol, objecting to the Court receiving the supplementary affidavit, did deliver a short “conditional and limited” reply thereto. Therein, Sasol raised three grounds for its objection:

[29.1] The supplementary affidavit was filed without leave of the Court.

[29.2] The lateness of the affidavit left Sasol with insufficient time to investigate and deal with the contents.

[29.3] Sasol’s heads of argument deal only with the contents of the affidavits properly before Court.

[30] In the alternative, and in so far as the Court may exercise its discretion to accept the supplementary affidavit, Sasol recorded that, in relation to the issue of

external storage, it was not afforded sufficient time to investigate the new matter, asking the Court to disregard those allegations in the respondents' supplementary affidavit. However, in relation to the aspect of the Fund's guidelines and timeframes, Sasol's response was more detailed, and in essence a restatement of when it took what steps prior to and after imploring the Fund to withhold the pension benefits.

[31] This Court is not called upon to determine the guilt or not of Ms Mbakaza in respect of the allegations of fraud, malfeasance and corruption. That falls for the trial court to determine in due course. This Court must determine, in the face of the factual disputes raised by Ms Mbakaza, whether Sasol established the requisites for an interim interdict. The new material Ms Mbakaza seeks to introduce purports to exonerate Ms Mbakaza from sourcing unnecessary storage services, but that is but one aspect of her alleged misdeeds.

[32] As to Sasol's alleged non-compliance with the guidelines and timeframes imposed by the Fund, Ms Mbakaza's supplementary affidavit may be termed a proverbial second bite at the cherry. However, the allegations and counter-allegations in relation to Sasol's initial request to the Fund to withhold payment to Ms Mbakaza; the Fund's reaction; and the correspondence that flowed even subsequent to the delivery of the relying affidavit, are indeed relevant to the issues for determination by this Court.

[33] Mr De O'liveira, who appeared with Mr Mohapi for Sasol, argued against the admission of the new material in relation to the necessity or not of the storage services, for Sasol was prejudiced thereby in that it was unable to deal with the material meaningfully.

[34] Mr Vilakazi, on behalf of the respondents, made no submissions in relation to the introduction of his clients' supplementary affidavit. The prejudice Sasol complained of were simply ignored.

[35] Having had regard to the nature of the new material, the relative prejudice caused to Sasol by the introduction thereof compared to the prejudice the respondent's may suffer if it is not allowed, and the interests of justice in general, this Court accepts Ms Mbakaza's supplementary affidavit into evidence but only in respect of paragraphs 39 to 47 and annexures "SA8" to "SA13" (both included), as well as Sasol's conditional and limited reply thereto but only in respect of paragraphs 17 to 36 and annexures "RS1", which relate to the guidelines and timeframes stipulated by the Fund.

Sasol's asserted right

[36] In the various affidavits, numerous paragraphs over many pages were devoted to Sasol's allegations of the fraudulent scheme allegedly employed by the respondents and others to procure services from middlemen at grossly inflated prices, in circumstances where Ms Mbakaza having allegedly perpetrated fraudulent misrepresentations as to the necessity for *inter alia* external storage services, thereby causing Sasol to suffer damages. Although Ms Mbakaza denies that she is guilty of any of the allegations of fraud, malfeasance and corruption, the parties are *ad idem* that Sasol's claims against Ms Mbakaza fall within the category of claim covered by section 37D(1)(b)(ii).

[37] The chronology of pertinent events appear to be common cause.

[38] There is no dispute that Sasol sought and obtained urgent, *ex parte* relief against Ms Mbakaza and others in the Mpumalanga Division of the High Court on June 2024. The respondents admit that Sasol laid criminal charges against them and others during or about July or August 2024,¹⁹ being prior to Sasol requesting the fund to withhold Ms Mbakaza's pension benefits. They also admit that the NPA sought and obtained preservation orders during or about September 2024. There is no dispute that, albeit only after the granting of the rule *nisi* in February 2025, Sasol instituted the civil action for damages.

[39] In sum, the parties are agreed that there is a dearth of litigation against Ms Mbakaza, Mr Manyoni, and others arising from the allegations of malfeasance levied against them which caused Sasol financial damages.

[40] Ms Mbakaza, unsurprisingly, denies that the wrongdoing she is accused of, contending that "*Sasol received the full benefit of services for which it contracted at market-related rates, under contracts in accordance with its own Supply Chain Governance Framework.*"

[41] Without making any firm findings, this Court has serious reservations about the inherent probabilities of Ms Mbakaza's version of events on affidavits filed in this Court:

[41.1] The quotations and invoices rendered to Sasol by third parties in previous years which she relies on, are discordant in scope, time periods

¹⁹ The founding affidavit contains contradictory allegations regarding the date upon which the charges were laid, but the allocated case number (CAS 175/07/2024) suggests that these were registered in July 2024 (underlining added).

for the rendering of such goods and services, and/or the price for such goods and services.

[41.2] The services contracted for did not arise solely within the context of “emergency procurement”, but also other, in routine or planned circumstances. Sasol’s allegations of malfeasance relate, for the most part, to services contracted for in latter type of instances.

[41.3] By her own admission, Ms Mbakaza instructed her clerk to create purchase requisitions and purchase orders for the appointment of suppliers which did not possess a Sasol vendor number, meaning these suppliers were not approved vendors.

[41.4] The unapproved vendors so appointed, and with the assistance of Ms Mbakaza’s husband in “*putting together a deal*”, in turn, subcontracted other entities, some of which were banned by Sasol, and others being the companies related to the respondents.

[41.5] There are unexplained contradictions between her version before this Court, and the version in the pending litigation in the Mpumalanga Division, especially with reference to her knowledge of and involvement with the related companies.

[41.6] One of the related companies received payment of some R 27 million. Some of the monies paid into the banking accounts of these related companies funded family expenses such as groceries, restaurants, educational costs, and even jewellery and spa treatments. These payments certainly suggest the existence of a conflict of interest and even dishonesty,

which a senior employee, such as Ms Mbakaza's position, ought to avoid at all costs.

[42] Having considered the allegations in the particulars of claim in the civil action as well as the allegations in the affidavits filed of record in this application, this Court is satisfied that, should Sasol prove (at least in part) its various claims, Ms Mbakaza, jointly and severally with one or more of the other defendants cited, will be liable for substantial damages suffered by Sasol.

[43] That being so, Sasol has established a *prima facie* right, even if open to doubt, to invoke the remedy provided for in section 37D(1)(b)(ii), which it did in August 2024.

The exercise of the Fund's discretion

[44] Undercover of an email dated 30 August 2024, Sasol addressed the Fund's administrators as follows²⁰:

"1. We confirm that we have conducted a preliminary investigation into serious allegations of misconduct involving one of our former employees, Ms. Nonzolelo Cordelia Mbakaza (ID: [...]) starting April 2024. The investigation revealed that Ms. Mbakaza, along with her husband, orchestrated, engaged in, and/or participated in multiple acts of fraud, bribery, and corruption, both internally and with certain suppliers. These actions have led to a substantial financial loss for Sasol. Please note that Ms. Mbakaza has since resigned from Sasol on 18 June 2024 (24-hour notice), and a copy of her termination notice is attached.

2 As part of our civil legal recourse, urgent court proceedings have been instituted to preserve funds in known bank accounts belonging to the individuals involved. We have also instructed the banks cited in the proceedings to disclose, identify, and preserve funds in any other accounts associated with Ms. Mbakaza, her husband and her related entities. Several banks, including Nedbank and Standard Bank, have

²⁰ A copy of the email and attached letter was annexure "RS1" to Sasol's replying affidavit.

already taken steps to freeze or hold these accounts pending further investigation. This correspondence can be made available upon request.

3. In addition, the following legal process are continuing:

(a) Criminal proceedings with SAPS Secunda SAPS CAS 175/7/2024 (matter reported to Directorate for Priority Crime Investigation (Hawks)).

(b) The Asset and Forfeiture Unit of the NPA is also involved in the matter and they have filed an ex-parte application for the freezing of business account.

4. In light of these developments, and with legal proceedings underway, we kindly request that Alexander Forbes withhold any payout of Ms. Mbakaza's pension funds until we can provide a court order confirming her liability. We understand that Section 37D of the Pension Funds Act 24 of 1956 requires either a written admission of liability or a court order confirming misconduct.

...

5. Ms. Mbakaza has opposed our proceedings and has denied any liability. Consequently, an admission of liability will not be forthcoming. While we are actively working towards obtaining the necessary court order/judgment, we believe the matter will only be ready for hearing in the new year. By that time, the pension funds could have already been paid out and potentially dissipated. Given this, Alexander Forbes will appreciate that awaiting a judgment before acting on Sasol's request could render the penalty under Section 37D ineffective, as the funds could be paid out before judgment is delivered. Therefore, Sasol believes it would be prudent to hold off on any payment due to Ms Mbakaza at this stage.

6 In the interim, we can provide a copy of our court application and will keep you updated on the progress of the legal proceedings. Your cooperation in this matter is greatly appreciated.

7 We would appreciate your urgent feedback.

8 Should you require any further information or documentation, please do not hesitate to contact us."

[45] During October 2024 the Fund communicated to Sasol and Ms Mbakaza the Fund's discretion to withhold Ms Mbakaza's pension benefits, in writing.

[46] This Court accepts that the Fund and its administrators, in exercising its discretion to withhold the benefits, did not engage with Ms Mbakaza. It is unfortunate that neither the Fund nor its administrators participated in the litigation before this Court. This apathy results in the Court having to decipher emails and correspondence in an attempt to discern the Fund's stance not only at the time of its initial decision to accede to Sasol's request to withhold the pension benefits, but also in January 2025, when the Fund had a change of heart.

[47] Much of the argument presented on Ms Mbakaza's behalf, centred about what was termed Sasol's failure to comply with the guidelines and timeframes of the Fund in relation to its initial request to the Fund to withhold payment of Ms Mbakaza's pension benefits in terms of section 37D(1)(b)(ii). It was contended that Sasol, having gained knowledge of the alleged loss in April/May 2024, it did not submit supporting documentation to the Fund within a period of four months; and did not provide the Fund, within a further two months, with proof of the institution of civil action against Ms Mbakaza and/or provide the Fund with documented updates regarding the criminal proceedings instituted against Ms Mbakaza. Ultimately, it was submitted that Sasol provided no information to enable the Fund and its administrators to exercise their discretion as required by the rules of the Fund.

[48] This Court is called not upon to determine whether the decision taken by the Fund in October 2024 to withhold Ms Mbakaza's pension benefits was reasonable or not. This decision is not the aim of Sasol's case. The impugned decision is the one taken by the Fund in January 2025, overturning the October 2024 decision, without affording Sasol the opportunity to make representations.

The impugned decision followed upon Ms Mbakasa's complaint with the Adjudicator against the Fund. Instead of heeding the advice it received, and engaging with Sasol, the Fund reneged on its initial decision without more.

[49] During his argument, Mr Vilakazi was pertinently questioned about the legal nature of the guidelines and timeframes his clients relied on. No cogent submissions were made in response. For purposes of this application, it is unnecessary to decide the question, for, on the admitted facts:

[49.1] Sasol did lay criminal charges against Ms Mbakaza, whether it was in July or August 2024, being within four months of April/May 2024, when it discovered her alleged misdeeds.

[49.2] When Sasol addressed its request to the Fund to withhold Ms Mabakza's pension benefits, the Fund was apprised of these criminal charges, as well as the pending proceedings in the Mpumalanga Division as well as the NPA's involvement.

[50] There is no evidence to support the suggestion that the Fund's discretion was exercised without Sasol having placed sufficient evidence before the trustees.

[51] Furthermore, in her complaint of 9 January 2025 to the Adjudicator, which included a letter with various annexures thereto, Ms Mbakaza herself referenced:

[51.1] The urgent application brought by Sasol on 4 July 2024 against her (as first respondent), her husband and the related companies "*to freeze a business account of*" the one of these companies. She stated that Sasol since abandoned these proceedings.

[51.2] Sasol having reported the matter to the NPA who did not charge her with any criminal charges but she mentioned the *ex parte* applications in terms of POCA, and the return dates thereof being set for May and July 2025.

[51.3] The Fund having telephonically advised her during early September 2024 that it was withholding payment her pension benefits in terms of section 37D(1)(b)(ii) of the Act, which advice was confirmed by email dated 11 October 2024.

[51.4] Various emails which passed between her and the Fund and its administrators.

[51.5] Sasol's failure to institute action against her for damages.

[51.6] The Fund's obligation to exercise its discretion to withhold pension benefits fairly and without bias, to obtain *prima facie* evidence that the employer has a claim against the member; and to receive submissions from both parties.

[51.7] Relying on authorities including *Highveld Steel* and *Jefftha*, Ms Mbakaza asserted that the Fund failed to properly exercise its discretion and therefore the withholding of her pension benefits is baseless and unlawful.

[52] This Court is satisfied that, at the time of its initial request, Sasol had in fact kept to its obligations imposed by the Act, the Fund Rules and also the Fund's guidelines and timeframes. By its very nature, litigation, whether in the context of civil or criminal proceedings, can and does take time to finalise.

[53] Ms Mbakaza’s complaint to the Adjudicator provides ample evidence that at all relevant times Ms Mbakaza was fully aware of the allegations against her, participated in the litigation, and continues to do so, with full knowledge of the grounds for the withholding of payment of her pension benefits. She sought to reverse the Fund’s initial decision by lodging an *ex post facto* complaint, raising “new material” which called for an answer from Sasol.

[54] Upon receipt of Ms Mbakaza’s complaint to the Adjudicator, the Fund sought legal advice in anticipation of having to respond to the complaint by 4 February 2025. A copy of the opinion it received, dated 17 January 2025, was annexed to the founding affidavit. Pertinently:

[54.1] In paragraph 1 of the opinion, it is proposed that the Fund must, as a first port of call, ascertain whether Sasol is in fact persisting in its claim against Ms Mbakaza.

[54.2] On the assumption that Sasol is persisting with its claim against Ms Mbakaza, it was suggested that Ms Mbakaza’s complaint “*seems to be on all fours with the Borwa matter...*”,²¹ where the Tribunal held the decision to withhold pension benefits unlawful, absent compliance with the *audi alterem partem* rule.

[54.3] The opinion concludes with the view that Ms Mbakaza’s complaint to the Adjudicator has good prospects of success.

[55] The opinion was shared with Sasol’s in-house legal adviser on 23 January 2025, and the Fund communicated that it intends advising the Adjudicator that the Fund

²¹ See fn 13 above.

will be paying out Ms Mbakaza's pension benefits to her. The best Sasol could manage was an undertaking from the Fund and its administrators to await the outcome of the present application before paying out Ms Mbakaza's benefits.

[56] On Sasol's uncontested version, the Fund did not seek clarification or information about the state of play in relation to Sasol's claim against Ms Mbakaza, nor did it seek to gauge Sasol's stance on the "reversal" of its initial decision to withhold payment of Ms Mbakaza's pension benefits. The reversal did not flow from the provisions of the Act or the Fund's Rules, but from Ms Mbakaza's complaint to the Adjudicator. That being so, Sasol has established that the Fund failed to exercise its discretion to payout Ms Mbakaza's pension benefits notwithstanding the pending criminal investigations, the POCA proceedings, and the finalisation of the civil action which, at the time of the impugned decision, was to be instituted imminently.

[57] On the evidence before this Court, there is merit to Sasol's submissions that the Fund's decision to pay out Ms Mbakaza's pension benefits was informed by a fear of its own reputational damage as opposed to by virtue of exercising its discretion as a reasonable person.

[58] By all accounts, the Fund and its trustees failed to follow the law of natural justice, and the *audi alterem partem* rule on either occasion it was called upon to make decisions in respect of Ms Mbakaza's pension benefits. But for purposes of this application, it is only the decision of January 2025 that is relevant.

[59] In the result, I am satisfied that Sasol established the Fund's failure to exercise its discretion as required in law, when it resolved to pay out Ms Mbakaza's pension benefits in the face of her complaint to the Adjudicator.

Balance of convenience

[60] The balance of convenience embraces a comparison between the harm to be suffered by an applicant if the interdict is refused, and on the other hand the harm to be suffered by a respondent if the interdict is granted.²²

[61] On the admitted evidence before this Court. Sasol's claim far exceeds the value of Ms Mbakaza's pension benefits. By their own description, the respondents are "established professionals" with several immovable properties and other assets. It is not Ms Mbakaza's case that she is not or cannot be employed elsewhere.

[62] If the interdict is refused, Sasol loses its the remedy afforded by section 37D(1)(b)(ii), and Ms Mbakaza can spend her pension benefits at will. On the other hand, for as long as the interim interdict remains in place, Sasol's remedy in terms of section 37D(1)(b)(ii) is preserved; and at the same time Ms Mbakaza's pension benefits will grow in value. Should Sasol fail in its the civil action, Ms Mbakaza will receive her increased pension benefits.

[63] Thus, at this juncture, the balance of convenience favours Sasol.

CONCLUSION

[64] Notwithstanding the factual disputes on the affidavits, Sasol has discharged the onus to establish the *prima facie* right it contends for, that the Fund failed to exercise its discretion in reasonable, justifiable and fair manner, and that the balance of convenience favours the interim interdict it seeks.

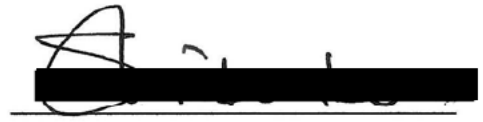
²² OUTA above at para 55.

[65] In relation to costs, Sasol seeks costs of two counsel, both on scale C. In the circumstances of this case, and in the exercise of the Court's discretion in relation to costs, the Court intends awarding costs of two counsel, but one on scale C and the other on scale B.

ORDER

[66] Having read the papers, having heard argument, and having considered the matter, it is ordered that:

1. The rule nisi granted on 3 February 2025 is confirmed.
2. The first respondent is restrained and interdicted from paying out the whole of the pension benefits of the fourth respondent in terms of section 37D(1)(b)(ii) of the Pension Funds Act 24 of 1956 read with rule 9.5(3) of the Sasol Pension Fund Rules, pending the finalisation of either the prosecution of the criminal charges laid by the applicant against the fourth respondent under Secunda CAS175/7/2024, or the civil action instituted by the applicant against the fourth and fifth respondents and others in the Mpumalanga Division of the High Court, Middelburg under case number 933-2025, whichever occurs first.
3. The fourth and fifth respondents are ordered to pay, jointly and severally, the one paying the other to be absolved, the costs of the application including the costs of two counsel, one on scale C and the second on scale B, including the costs reserved on 3 February 2025.



SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances

For the applicant:

Advs A J D'Oliveira and SL Mohapi

Instructed by: Bowman Gilfillan Inc. (Ref: R Webster/6248908)

For the fourth and fifth respondents:

Adv V Vilakazi

Instructed by: MADLELA GWEBU MASHAMBA (Ref: Mr J Gwebu / Mr E Gwebu)

Heard on 26 August 2025

Judgment on 20 November 2025