REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 103308/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE **9 December 2025**

SIGNATURE

In the matter between:

EDWIN KHOMOTSO SERUBA

(Identity number: 8[...]) Applicant

and

THE COMMISSIONER: COMPENSATION FUND Respondent

JUDGMENT

MINNAAR AJ:

Introduction:

[1] The applicant has been self-employed since June 2012, conducting business in the printing industry.

[2] In October 2002, the applicant sustained a medical injury which left him with a personal disability. The applicant states that because of the injury, he was awarded a monthly pension in terms of the provisions of the Compensation for

Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"). To this effect, a letter of confirmation from the respondent, dated 24 June 2025, is attached to the founding affidavit. This letter certifies that the applicant is receiving a monthly pension of R1 941.24 in terms of section 54(1)(A) of COIDA and that this pension is payable for life.

[3] I pause to state that the reference to section 54(1)(A) must be incorrect, as no section 54(1)(A) is to be found in COIDA. Suppose the letter is intended to refer to section 54(1)(a) of COIDA. In that case, the reference to this section is also a misdirection, as section 54(1)(a) provides for compensation in the event of the death of an employee. It is accepted that the applicable pension is paid in terms of the provisions of section 49(1)(a) of COIDA, as this section provides for compensation for permanent disablement through payment of a monthly payment throughout the remainder of the employee's life.

[4] At the end of August 2023, the applicant, in terms of section 49 of the Workmen's Compensation Act, Act 30 of 1941, applied to commute the monthly pension into a lump sum. It is unclear why the provision of section 49 of the Workmen's Compensation Act, Act 30 of 1941, is referenced in the application form (Annexure "FA-2" to the founding affidavit) when section 52 of COIDA contains a similar provision.

[5] In terms of the application, the applicant sought a lump-sum payment of R550 000.00. It is of crucial importance to note that the calculation of the amount of R550 000.00 is not explained in the founding affidavit. The motivation for the commutation was to expand the applicant's printing business by investing in machinery, to employ more staff, and, in doing so, to prevent outsourcing. In the application, the applicant listed his income as R31 719.81 (of which R1 719.81 appears to be the pension he is receiving) and his living expenses as R31 719.81.

[6] On 26 October 2023, the respondent declined to grant the commutation on the basis that the applicant's monthly pension was calculated using the earnings ceiling prescribed in terms of section 83(8) of COIDA, namely

R4 993.00. The respondent asserted that this amount fell below the prescribed minimum threshold for commutation.

[7] The applicant then proceeded in terms of section 91(1) of COIDA, providing for objections and appeals against decisions of the Director-General, to object to the Panel.

[8] Following a hearing on 7 August 2024, the Panel delivered a judgment. In terms of the judgment, the Panel made the following findings:

a. The respondent failed to explain the rationale for requesting the applicant to disclose any extra or additional income to his monthly pension.
b. The respondent vehemently denied the existence of a policy or a directive limited only to a commutation.

[9] The Panel concluded:

a. In deciding the application for a commutation, the Panel agreed to invoke Instruction number 191, particularly the provisions of paragraph 2.8 (Commencing own business) and paragraph 3.2 (Income of pensioner in respect of salary).
b. As the applicant wishes to extend his business and proof has been furnished to the respondent, paragraph 2.8 of Instruction 191 supports the application.
c. The applicant disclosed his salary of R40 000.00 to the respondent, and he confirmed same under oath. If this amount is considered, the applicant's monthly pension will exceed the prescribed amount of R4 993.00.
d. Based on available information, it is clear that the respondent, in determining the application for commutation, ignored or neglected to take into account the provisions of Instruction 191.
e. As a result, the decision of the respondent is deemed to be unreasonable and not in compliance with the provisions of section 33 of the Constitution of South Africa, Act 108 of 1996 (dealing with just administrative action).

[10] The Panel ultimately upheld the objection, overturned the respondent's initial refusal, and directed that the pension be commuted in a lump sum. No order was made as to the amount of the lump sum.

[11] The applicant then lodged an application to this court in terms of which the following relief is sought:

a. That the decision of the respondent, refusing to give effect to the decision of the Panel, dated 19 August 2024 ('the decision'), be reviewed and set aside to the extent that it constitutes a refusal to comply therewith.
b. That the respondent be directed and compelled to give effect to the decision of the Panel upholding the applicant's objection and authorising the commutation of the applicant's monthly pension into a lump sum of R550 000.00.
c. That the respondent be ordered to make payment to the applicant, the lump sum of R550 000.00 commutation within 10 (ten) days of the granting of this order.
d. That the respondent be ordered to pay the costs of this application.

<u>The applicant's objection and commutation:</u>

[12] The respondent did not take any steps to appeal or set aside the Panel's decision. The Panel's decision, therefore, remains active and binding.[1] The effect of the Panel's decision is that the applicant's objection is upheld.

[13] The applicant's objection (Annexure "FA-4") relates to the declaration by the respondent that his monthly pension is below the prescribed amount of R4 993.00. The objection does not contain any mention of the calculation of the R550 000.00 lump sum or of the respondent's refusal to pay this amount to the applicant.

---

[1] *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at paras 26 and 27; *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) at paras 101 to 103

[14] The calculation of the R550 000.00 lump sum was also not traversed before the Panel, and the Panel did not rule that this amount must be paid to the applicant.

[15] On the first appearance of this application (1 October 2025), I raised concerns as to how the amount of R550 000.00 was calculated. The application was stood down to 3 October 2025 for a supplementary affidavit to set out the calculation of the R550 000.00 and to provide the court with a copy of Instruction 191.

[16] The applicant provided the supplementary affidavit, in terms of which the lump sum is premised on a quotation from Jonachantelle Trading and Projects (Pty) Ltd, setting quoted prices for the purchase of embroidery machines, a vinyl cutter machine and a vinyl printer machine ('the quotation').

[17] Instruction 191 was provided; it is unclear how it is relevant to the Panel's decision, as this Instruction addresses medical tariffs for medical service providers.

[18] The supplementary affidavit did not address my concern, and the application was postponed to 13 October 2025 for the filing of heads of argument. Heads were delivered, but the calculation of R550 000.00 was still not addressed. I then reserved judgment.

[19] Section 59 of COIDA provides that compensation payable in terms of COIDA may, for reasons deemed by the Director-General to be sufficient, be paid in instalments or in such other manner as he may deem fit.

[20] In *Knowles v Compensation Commissioner Vuyo Mafata* (75337/2016) [2018] ZAGPPHC 773 (13 February 2018), reference was made that an appropriately qualified expert should be approached for "proper calculations" to be made with regard to the amount payable. In *Knowles*, the applicant enlisted the assistance of a registered account/chartered accountant, who calculated past and future amounts due to the applicant, using, among others,

an average consumer price index for the applicable period until the applicant would probably have retired. In the application before me, no such evidence is provided, nor was any such evidence provided in the complaint or to the Panel in support of the calculation of the R550 000.00 lump sum.

[21] Commutation from a monthly pension to a lump sum cannot be a thumb suck exercise premised on a quotation to purchase desired machinery. Factors such as the applicant's age, estimated retirement date, inflation, and applicable pension payments must be considered. An appropriate expert, such as an actuary or a chartered accountant, must determine the lump-sum calculation.

[22] In the premises, there is no basis upon which this court could order payment of the amount of R550 000.00. The Panel's decision is that the applicant is entitled to a lump-sum payment. The Panel did not direct payment of a specified amount. Nothing prevents the applicant from presenting evidence to the respondent to substantiate payment of a specified amount.

[23] The applicant is entitled to a review and setting aside of the respondent's decision, but only insofar as it relates to the refusal by the respondent to give effect to the decision of the Panel that the applicant is entitled to a lump-sum payment.

ORDER:

The following order is made:

[1] The decision of the respondent, refusing to give effect to the decision of the Panel dated 19 August 2024 ('the decision'), which Panel is constituted in terms of of section 91(2) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ('COIDA') ('the Panel'), is reviewed and set aside to the extent that it constitutes a refusal to comply therewith.

[2] The respondent is directed and compelled to give effect to the decision of the Panel upholding the applicant's objection and authorising the commutation of the applicant's monthly pension into a lump sum.

[3] The determination of the amount payable as a lump sum is referred back to the respondent.

[4] The applicant is to submit expert evidence to the respondent in support of the amount claimable as a lump-sum payment.

[5] There shall be no order as to costs.

MINNAAR AJ

ACTING JUDGE OF THE HIGH COURT: PRETORIA

For the Applicant:	Adv C van der Merwe instructed by Raubenheimers Inc
Date of hearing:	1 October 2025, 3 October 2025, 14 October 2025
Date of judgment:	9 December 2025