



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024 -136123

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED

20/01/2026

[REDACTED]

DATE

SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED
t/a *inter alia* Standard Bank

APPLICANT

and

HENRY MCMURRAY
THE PENSION FUND ADJUDICATOR
MUVHANGO ANTOINETTE LUKHAIMANE
STANDARD BANK GROUP RETIREMENT FUND

FIRST	RESPONDENT
SECOND	RESPONDENT
THIRD	RESPONDENT
FOURTH	RESPONDENT

JUDGMENT

BHOOLA AJ,

Introduction

[1] This matter concerns an interlocutory application for the filing of a supplementary founding affidavit arising in proceedings arising from a determination of the Pension Funds Adjudicator (“the second respondent”) in terms of section 30P of the Pension Fund Act 24 of 1956 (“the Act”).

Issues

[2] The issues for determination are:

2.1 whether leave should be granted for the applicant to file a supplementary founding affidavit.

2.2 should the court grant leave to file the supplementary founding affidavit, then the normative process of answering and replying affidavits would apply.

2.3 should the court refuse to allow the supplementary founding affidavit, then the court will proceed to consider the merits in the main application.

Background facts

[3] There were two applications set down for hearing on the same day: the main application and an application for leave to file a supplementary founding affidavit.

[4] The first respondent did not file any notice of opposition to the application for leave to supplement. The first respondent addressed these issues only in its heads of argument, together with submissions directed at the main application.

[5] The application for leave to file a supplementary founding affidavit was not opposed on affidavit.

[6] Whilst the respondent raised objections in the heads of argument, it is trite that heads of argument do not constitute evidence. Procedural objections of this nature are ordinarily required to be raised formally and timeously on affidavit.

[7] In any event, where an application is unopposed, the Court retains a discretion whether to grant the relief sought. That discretion must be exercised judicially and with due regard to the interests of justice.

Legislative Framework and general principles

[8] The general rule is that an applicant must make out its case in the founding affidavit. That rule, however, is not inflexible.

[9] A court has a discretion to permit the filing of supplementary affidavits where the interests of justice so require, having regard to factors such as the nature of the proceedings, the explanation for the supplementation, the stage which it is sought; and whether any prejudice is occasioned to the opposing party.

[10] In *Minister of Environmental Affairs and Planning v Clairison's CC*,¹ the SCA, the Supreme Court of Appeal reaffirmed that the admission of supplementary affidavits lies within the discretion of the court, to be exercised judicially.

¹ (408/2012) [2013] ZASCA 82; [2013] 3 All SA 491 (SCA); 2013 (6) SA 235 (SCA) (31 May 2013)

[11] Proceedings arising from determination of the Adjudicator are not rigidly confined to the record. Section 30P (2) of the Act expressly empowers the court to receive further evidence, reflecting a degree of procedural flexibility.

[12] The court is mindful that its acting term has concluded. In those circumstances, it would be inappropriate to make binding or dispositive findings on substantive procedural objections that may arise in the main application, as this could render the matter part-heard and constrain the discretion of the judicial officer subsequently seized with the matter.

[13] Judicial restraint is therefore warranted. The interests of justice is best served by confining the present determination to the narrow interlocutory issue and leaving the substantive procedural questions to be determined together, on a complete set of papers, by the court that ultimately hears the matter.

Evaluation

[14] The applicant seeks to supplement its founding affidavit in order to correct certain legal statements contained in the founding affidavit, clarify a paragraph in the founding affidavit, and to clearly illustrate to the Court, premised upon further correspondence read with the applicable Rules of the Fourth Respondent.

[15] The first respondent has not demonstrated any prejudice that it would suffer to justify this court refusing the relief sought. The first respondent will have an opportunity to respond to the supplementary affidavit. This will also promote the proper ventilation of the issues when the main application is heard.

[16] In these circumstances, and without expressing any view on the sustainability of the main application or the merits of the procedural objections raised, the Court is

satisfied that it is in the interests of justice to permit the filing of the applicant's supplementary founding affidavit.

Order

[17] In the result, the following order is made:

17.1. The applicant is granted leave to file a supplementary founding affidavit.

17.2. The respondent is granted leave to deliver a supplementary answering affidavit, if any, within the time periods prescribed by the Rules.

17.3 The applicant is granted leave to deliver a replying affidavit to the respondent's supplementary answering affidavit, if any, within the time periods prescribed by the Rules.

17.4. The costs of the application shall be costs in the main application.



CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg



Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 20 January 2026 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 20 January 2026

APPEARANCES

Date of hearing: 17 November 2025

Date of judgment: 20 January 2026

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