IN THE EQUALITY COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: B4094/2023

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED.
(4) Date: 12 February 2026
Signature: [redacted]

In the matter between:

LEO MURFIN	Complainant
And	
SANLAM DEVELOPING MARKETS LTD	First Respondent
SANLAM EMPLOYEE BENEFITS (PTY) LTD	Second Respondent
SANLAM LIFE INSURANCE LTD	Third Respondent
SANLAM GROUP LTD	Fourth Respondent

JUDGMENT

NYATHI J

A. Introduction

[1] This judgment concerns two preliminary issues directed to be heard in limine:

(i) whether this Court, sitting as an Equality Court in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA"), has jurisdiction over the complaint; and

(ii) whether the Respondents' answering affidavit (or parts thereof) ought to be struck out. The parties filed comprehensive written submissions on both issues.

[2] The complaint arises from the Complainant's continued participation in the Iscor Pensioners and Former Members Scheme ("IPFM Scheme"), a group life arrangement underwritten within the Sanlam group. The impugned term is clause 6.3 of the Master Policy, which provides for a post-age-64 reduction of death benefits by 5% per annum to a minimum of 50% of the "Original Death Benefit". The Complainant alleges that the introduction and enforcement of that clause, and related conduct, amount to unfair discrimination—principally on the prohibited ground of **age**—and seeks the array of remedies contemplated by section 21(2) of PEPUDA.

[3] The Respondents deny any discrimination, contend that the dispute is essentially contractual and commercial, and submit that the Equality Court lacks jurisdiction. They further oppose the striking-out relief and contend that the Complainant's increasingly

voluminous papers, some allegedly generated with AI[1] assistance, have become abusive.

B. The issues

[4] The preliminary issues are:

- Whether the complaint, on its pleadings, falls within the Equality Court's subject-matter jurisdiction under PEPUDA (the "jurisdiction issue"); and

- Whether the Respondents' answering affidavit (deposed to by Ms Mokheti) should be struck out in whole or in part (the "strike-out issue").

C. The applicable legal framework (brief)

[5] PEPUDA creates specialist Equality Courts to determine, inter alia, whether **unfair discrimination** on prohibited grounds has occurred, and to grant appropriate remedies. The Act's definitions of "discrimination", "equality" and "prohibited grounds" (which include **age**) are central. Section 21 empowers this Court to hold an inquiry and to make broad remedial orders.

[6] The parties are *ad idem* that **jurisdiction is determined with reference to the pleadings**: if the pleaded case, properly interpreted, invokes the Court's competence under PEPUDA, jurisdiction is engaged. (See the statement of principle invoked by both sides).

---

[1] Artificial Intelligence.

[7] Both parties also referenced the character of the Equality Court as a specialised, more informal forum that places substance over form. That characterisation is not controversial for present purposes and informs, but does not replace, the statutory inquiry.

D. The pleadings in outline

[8] The Complainant pleads, among other things, that:

- Clause 6.3's age-linked reduction of benefits imposes a disadvantage on members "as from the policy renewal date after attaining age 64", resulting in a 50% diminution, and that this constitutes **indirect and systemic unfair discrimination on the ground of age**;

- The clause was introduced and applied without adequate disclosure, consultation or consent and in a manner inconsistent with the Master Policy's structure (relying on clauses 5 and 6.1) and with statutory and constitutional norms; and

- Relief is sought under section 21(2) of PEPUDA, including declaratory, interdictory and corrective orders.

[9] The Respondents submit that most of the Complainant's quarrels are contractual (interpretation, alleged repudiation, transfer formalities, surrender value calculations) and thus non-equality matters. They contend that, even as to clause 6.3, the Complainant **accepts** a risk-rating differentiation post-63 (by choosing Option 1) and only disputes the *quantum* or *extent* of reductions, which (so the argument goes) is not a discrimination claim at all. They therefore say there is no prima facie PEPUDA complaint to found jurisdiction.

E. The jurisdiction issue

The test

[10] The correct approach is to examine the **pleaded case** (including the founding and supplementary affidavits) to ascertain whether it alleges facts that, if proven, would constitute **unfair discrimination** within the meaning of PEPUDA. Whether the Complainant will ultimately succeed on the merits is a different question.

Application to the pleadings

[11] On a fair reading, the Complainant's case is that **age** operates as the decisive trigger for the diminution of benefits in clause 6.3 (the reductions commence only "after attaining age 64"), and that this age-based diminution—super-added to the premium loading/benefit-retention election at 63—constitutes a second, unjustified reduction that disproportionately burdens older members. He invokes the statutory definition of **discrimination** and pleads the factors relevant to **fairness**. He also pleads that less restrictive means were reasonably available. This is a quintessential equality complaint.

[12] The Respondents' answer—that the Complainant "accepts" a qualitative differentiation post-63 and only quarrels with quantum—does not defeat jurisdiction. A contention that a measure is a *justified* age differentiation goes to the **merits** and the **section 14 fairness** analysis; it does not transmogrify a pleaded age-based disadvantage into a mere commercial gripe.

[13] The Respondents further argue that clause 6.3 (or a substantively similar mechanism) existed for decades, at least since 1998, and that the option-set post-63 merely gave members more choice rather than less. That, again, is a merits defence (historical practice, actuarial rationality, continuity) which must be assessed on evidence at the appropriate stage; it is not a jurisdictional knock-out.

[14] It follows that **the Complainant has pleaded a PEPUDA claim grounded in the prohibited ground of age**. Whether it ultimately amounts to **unfair** discrimination requires the section 14 inquiry and, if necessary, expert evidence. At the jurisdictional threshold, the Court's competence is engaged.

Conclusion on jurisdiction

[15] The Equality Court **has jurisdiction** to entertain the complaint. The Respondents' request that the matter be transferred as purely commercial is declined at this stage. This does not preclude case-management directions to isolate equality issues from ancillary contractual disputes for efficient adjudication.

F. The strike-out issue

The relief sought

[16] The Complainant seeks to strike out the Respondents' answering affidavit as a whole, alternatively in material part, on grounds that it contains inadmissible hearsay, speculation, misstatements, and argument, and that the deponent lacks personal knowledge of historical matters. He identifies illustrative paragraphs and annexures impugned on these bases.

[17] The Respondents oppose the application, submit that Ms Ann Mokheti set out her basis of knowledge (management of the complaint and access to and perusal of the records), and contend that striking-out is inappropriate in this forum, where substance is placed above technicality and where any hearsay or argument can be accorded the weight it deserves. As stated in ***Maharaj v Barclays National Bank Ltd*** 1976 (1) SA 418 (A), "undue formalism in procedural matters is always to be eschewed" and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are

brought by financial institutions and large corporations. <u>First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institution or large corporation.</u>"[2] [my emphasis].

Principles

[18] Even in motion proceedings in the High Court, our courts have recognised that an authorised deponent may depose on the strength of access to the litigant's records and direct involvement in handling the matter, provided that the basis of knowledge and authority is disclosed. The correctness and weight of specific averments remain for the Court. While the Equality Court's process is more flexible and inquisitorial, it does not license **abuse** nor require the Court to accept inadmissible matter; rather, it counsels against an over-formalistic excision where any prejudice can be addressed by **weight** rather than rulings as to **admissibility**.

Application

[19] Having reviewed the impugned portions with the helpful cross-references in the Complainant's submissions, I am not persuaded that the **entire** answering affidavit should be struck out. The deponent stated her role in the handling of the complaint and her access to the records. That suffices to allow the affidavit to stand at this stage without elevating every contested assertion to proof.

[20] That said, several passages are **argumentative, conclusory or speculative**, and some are premised on documents whose provenance or relevance may be contentious. Those defects are better managed by (i) **according limited or no weight** to such passages unless properly proved at trial (or main hearing), and (ii) **directing** the Respondents, to the extent they wish to rely on historical facts outside the deponent's personal knowledge, to procure **confirmatory affidavits** from persons

---

[2] Excerpt quoted from *Rees & Another v Investec Bank Limited* 2014 (4) SA 220 (SCA).

with direct knowledge or to place the **original records** (or properly authenticated copies) before the Court.

[21] In an Equality Court—where the Court may itself call for information and where remedial flexibility is paramount—piecemeal excision is seldom productive at a preliminary stage. The more proportionate course is to **decline wholesale striking-out**, mark specific categories of matter as **provisionally received subject to weight**, and craft directions to ensure that the record is regularised ahead of the merits hearing.

Conclusion on strike-out

[22] The strike-out application **fails**, save that the Court records the following **directions** (below) to regulate the evidentiary record and avoid prejudice.

G. Case-management and directions to trial

[23] To separate equality questions from ancillary contractual debates, and to ensure a focused and fair inquiry, it is appropriate to give the following directions:

23.1 **Issues for determination at the merits hearing (phase 1):**

- Whether clause 6.3 and its operation constitute **discrimination** on the prohibited ground of **age** (directly or indirectly) under PEPUDA;
- If so, whether such discrimination is **unfair** having regard to section 14 factors; and
- If unfair discrimination is established, the **appropriate relief** under section 21(2).

23.2 **Evidentiary directions:**

- If the Respondents intend to justify the impugned differentiation by reference to **actuarial rationale** or industry risk-rating norms, they shall file a **summary of expert evidence** (and any actuarial report) within **8 weeks**; the Complainant may file a responding expert summary within **8 weeks** thereafter.

- To the extent the Respondents rely on **historical policy terms** (including versions prior to 2005) and scheme transfers/continuities, they shall produce **authenticated policy documents** and **confirmatory affidavits** from persons with direct knowledge of such documents/events, within **6 weeks**.

- Any party relying on **annexures** which are not self-proving must identify their source, date, and author and provide confirmatory material where available.

23.3 **Record regularisation:**

- All passages in either party's affidavits that are **argumentative** or **legal submissions** shall stand as such, without being treated as evidence of fact. Their **weight** shall be assessed accordingly at the hearing.

H. Costs

[24] In equality litigation, costs ordinarily follow the **Biowatch**[3] approach to avoid a chilling effect on bona fide assertion of constitutional and equality rights. Both parties approached the preliminary hearing in good faith and were partially successful: the Complainant on jurisdiction; the Respondents on the strike-out. The just order is that **each party shall bear its own costs** of the preliminary hearing.

[3] Biowatch Trust v Registrar Genetic Resources and Others (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009)

I. Order

[25] The following order is made:

25.1 The Equality Court has **jurisdiction** to hear and determine the Complainant's complaint under PEPUDA.

25.2 The Complainant's application to **strike out** the Respondents' answering affidavit is **dismissed**, subject to the case-management directions below.

25.3 **Directions:**

- (a) The Respondents shall, within **6 weeks**, file authenticated copies of any historical policy instruments and scheme-transfer documents on which they rely, together with confirmatory affidavits from persons with direct knowledge.

- (b) The Respondents shall, within **8 weeks**, file any **actuarial/expert summary** and report on which they rely; the Complainant shall have **8 weeks** thereafter to file a responding expert summary.

- (c) All argumentative or conclusory matter in either party's affidavits is received **subject to weight**; factual assertions outside the deponent's knowledge will require proper proof at the merits hearing.

25.4 **Costs:** No order as to costs.

[redacted]

J.S. NYATHI

Judge of the High Court

(sitting as Equality Court)

Gauteng Division, Pretoria

Date of hearing: 15/07/2025
Date of Judgment: 12 February 2026

On behalf of the Complainant/Plaintiffs: Mrs. Barbra Murfin (Complainant's wife).
Instructed by: Mr Leo Murfin (appearing in person).
E-mail: Leomurfin@gmail.com

On behalf of the First and Fourth Defendants: (Adv.) Mr. Doug C. Ainslie
Duly instructed by: Moodie & Robertson Inc.
E-mail: ainslie@group621.co.za

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 12 February 2025.