REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: CL12/2025

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE 2026/03/03 SIGNATURE [redacted]

In the matter between:

GREATER LETABA MUNCIPALITY **Applicant**

and

NATIONAL FUND FOR MUNCIPAL WORKERS **First Respondent**

EMMANUEL SELLO SHAI **Second Respondent**

JUDGMENT

BURNETT, AJ

Introduction

[1] The applicant launched an application for leave to appeal against the judgment (and subsequent reasons therefore) that was handed down on 31 December 2025.

Superior Courts Act

[2] Section 17 (1) of the Superior Courts Act 10 of 2013 states that: -

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

(a) (i) the appeal would have a reasonable prospect of success.

(ii) there are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

(b) the decision sought to appeal does not fall within the ambit of section 16 (2) (a).

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

Reasons for the dismissal.

[3] The applicant sought an order in terms of Section 37D (1) (b) of the Pensions Fund Act 24 of 1956. <u>The application before the court was not an anti-dissipation application in terms of the common law.</u>

[4] Section 37D (1) (b) of the Pension Funds Act 24 of 1956, which reads as follows: -

*"**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 No. 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 No. 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."

[5] From a plain reading of the above section, the legislature intended to provide the **registered pension fund** concerned with **a discretion** to deduct certain monies from a member's pension fund, subject to the following:-

[5.1] The employee committed theft, dishonesty, fraud or misconduct against the employer.

[5.2] The theft, dishonesty, fraud or misconduct by the employee caused damage to the employer.

[5.3] **<u>And also if</u>**, the employee admitted liability to the employer; **<u>or</u>** judgement has been obtained in a court of law for the damages.

[5.4] **The deduction must be made in accordance with the Rules of the Fund.**

[6] The purpose of Section 37D (1) (b) is to protect the employer's right to pursue the recovery of money against an employee, however only in specific instances of theft, dishonesty, fraud or misconduct. Theft, fraud, dishonesty and misconduct create the

primary boundaries of this section. If the employee is accused of any act other than one of those four acts, the employer cannot invoke Section 37D (1) (b).

[7] Counsel for the Applicant argued that Section 37D (1) (b) implied that the withdrawal of pension interest by an employee could be withheld from him/her pending the determination of liability for theft, fraud, dishonesty or misconduct in accordance with the Supreme Court of Appeal held in ***Highveld Steel & Vanadium Corporation Ltd v Oosthuizen.***[1]

[8] The Highveld judgment found that it was implied from the wording of section 37D (1) (b) that whilst a registered pension fund may deduct certain monies from an employee's pension fund, it may also withhold payment of the pension interest under the same circumstances and pending a final outcome of the dispute. The Supreme Court of Appeal articulated the rationale for this as follows:-

"[17] However, a practical problem threatens the efficacy of the remedy afforded by the section. In many case employers only suspect dishonesty on the date of termination of an employee's service and fund membership with the consequence that pension benefits are paid before the suspected dishonesty can be properly investigated. Furthermore, it must be accepted as a matter of logic that it is only in a few cases that an employer will have obtained a judgment against its employee by the time the latter's employment is terminated because of the lengthy delays in finalizing cases in the justice system. The result, therefore, is that an employer will find it difficult to enforce an award made in its favour by the time judgment is obtained against him.

[18] These practicalities lead me to disagree with the submissions for the respondent, inter alia, that the tense used by the legislature in s 37D(b)(ii)(aa) and (bb), in the words 'has in writing admitted liability' and 'judgment has been obtained' reflects an intention that either proof of liability must be available on termination of the employment contract. I similarly have a difficulty with the contention that the words 'as soon as possible' in rule 7.3 require payment of the pension benefits to be effected immediately upon termination of an employee's service.

1 (4) SA (1) (SCA) para 16.

[19] Such an interpretation would render the protection afforded to the employer by s 37D(1)(b) *meaningless, a result which plainly cannot have been intended by the legislature. It seems to me that to give effect to the manifest purpose of the section, its wording must be interpreted purposively to include the power to withhold payment of a member's pension benefits pending the determination or acknowledgement of such member's liability.* ***The Funds therefore had the discretion*** *to withhold payment of the respondent's pension benefit in the circumstances.*

[20] Considering the potential prejudice to an employee who may urgently need to access his pension benefits and who is in due course found innocent, ***it is necessary that pension funds exercise their discretion with care and in the process balance the competing interests with due regard to the strength of the employer's claim****. They may also impose conditions on employees to do justice to the case."*

[9] One must however have careful regard to the wording of Section 37D (1) (b) and the ***Highveld Steel*** case. The discretion to deduct from or withhold pension benefits, rests with the registered fund and not the court. However, in instances where the registered fund exercised their discretion incorrectly, the decision is reviewable by a High Court.

[10] The registered pension fund exercised its discretion when it rejected the Applicant's request to withhold payment of Second Respondent's pension funds benefit to him. To the extent that the Applicant believes that the registered pension fund exercised its discretion incorrectly, it ought to have launched a judicial review application.

[11] The Applicant did not launch a judicial review application, instead it asked the court to exercise a discretion in terms of Section 37D (1) (b) of the Pension Funds Act 24 of 1956 and interdict the pay-out of the Second Respondent's pension fund to him. This court does not have such a discretion in terms of Section 37D (1) (b).

Arguments at leave to appeal

[11] The applicant argued that this court erred in that the court made two incorrect factual findings, namely: -

[11.1] *"Following receipt of the Notice to Attend a Disciplinary Hearing, the Second Respondent, at the age of 63 (sixty-three) years old, resigned from the Applicant's employ and applied to the First Respondent to release his pension fund to him."*

[11.2] *"On 10 December 2025 the First Respondent dismissed the request to withhold the pension fund payment."*

[12] The Applicant argued that the court incorrectly found that the Second Respondent resigned following receipt of the Notice to Attend a Disciplinary Hearing, and that he in fact resigned during the preliminary stages of the disciplinary process long after he received the notice. The Applicant attempted to argue that the word *"following"* means *"upon"*, when in fact it means *"after or as a result of"*.[2] There is no substance in this argument, and it make no difference to the legal position. The argument presented by the Applicant in this regard is frivolous.

[13] The Applicant further argued that the First Respondent did not dismiss the Applicant's request to withhold the pension fund, but rather refrained from making a decision, and referred the parties to court.

[14] The letter from the registered fund dated 10 December 2025, referring to a letter dated 1 December 2025 states, *inter alia* that:-

2 The Oxford Dictionary (2026).

"As conveyed in our letter dated 1 December 2025, addressed to the Municipal Manager of Letaba Local Municipality, the Fund provided the employer with an opportunity to provide it with relevant information, including court documentation by the end of business on 31 December 2025. The fund will therefore not process the payment of Mr. Shai's withdrawal benefit until the request to withhold procedure has been completed in the time frames as communicated previously. With reference to your statement in paragraph 4.8 of your letter, the Fund will not be opposing the Local Municipality's court application. As the fund may only act in accordance with the applicable legislation, any court order not in compliance with the legislation will be unenforceable against the fund."

[15] The letter dated 10 December wherein it conveyed the above to the Applicant, must be read with the letter dated 1 December 2025 wherein it stated that: -

"From the information provided by the Municipality it is unclear whether the reason for the request as well as the legal procedures as prescribed by the Pension Funds Act are complied with for the NFMW to consider the request to withhold the payment of the member's benefit. It is also indicated that the reason for the request is due to the members' dereliction of duty and/or gross negligence, which does not seem to comply with the requirements, i.e. theft, fraud, dishonesty or dishonest misconduct. From the NFMW to be in a position to make an informed decision, the NFMW will provide the Municipality with an opportunity to provide the relevant information stated above by no later than end of business on 31 December 2025 for our consideration. If the required information, including court documentation, i.e. an interdict against the NFMW not to make payment or a court order application against Mr. Shia that complies with the above legal requirements is not received within the required period, the NFMW will proceed with the payment process, on the conditions as prescribed in its rules."

[16] Rightly or wrongly, the registered pension fund exercised its discretion and **made a decision** not to withhold the Second Respondent's pension benefits.

[17] A registered pension fund cannot delegate its own duty in terms of legislation to a court of law, and that decision in itself would be reviewable.

[18] Instead of launching an application for an interdict in terms of Section 37D (1) (b) of the Pension Funds Act 24 of 1956, the Applicant ought to have launched an application for a review of the registered pension fund's decision; whatever the decision was.

[19] The Applicant argued that the *Highveld Steel* states that a court may grant an interdict in terms of Section 37D (1) (b) of the Pension Funds Act 24 of 1956. The Applicant has misinterpreted the *Highveld Steel* case. The *Highveld Steel* case does not provide authority for the proposition that a court can take the place of the registered pension fund and assume its discretion. The *Highveld Steel* case extends the interpretation of Section 37D (1) (b) to allow a **registered pension** fund to withhold pension benefits pending the determination of an employee's liability for theft, fraud, dishonesty or misconduct, and not merely deduct funds resulting from an acknowledgment of liability.

Conclusion

[20] There are no prospects of success on appeal, and neither are there any compelling reasons to grant leave to appeal.

[21] I according make the following order:-

[21.1] The application for leave to appeal is dismissed.

[21.2] The Applicant is to pay the Second Respondent's taxable party and party costs on Scale B.

[redacted]

BURNETT, E J
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: -	**ADV. QOFA-LEBAKENG**
INSTRUCTED BY: -	**MPHOKE MAGANE ATTORNEYS**
FOR THE 1st RESPONDENT: -	**NO APPEARANCE**
FOR THE 2nd RESPONDENT: -	**ADV. MARX**
INSTRUCTED BY: -	**CHAUKE ATTORNEYS**
DATE OF HEARING: -	**16 FEBRUARY 2026**
DATE OF JUDGMENT: -	**3 MARCH 2026**