IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE N2:10499/2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED: **YES**

DATE: 28/04/2026

SIGNATURE:

In the matter between:

BEARING MAN(PTY) LTD **APPLICANT**

V

DAVON PIETERS **1ST RESPONDENT**

ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD **2ND RESPONDENT**

Delivered	**28 April 2026** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **28 April 2026** at 10:00 am.
Date heard	**19 January 2026**
Coram	**Pillay J**

JUDGMENT

PILLAY J:

INTRODUCTION:

[1] The parties came before Court by way of an urgent application. The applicant required the Court to dispense with the normal requirements pertaining to the rules and formalities in respect of timelines in terms of rule 6(12) insofar as it pertained to urgency in respect of this application. The applicant had filed its founding affidavit in support of same and obtained an interim interdict against the second respondent to withhold the benefits due to the first respondent flowing from the termination of his employment with the applicant. The application was opposed only by the first respondent, with the first respondent filing his opposing affidavit. The second respondent was properly served with the Court Order and application but has not opposed same. The applicant replied and the parties filed practise notes and heads of argument in respect of the said application. The applicant sought the confirmation of the interim order which read as follows;

> [1.1] The application is deemed urgent and the applicant's failure to comply with the terms and times for service and notice in terms of the Rules of the above Honourable Court is condoned on the grounds of urgency in terms of Rule 6(12).
>
> [1.2] Leave is granted to amend and substitute the citation of the second respondent with Alexander Forbes Retirement Fund (Provident Section) a pension fund organization as contemplated in section 5(1)(a) of the Pension Fund Act 24 of 1956 with its principal place of business situated at 1[...] W[...] Street Sandown Sandton 2196.
>
> [1.3] A rule nisi is hereby issued calling upon the 1st and 2nd respondents to show cause if any to the above Honourable Court on 25 March 2025 at 10;00 AM or soon thereafter as the matter may be heard why an order should not be made in the following terms:
>
>> [1.3.1] The second respondent is interdicted and restrained from releasing or paying any monies from the first respondent's pension fund credit in the Alexander Forbes Retirement Fund, to the first

respondent, pending the finalization of the civil action instituted by the applicant against the first respondent under case number 9495/2024, currently before in the Limpopo High Court held at Polokwane.

[1.3.2] The second respondent is directed to withhold the first respondent's pension credit in the Alexander Forbes Retirement Fund pending the finalization of the civil action referred to in prayer 2.1. above, provided that the second respondent is not required to withhold any amount over and above the amount due to the first respondent in terms of its registered rules.

[1.3.3] Service of this order is to be affected by the Sheriff by serving a copy of the order on the first and second Respondent.

[1.4] No order as to costs.

[1.5] Prayers 1.3.1. to 1.3.3 operate with immediate effect as an interim order pending the finalization of this application.

BRIEF BACKGROUND:

[2] The applicant is a Distributor and engineering services provided to inter alia the mining industry. The first respondent was employed as a branch manager at the applicant's Phalaborwa site on 18 February 2021.

[3] The first respondent was alleged to have been involved in fraudulent conduct whilst in the employ of the applicant and was subsequently dismissed as an employee and damages were sought from him arising from the allegation of him being involved in dishonest activity whilst in the applicant's employ. The applicant subsequently instituted summons for damages flowing from the first respondent's alleged misconduct.

[4] The first respondent was advised to attend a disciplinary inquiry on 22 May 2024 to address the allegations of fraud in that between October 2023 and April 2024 he colluded with an external engineering supplier Bushveld Projects to inflate prices and thereby derived financial benefit for himself. He did not attend the disciplinary inquiry, instead he resigned and the proceedings continued in his absence amidst the first respondent being contacted telephonically prior to the

proceedings continuing, once he refused to avail himself to respond to the allegations. Evidence was led satisfactorily concerning his involvement in these illicit and unlawful acts and consequently resulted in his dismissal.

[5] On the 2 July 2024 the applicant's attorney contacted the second respondent invoking the provisions of Section 37D of the Pension Funds Act[1], requesting the second respondent to withhold payment of the first respondent's pension benefits because of the first respondent's fraudulent behaviour. The response from the second respondent was that an interdict from Court would be preferable resulting in the interim interdict granted as per the above Court order, which the applicant sought to be made final pending the damages claim which was instituted against the first respondent.

[6] The applicant indicated that the first respondent after his dismissal did not refer the alleged unfair dismissal dispute to the CCMA amidst being aware of his rights insofar as approaching the CCMA being an impartial adjudicator to assist in respect of his dismissal if he was aggrieved by same. The applicant highlighted that it was in the interest of justice that the order be made final. The funds held by the second respondent would still draw interest and that on the finalization of the proceedings against the first respondent same could be used to offset the debt owed alternatively refunded to the first respondent and that the applicant's case is merited for the *rule nisi* to be confirmed as per the Court Order.

[7] The first respondent in opposition to the application indicated that he disputed the contents of the deponent's affidavit insofar as the involvement of the deponent in the day-to-day running of the business and the deponent's firsthand knowledge in relation to the uncorroborated hearsay evidence which the deponent has alleged to have knowledge of concerning the matter. He indicated that there was no justification that anything stated in the founding affidavit was true and or correct.

[8] The first respondent confirmed that he was employed by the applicant but denied that he perpetrated any fraudulent conduct as alleged by the applicant. He

[1] See Act 24 of 1956

admitted that he was dismissed on 23 May 2024 after the disciplinary hearing was held in his absence on 22 May 2024. He indicated that he did not attend the disciplinary hearing as the outcome thereof was a foregone conclusion and same was a mere formality as stated by Employees, Managers and Board Members of the applicant to him. He highlighted that the Chairperson of the disciplinary hearing was employed by the applicant as well as the Investigator tasked with the investigation, therefore his participation in such proceedings would have been a futile exercise as there could be no impartiality.

[9] He denied that there was any merit in the Civil proceedings pending against him and the entitlement to the interdict against his pension fund benefits. He confirmed the Summons issued against him on 24 August 2024 alleged he committed bribery and corruption by awarding contracts to suppliers of the applicant in exchange for benefits in money but disputed the allegations. Further he disputed that he forged invoices in the process and he retained the money for himself or used it to solicit further bribes as contained in the applicant's particulars of claim in paragraph 8.2.

[10] He denied the results of the internal investigation. According to him after his appointment as branch manager at Phalaborwa, he was requested to build a firm customer base over and above the existing contract volumes in place, during the annual branch meetings. He was instructed to aggressively promote the branch and to pay commission to agents obtaining any extra orders. The said commissions were to be paid directly from the amount included as part of the markup placed on products and services by the branch. The commission would be paid to the agent without affecting profit and directly benefiting the applicant.

[11] On 23 April 2024, he was instructed to take commission a step further to include commissions directly affiliated to employees of customers with which he did not agree, whereafter he visited the applicant's Head Office in Johannesburg, to object to and refuse payment of commission to employees of customers as per the instructions received. The report was ill received which resulted in his dismissal flowing from what he believed, was the animosity the report created between the Directors of the applicant as some of the Directors were never informed of the

commissions paid and the others who gave the instructions, backtracked and denied giving those instructions. He denied appropriating any money for himself as it was solely paid out to agents as commission. He indicated that the applicant never made a loss but benefited therefrom as the customers in fact paid the commission.

[12] He denied the averments made by the applicant in the various paragraphs as contained in the founding affidavit and that his conduct constituted bribery and corruption. He indicated that at all material times he was supervised and following instructions. He stated that at no stage did he breach any agreements or the code of conduct. He maintained that the supply contracts were already in place prior to him being appointed and no further contracts were entered into, after his appointment, that he was aware of.

[13] He highlighted that he could not appoint suppliers and that no services or products was supplied to suppliers, as the suppliers supplied their products to the applicant for the resale, alternatively supplied customers with products, as per the agreements existing between the applicant and the suppliers. He indicated that he was not involved in the issuing of invoices nor was he involved in the sales but was responsible for verifying orders and customer invoicing to be in line with the deliveries. If there were any questions to be raised in respect of pricing and commission the Head Office would immediately have raised the alarm.

[14] He stated that the cost price of goods was obtained from the applicant's appointed suppliers or the applicant's Head Office, whereafter the Branch may add profit in its discretion. In so far as commission was concerned the instructions came from his seniors and he denied misappropriating any money for personal use, accepting money as commission for personal use or soliciting bribes. He denied making any misrepresentations and never overinflated costs. He disputed the contents of the "Annexure C" as it was not an electronically generated document and the contents contained therein could be misconstrued. According to him the document constituted hearsay as the author thereof as well as the information forming the basis thereof was inadmissible.

[15] He disputed that he acted fraudulently or dishonestly and that there was any money that the applicant could recover as the applicant made no loss, nor was the applicant's name tarnished in any way. In fact, according to him, the application was without merit and based on hearsay and utter misconceived speculation. He maintained that he would suffer prejudice as he was dependent on his pension to make a living after being dismissed by the applicant for no valid reason. At present he and his family suffer severe financial prejudice, whilst the alleged suppliers still provide goods to the applicant, as per usual without any prejudice and the relevant Directors who gave the instructions to pay the commission, were still employed by the applicant. The first respondent highlighted that if the applicant were to be successful it could execute against his assets or obtain a garnishee order against him in the event of Judgment which was disputed.

[16] The first respondent submitted that the protection afforded to employer's rights to pursue the recoveries of money misappropriated by its employees in terms of the provisions of section37D(1)(b) could only be afforded to the extent that the applicant could prove its claim and the Court could not deviate therefrom. The first respondent submitted that the application was not urgent due to the delay of a period of approximately four months and that the interim order should be dismissed with costs.

[17] In reply the applicant argued that the deponent had the relevant authority to file an affidavit in support of the application on its behalf and maintained that there was justification in the urgency of the application, to interdict the second respondent from releasing the first respondent's pension interest, pending the final resolution of the Civil action which was brought against the first respondent. The contents of the documentation used in support of the application as well as for the purposes of the Civil litigation against the first respondent, was compiled as a result of investigation done into the alleged misconduct by the first respondent. This evidence would be discovered at the relevant time during the Civil proceedings instituted against the first respondent.

[18] The applicant maintained that the first respondent's actions have illustrated his dishonest behaviour and therefore if the pension interest was released to him,

there was a strong possibility that the applicant would not recovered this money and this was inherently prejudicial to the applicant, if the interim order was not made final. It was further on account of the second respondent's communication, that it would not withhold the release of the first respondent's pension benefit without any interdict, that resulted in the applicant having to approach the Court on an urgent basis. The applicant maintained that there was compliance with the requirements of the Pension Fund Act and the first respondent had made a bold allegation of noncompliance without substantiating same and as such did not meaningfully grapple with the issues at hand especially the allegations of the payment of funds by Bosveld Products.

[19] Both parties filed detailed heads of argument in support of and opposing the confirmation of the *Rule Nisi.*

COMMON CAUSE FACTS:

[20] The following were identified as the facts germane to the matter.

[20.1] That the identity of the parties was not in dispute and the fact that the first respondent was employed by the applicant.

[20.2] That the first respondent's employment was terminated after a disciplinary enquiry was held in his absence, amidst being informed of same and being telephonically contacted by the Chairperson at the time of the disciplinary enquiry, wherein he indicated that he would not be attending.

[20.3] That the first respondent did not approach any higher forum or CCMA in respect of his dissatisfaction concerning the alleged basis for dismissal being the allegations of dishonesty and fraud.

[20.4] That the second respondent sought a Court Order in respect of an interdict to halt the payment of the pension interest to the first respondent.

[20.5] That a *Rule Nisi* was granted calling on the respondents to show cause why the interim interdict for the preservation of the pension interest of the first respondent, as held by the second respondent, pending the outcome of the civil claim for damages, not be confirmed.

FACTS IN DISPUTE:

[21] The crisp issues for determination were the following:

[21.1] Whether the applicant had made out a case for the confirmation of the *Rule Nisi* as sought by the applicant?

[21.2] Whether the disciplinary enquiry was fair and just resulting in a just decision or as indicated by the first respondent "*as stated by Employees, Managers and Board Members of the applicant to me. The Chairperson of the disciplinary hearing is employed by the applicant as well as the Investigator tasked with the investigation. Therefore, my participation in such proceedings would have been a futile exercise as there can be no impartiality*" was a mere formality where the outcome was pre-determined.

[21.3] Whether the first respondent's version in rebuttal of the said application had merit, requiring a dismissal of the interim interdict.

[21.4] Whether the applicant had recourse to other remedies outside of this Court Order, and whether the prejudice suffered by the first respondent outweighed that of the applicant and grounds for the refusal of the application.

THE LEGAL PRINCIPLES AND ITS APPLICABILITY

[22] It is common cause that there is currently an Interim Interdict granted in favour of the applicant dated 15 October 2024. The issue of urgency had already been ventilated in those proceedings as per the Court Order. At the time this matter was argued it was apparent that the issue of urgency was no longer pertinent to be ventilated. Moreover, this Court was satisfied that the basis for urgency had already been established when the Interim Order was granted. Therefore, this issue needed no further adjudication.

[23] The provision of section 37A (1) and section 37D of the Pension Fund Act[2] reads as follows:

[2] See Act 24 of 1956 as above

Section 37A(1) reads:

'Pension benefit is not reducible, transferable or executable.

(1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act 58 of 1962), and the Maintenance Act, 1998, no benefit provided for in the rules of the registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law ... '.

Section 37A(3) however states that the prohibition against reduction does not apply to a reduction effected under s 37D.

Section 37D(1)(b) provides:

'(1) A registered fund may-

(a) ...

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of -

(i) ...

(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) 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 -

(aa) the member has in writing admitted liability to the employer; or

(bb) judgment has been obtained against the member in any court, including a magistrate's court, from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned'.

[24] From the accepted evidence it was apparent that at the time of the disciplinary inquiry the applicant had diligently investigated the allegations of fraud and theft

involving the first respondent. The first respondent however amidst these serious allegations maintained that he was acting under the instruction, supervision and direction of his seniors. He however elected not to place this information before the disciplinary inquiry.

[25] It was also clear that amidst this unjust and unfair decision taken by the applicant, the first respondent had taken no steps to appeal to a different forum. If anything, up and until the proceedings before Court, the first respondent showed little or no interest in rebutting the narrative, that was presented by the applicant, concerning these very serious allegations against him. This was disconcerting considering his defence and opposition to this application.

[26] Regard was had to the case of Highveld Steel and Vanadium Corporation Ltd v Oosthuizen[3] where the SCA appreciated the difficulty facing the employer to have secured judgment against an employee, at the time that the employee's retirement benefit was to be paid out. The SCA noted,

> *"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. I daresay that such discretion was properly exercised in view of the glaring absence of any serious challenge to the appellant's detailed allegations of dishonesty against the respondent".*

[27] From the reading of the SCA decision, there lies a duty on the Court to strike a balance with the need sought by the applicant to preserve the funds held by the second respondent, offset against the prejudice to be suffered by the first respondent. The first respondent in his answering affidavit made no mention concerning placing his defence and version before any forum, creating the impression that he was comfortable with the outcome of the disciplinary inquiry, as well as allowing the real

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[3] *(103/2008) [2008] ZASCA 164 (01December 2008)*

perpetrators of this unlawful conduct, on his version, to go unpunished and free to perpetuate this illegal activity in the future, to the prejudice of himself and the applicant. The first respondent will be afforded an opportunity to test the applicant's version at trial, with specific reference to the allegation of the report compiled documenting the fraudulent activities being inadmissible and unreliable. He will also then be able to put his version before Court for ventilation.

[28] The first respondent indicated that his family's need for his pension interest outweighed that of the applicant since his financial circumstances were dire and more serious than that of the applicant. This supported the argument by the applicant concerning the respondent's intention to deplete his pension interest, and further escape liability, once the judgment against him for the alleged theft and fraud was finalized as per the applicant's case. When considering these two separate distinct interests the Court found that the prejudice to be suffered by the applicant far outweighed that of the first respondent.

[29] The allegations against the first respondent were serious, the amount alleged to have been fraudulently stolen was over one million rands (R 1000 000,00). This was offset against the pension interest of the first respondent which according to the parties were not much since the first respondent was not employed by the applicant for long. The Court appreciated that the liability if any, of the first respondent, will only be determined at a later stage, and the allegations were serious and could not be ignored. The first respondent failed to seriously grapple with these issues, and the Court was satisfied that the applicant, had made out a case for final relief in circumstances where the *Rule Nisi* was granted for interim relief and a case was made out for same to be confirmed.

[30] Therefore, having regard to all the evidence placed before me I am satisfied that the applicant has made out a case for the confirmation of the interim order as per the Court Order dated 15 October 2024.

[31] Both parties sought costs in respect of these proceedings. As costs are at the discretion of the Court, I believe that at this stage it is prudent that costs be reserved to be ventilated during the trial proceedings.

[32] In the result the following Order is made;

[32.1] The *Rule Nisi* granted by the Court on 15 October 2024 is confirmed.

[32.2] The issue of Costs is reserved to be determined during the Civil Trial proceedings in Case Number 9459/2024 involving the parties.

K.L. PILLAY J
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT	:	Adv. WJ Hutchinson
INSTRUCTED BY	:	MacGregor Erasmus
	:	c/o Chayya S Attorneys
	:	Limpopo Polokwane
FOR THE RESPONDENT	:	Adv. AJ Swanepoel
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