



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
10 September 2026	
DATE	SIGNATURE

Case number: 2025-039060

In the matter between:

THE MEC FOR HEALTH: GAUTENG PROVINCE	First Applicant
TEMBISA HOSPITAL	Second Applicant
and	
KGABO FRANCINA MOFUTSANA	First Respondent
MAGISTRATE P SINGH	Second Respondent
GOVERNMENT EMPLOYEES PENSION FUND	Third Respondent
THE MINISTER OF THE DEPARTMENT OF JUSTICE	
AND CONSTITUTIONAL DEVELOPMENT	Fourth Respondent

JUDGMENT

MINNAAR AJ**Introduction:**

[1] On 4 December 2024, in the Regional Court for the Regional Division of Tshwane, held at Tshwane Central, the first respondent obtained a default judgment. The second respondent granted the order. In terms of the order, the Member of the Executive Committee for Health (“the MEC”), as third defendant, was ordered to pay to the first respondent the amount of R230 987.13 and R150 000.00, together with interest and costs (“the order”).

[2] The applicants seek to review and set aside the order in terms of Rule 53 of the Uniform Rules of Court on the basis that the order was granted in breach of procedural safeguards, outside the Magistrate’s Court jurisdiction, and in disregard of statutory remedies prescribed by the Pension Funds Act 24 of 1965 (“PFA”) and the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”).

[3] The first respondent opposes the application. In essence, it is the first respondent’s case that the applicants ought to have brought an application for rescission of the order and that a review is not applicable as her cause of action was premised on negligence, and not on the statutory provisions encapsulated by the PFA.

[4] The second and third respondents filed a notice to abide by this Court's decision. A Rule 53 record was filed.

Cause of action in support of the order:

[5] The first respondent pleaded that she married the late Joel Mofutsana ("the deceased") in community of property on 21 December 2011. The deceased was employed at the Tembisa Hospital and held a pension fund ("the pension fund") with the Government Employees Pension Fund ("GEPF"). According to the first respondent, as the deceased's spouse in community of property, she is entitled to 50% of the pension fund. The first respondent estimated her share to be R230 987.13 and R150 000.00, which is a child's share or whichever is greater thereof, since the deceased died intestate.

[6] Despite having submitted a pension fund claim, the first respondent's portion of the pension fund was not paid to her. Instead, it was paid to the deceased's children. According to the first respondent's pleaded case, this payment resulted from negligence by the GEPF, Tembisa Hospital (where the deceased was employed), and the MEC.

[7] The first respondent caused summons to be issued against:

- a. The Government Employees Pension Fund as the first defendant.
- b. Tembisa Hospital as the second defendant.
- c. The MEC as the third defendant.

- d. The Department of Health as the fourth defendant.
- e. The deceased's children as the fifth, sixth and seventh defendants.

[8] The first respondent sought judgment against the first, third, fifth, sixth, seventh and eighth defendants jointly and severally for payment of R230 987.13 and R150 000.00. The court granted default judgment only against the MEC, as the third defendant.

Discussion:

[9] It is common cause that the third respondent administered the pension fund.

[10] In the particulars of claim, the first respondent pleaded that, after submitting her pension fund claim to the Human Resources Department at Tembisa Hospital on 12 October 2016, she attended the third respondent's offices on 12 April 2017 to enquire about the progress of her claim. She was advised that the deceased's children received payment of the pension fund from the third respondent on 28 March 2017.

[11] In terms of section 2(1) of the PFA, the PFA finds application herein as it applies to the pension fund.

[12] Section 37C of the PFA deals with the disposition of pension benefits upon the death of a member.

[13] Section 30A of the PFA deals with submissions and complaints. It prescribes a mandatory internal remedy: a complainant must first lodge a written complaint with the fund and, if dissatisfied, escalate it to the Pension Funds Adjudicator (“the Adjudicator”).¹

[14] Section 30E of the PFA provides for the procedure to be followed by the Adjudicator. Section 30M provides for the Adjudicator's determination, and section 30O clothes the Adjudicator's determination with the same power as a civil judgment of any court of law.

[15] Section 30P of the PFA provides that any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.

[16] In *Grey's Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2005 (6) SA 313 (SCA) at paragraph 21, Nugent JA provided the

¹ “**30A Submission and consideration of complaints**

(1) Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund.

(2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.

(3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.

(4) ... ”

following consolidated and abbreviated form of the definition of administrative action, which action sufficed to convey its principal elements:

'Administrative action means any decision of an administrative nature made

. . . under an empowering provision [and] taken . . . by an organ of State, when exercising a power in terms of the Constitution or a provincial constitution, or exercising a public power or performing a public function in terms of any legislation, or [taken by] a natural or juristic person, other than an organ of State, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect. . . .'

[17] The allocation of pension fund benefits constitutes administrative action under PAJA.

[18] In terms of section 30A of the PFA, there was thus an obligation on the first respondent, once she was made aware of the disposition of the pension fund to the deceased's children, to lodge a written complaint with the third respondent and, should she still be dissatisfied, to escalate her complaint to the Pension Funds Adjudicator. She first had to exhaust the internal remedies provided by the PFA.² If she remained dissatisfied, she had to approach the High Court for relief.

² *Nichol and Another v Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA) at para 15

This she had not done. Instead, she elected to claim what she deemed her entitlement to the pension fund through an action premised on the alleged negligence of the first, second and third defendants.

[19] It was not for the second respondent, under the guise of negligence, to determine the disposition of the deceased's pension funds. The second respondent was not clothed with the jurisdiction to adjudicate on this aspect. The second respondent acted *ultra vires* the provisions of the PFA and PAJA, and the order should not have been granted. Accordingly, the order must be set aside.

[20] There is no basis to deviate from the normal approach that costs should follow the outcome. On the complexity of the application, costs are to be taxed on Scale B.

Order:

Consequently, I make the following order:

[1] The order granted by the second respondent on 4 December 2024 against the first applicant is reviewed, set aside, and declared null and void.

[2] The first respondent is to pay the costs of the application, to be taxed on Scale B.

Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

For the applicants: Adv M Lekwape

Instructed by The State Attorney

For the first respondent: Mr K M Mabale

Instructed by K M Mabale and Associates Inc.

Heard on: 14 May 2026

Date of judgment: 10 September 2026