



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
P O Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our reference: PFA/GA/5151/2005/SM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – MS MOLEFE (“the complainant”) v MUNICIPAL EMPLOYEES PENSION FUND (“the first respondent”) AND EKURHULENI METROPOLITAN MUNICIPALITY (“the second respondent”)

1. Introduction

- [1.1] The complaint concerns the alleged unlawful deduction of an amount of R384.87 per month from the complainant’s salary on the grounds that he took a home loan from the first respondent in March 2000 and August 2000.
- [1.2] The complaint was received by this office on 26 August 2005. A letter acknowledging receipt thereof was sent to the complainant on 19 September 2005. On the same date letters were dispatched to the respondents giving them until 10 October 2005 to file their responses to the complaint. A response was received from Akani Retirement Fund Administrators (“the administrator”) on behalf of the first respondent on 21 October 2005. Although a response was sought from the second respondent it failed to file any response to the complaint.
- [1.3] Having considered the written submissions before this tribunal, it is

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalu (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2.Factual Background

- [2.1] The complainant is employed by the second respondent and is a member of the first respondent by virtue of his employment. The complainant started working for the second respondent on 1 April 1995 and commenced making regular contributions to the first respondent during the same year.
- [2.2] The complainant received a letter from the first respondent which informed him that it has granted him a loan in the sum of R3500.00 in March 2000 and again in August 2000 in the sum of R5450.00. The letter also indicated that the outstanding balance on the loan was R10 668.43 and that he was required to pay the balance in regular monthly instalments in the sum of R384.87.

3.Complaint

- [3.1] The complainant's complaint is that the first respondent erred in stating that he took a housing loan of R5450.00 in August 2000. The complainant contends that he only took a loan of R3500.00 in March 2000 and that he is not aware about the other loan of R5450.00.

4.Response

- [4.1] Mr ZE Letjane, a managing director of the administrator, filed a response on behalf of the first respondent. He submits that section 16 of the first respondent's rules provides that subject to the provisions of section 19 of the Act the board of trustees of the fund is authorised to grant a loan contemplated in section 19(5) of the Act. He submitted that the complainant applied for a home loan in the prescribed format for an amount of R5450.00.
- [4.2] He submitted further that the first respondent is in possession of documents which indicate that the complainant applied for a loan which he signed on 24 July 2000 and that he obtained a quotation for building materials for the amount of R5 277.00. Further, he pointed out that the complainant received a cheque on 8 June 2001 which he cashed on the same date. He indicated further that the complainant's loan record reflects that he ceased repaying his loan on 31 October 2003. The first respondent then sent a letter to the complainant advising him that his loan balance amounted to R10 568.43. Moreover, it submitted that the amount of the

loan accumulated interest from 31 October 2003 to July 2005.

5.Determination and reasons therefor

[5.1] The issue that needs to be determined is whether the first respondent had established that it has granted the complainant a housing loan in the sum of R5450.00 and whether it was entitled to deduct the amount of the loan from his salary. Before dealing with the provisions of the Act, it is necessary to have regard to the provisions of Rule 16(3) of the first respondent's rules. Rule 16(3) of the first respondent's rules provides that subject to the provisions of section 19 of the Act, the committee shall be authorised to grant a loan contemplated in section 19(5) of the Act. Section 19(5)(a) of the Act read as follows:

“A registered fund may, if its rules so permit and subject to the regulations, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member-

- (i)
- (ii) to acquire immovable property on which a residence has been or will be erected, or to erect a residence on immovable property in respect of which, either the member or his or her spouse, or the member and his or her spouse, has or have obtained ownership or the right to ownership through a right of occupation, for occupation by the member or a dependant of the member; or
- (iii) to make additions or alterations to or to maintain or repair a residence of which ownership or the right to ownership was obtained through a right of occupation by either the member or his or her spouse or the member and his or her spouse and which is occupied or will be occupied by the member or a dependant of the member,

if the right of occupation of the immovable property or residence is secured by virtue of the operation of any custom or law, other than an agreement of lease or similar temporary measure, entitling such member, or his or her dependants, to the right of occupation of such immovable property or residence or any specified portion thereof.”

[5.2] Section 37D(a)(i) of the Act also provides that a registered fund may deduct any amount due to the fund in respect of a loan granted to a member in terms of section 19(5)(a) of the Act. Thus, section 19(5)(a)

governs the granting of housing loans to fund members. The deduction of any amount for the repayment of a loan is regulated by section 37D(1) of the Act read with section 19(5)(a). There are certain conditions which should be met before a fund may redeem a loan granted in terms of section 19(5)(a) of the Act. Firstly, there must be an amount owing in respect of loan in relation to the building, repairing or upgrading of the immovable property. Secondly, the loan must have been granted by the fund or employer or a third party.

[5.3] According to the evidence before this tribunal, it is evident that the complainant applied for a housing loan in the sum of R5450.00 to the first respondent. The administrator submitted that the complainant received a cheque in the sum of R5450.00 which he cashed on 8 June 2001. The administrator also submitted documentary evidence which reflect a housing loan agreement which appears to be signed by the complainant and a copy of a cheque in respect of his housing loan in the sum of R5450.00. Although the complainant submitted that he does not know anything about the loan of R5450.00, he did not submit any evidence to dispute the administrator's submission that he applied for a housing loan of R5450.00 in August 2000 and that he subsequently signed the loan agreement on 24 July 2000. Further, the complainant signed the loan agreement in terms of which he authorised the second respondent to deduct the amount of the loan on a monthly basis from his salary and pay it over to the first respondent. Moreover, the complainant did not dispute the fact that he received a cheque in the sum of R5450.00 from the first respondent in respect of the housing loan.

[5.4] Therefore, this tribunal is satisfied that the first respondent was entitled to deduct the amount of the complainant's home loan from his salary in terms of section 37D(a)(i) read together with section 19(5)(a)(ii) of the Act.

[5.5] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR