

## **IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

CASE NO: PFA/NP/98/00/CN

In the complaint between:

**Daniel M. Malesa**

**Complainant**

and

**African Bank Limited Retirement Fund**

**First Respondent**

**Old Mutual Life Assurance Co. (SA) Ltd.**

**Second Respondent**

**Glenrand M.I.B Employee Benefit  
Services (Pty) Ltd**

**Third Respondent**

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### **INTERIM RULING IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF 1956**

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1. This is a complaint in terms of section 30A(3) of the Pension Funds Act of 1956 (“the Act”), which concerns the failure of a fund and its administrators to furnish a member of the fund with adequate information concerning the computation of a withdrawal benefit payable to him on his withdrawal from the fund. The complaint essentially alleges that the complainant may suffer prejudice in consequence of the maladministration of the fund by the fund or any person.
2. No hearing has been held; thus in coming to my decision, I have had regard to the documentary evidence compiled in the course of the investigation conducted by my Assistant Adjudicator, Cikizwa Nkuhlu, as well as to the submissions of the parties to the complaint.

3. The complainant is Daniel Mashebane Malesa, an adult male residing at Badimong Village in Pietersburg. He is unrepresented in these proceedings.
4. The first respondent is the African Bank Limited Retirement Fund, ("the fund"), a pension fund duly registered in terms of the Act.
5. The second respondent is the Old Mutual Life Assurance Company (SA) Limited ("Old Mutual"), the administrator of the fund.
6. The third respondent is Glenrand M.I.B Employee Benefit Services (Pty) Ltd, ("Glenrand"), the brokers of the fund. Glenrand has not been joined as a party to these proceedings, but because it has a sufficient interest in the matter, I will order that it be joined as a party in terms of section 30G (d) of the Act.
7. The complainant was employed by the Pietersburg branch of the African Bank Limited, as an Enquiries Clerk, and later as a Teller, from June 1995 until he was dismissed by the employer for operational reasons, in January 1998. By virtue of his employment, he was a member of the African Bank Limited Retirement Fund.
8. He received a severance package of about R40 667-00 from his employer. During or about June 2001, the fund also deposited an amount of between R3000-00 and R3 500-00, representing his withdrawal benefit. The complainant is not sure about the exact figure that was paid to him because, despite repeated requests to Old Mutual and to the former employer, no documentation was furnished to him, setting out the breakdown of the computation of the benefit.
9. No response has been received from either Old Mutual or the fund, despite the fact that the complaint was faxed to them, by Ms. Laureen Manuel, of the office of the Pension Funds Adjudicator, during June 2000, and by Ms Cecile Higgs, on 21 September 2001, respectively.

10. The only response that was received came from Mr. Xan Prew of the Legal Department of the African Bank Limited, in the form of a letter dated 15 September 2000, which reads as follows:

As mentioned in our previous e-mail dated 18 July 2000, please be advised that on the 1 October 1998 Theta Investments Limited purchased the business previously known as "The African Bank Limited". This agreement composed of a ring fence transaction in terms whereof only certain of the assets and the banking licence were obtained. The remainder of the business of the "old African Bank" is currently being managed by Loan Management Services (LMS) who have been appointed for this purpose by the previous shareholders.

Therefore, we have no knowledge of the abovementioned person or his dealings with the "old African Bank". Furthermore we have perused our records and have been unable to attain any information relating thereto as we suspect that he was employed by the "old African Bank" before such time as Theta Investments Limited acquired such. I have forwarded your complaint to LMS for the attention of a Belinda Montgomery.

11. The above response does not go to the merits of the complaint and thus does not take the matter any further.
12. The complainant's concern as expressed in his complaint is that the benefit he received may not be the correct amount in terms of the rules of the fund. He is, however, not in a position to verify that fact because he does not know how much was paid to him by the fund. According to him, his suspicion is confirmed by information which he allegedly received from Mr. Kenneth Ross, of Glenrand, to the effect that some of the deductions that were made from his salary were not paid over to the fund.
13. Due to the lack of adequate information, the complainant is unable to establish and protect his rights.
14. The information required by the complainant is necessary to enable him to achieve

that purpose. Either the fund, or Old Mutual, or Glenrand M.I.B has it in its possession, or within its disposal.

15. Accordingly, it is ordered as follows:

15.1. Glenrand M.I.B Employee Benefit Services (Pty) Limited is hereby joined as a party to this complaint.

15.2. The second respondent is ordered to serve a copy of the complaint and this order on it, within seven days of the date hereof.

15.3. The first, second and third respondents are jointly ordered to furnish the complainant and this Tribunal, with a copy of the full set of the rules of the fund, as well as a detailed breakdown of the calculation of the withdrawal benefit that was paid to the complainant, pursuant to his retrenchment during January 1998; by no later than Friday 14 December 2001.

DATED AT CAPE TOWN ON THIS 30TH DAY OF NOVEMBER 2001.

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**JOHN MURPHY**  
**PENSION FUNDS ADJUDICATOR**