

Pension Funds Adjudicator


Press Office Feature : **Illegal interest on housing loan**

Company: Pension Funds Adjudicator


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PFA enforces rule prohibiting creditors from accumulating interest indefinitely

The deputy Pension Funds Adjudicator Ms Muvhango Lukhaimane has taken a provident fund to task for ignoring the in duplum rule when it computed the interest on a member's loan.

The *in duplum* rule states that unpaid interest on a money debt owing ceases to accumulate once it reaches the amount of the capital sum. In other words, the aggregate debt (capital plus interest) cannot exceed double the capital amount.

The *in duplum* rule protects debtors from exploitation by ensuring that their creditors cannot allow interest to accumulate indefinitely.

Ms VB Kunene of Lenasia, Gauteng, complained to the Office of the Pension Funds Adjudicator (OPFA) on August 2011 about the amount required for the repayment of a R8 250 housing loan granted to her by the Hospitality and General Provident Fund.

By December 2004, the amount had ballooned to R22 938.62 because of interest, and as the monthly contributions were lower than the interest rate, nine months later in September 2011 it was standing at R31 776. 25 - and still growing.

Mrs Kunene was an employee of the Garden Court Sandton City Hotel, a member of the Southern Sun Hotel Interest (Pty) Ltd and was a member of the Hospitality and General Provident Fund (the respondent).

In and around 1994, the employer created a fund for its employees and stopped paying contributions to the respondent.

This resulted in the respondent amending its rules to allow the complainant and other members to remain as paid-up members. Among the benefits that the paid-up members were still entitled to was a housing loan.

In November 1995, Mrs Kunene applied and was granted a housing



loan of R8 250 from the respondent. The repayment was to be deducted monthly from the complainant's salary until the debt was extinguished.

Mrs Kunene said that at some stage she approached the respondent to establish the balance of her loan and she was informed by the respondent that it was no longer working with the employer and it had for that reason stopped deducting the monthly repayment amount.

She submitted that she was further informed that to be provided with the balance statement she needed to pay R2 600.

She added that after the expiry of seven years without any activity the respondent approached her employer and started making deductions for the loan repayment without consulting her. She submitted that the employer had indicated to her that it could not stop these deductions.

She was aggrieved by the respondent's continued deductions from her salary and by the fact that the loan was still not extinguished, considering that she had been repaying it for a number of years.

In its response to the OPFA, the respondent said the employer was to deduct the monthly repayment amount from the member's salary and pay it over to the respondent.

During 1997 the employer stopped deducting and paying over the repayment amounts to the respondent. To compel the employer it lodged a complaint with the OPFA which was determined in its favour.

The respondent submitted that this determination ordered the employer to start deducting the member's salary every month for the repayment of the loan and members were informed by a notice circulated by the employer dated May 2000.

It further submitted that although some of the members started repaying their loans from then, Mrs Kunene only started her repayment in December 2004 at the rate of R190.52 per month and at that time the loan balance had already grown to R22 938.62 with interest.

The complainant was paying at a rate lower than the interest rate and as a result the loan amount was increasing and as at September 2011 it stood at R31 776. 25.

The respondent contended that it was justified in making these deductions in order to settle the housing loan.

In her determination, Ms Lukhaimane said while the respondent was entitled to make deductions to settle the loan, the bone of contention was the amount due and the manner of repayment.

"What the fund has ignored to do in computing the complainant's debt, is the *in duplum* rule.

"The rule provides that interest stops running when the unpaid interest equals the outstanding capital. When due to payment interest drops below the outstanding capital, interest again begins to run until it once again equals that amount."

The effect of the *in duplum* rule on Mrs Kunene's debt meant that the interest on the debt ought to have been capped at R8 250, meaning that at no time was the total of the debt to exceed R16 500.

"The actions of the respondents to continue charging interest upon interest even after this amount was reached, was illegal.

"In the event, this Tribunal finds that the complainant has been prejudiced by the manner in which the respondents computed the interest on her loan in total ignorance of the *in duplum* rule.

"Therefore, to place the complainant in the position she would have been if the *in duplum* rule had been correctly applied, the respondent needs to determine the point at which the interest on the complainant's loan reached R8 250 and as from that date determine by how much the debt has been reduced by the monthly repayment amount which the complainant continues to pay," said Ms Lukhaimane.

Should the outstanding balance exceed Mrs Kunene's total debt of R16 500, the amount by which it exceeds the total debt must be repaid to the complainant.