

Strict conditions for withholding pension benefit

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By Bruce Cameron

An employer cannot delay the payment of a retirement fund benefit to a fund member who has left its employ and resigned from a fund, simply by claiming that the former employee defrauded it.

Deputy Pension Funds Adjudicator Muvhango Lukhaimane says an employer must meet prescribed conditions before the payment of a retirement fund benefit may be delayed or an amount may be deducted from the benefit. These conditions are:

- * An amount must be due by a retirement fund member/employee to an employer;
- * The amount must be due at the date of retirement or the date on which the member ceases to be a member of the fund;
- * The amount must be in respect of compensation payable for damage caused to the employer, or legal costs recoverable from the member;
- * The damage caused to the employer must be by reason of theft, dishonesty, fraud or misconduct; and
- * The member must in writing admit to a liability for the damages caused to the employer, or the employer must obtain a civil judgment against the member in respect of the compensation.

In a recent determination, Lukhaimane ordered the Destiny Umbrella Provident Fund to pay the complainant, Mr O, his retirement fund benefit, because his former employer, Aucor Sandton, had not provided any proof that Mr O had signed an admission of liability, nor had Aucor Sandton obtained a civil judgment against Mr O.

Aucor Sandton had ordered the Destiny Umbrella Provident Fund to withhold payment of the benefit, because, it claimed, Mr O had defrauded the company, which Mr O denied