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Please quote our reference: **PFA/GP/00113623/2024/FL**

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): SM MASEKO (“complainant”) v DISCOVERY LIFE PENSION UMBRELLA FUND (FUND NO 38174) (“fund”) AND BUHLER (PTY) LTD (“employer”)

[1] INTRODUCTION

1.1 This complaint concerns the withholding of the complainant’s withdrawal benefit by the fund at the request of the employer pursuant to section 37D(1)(b)(ii) of the Act.

1.2 The Adjudicator received the complaint on 09 June 2024. On 18 June 2024, a letter was sent to the complainant notifying him that the complaint was forwarded to the respondents for possible resolution. On the same date, a notification of the complaint was sent to the respondents affording them until 18 July 2024 to resolve the complaint.

A response was received from the fund on 16 July 2024. An acknowledgement of the complaint was sent to the complainant on 19 July 2024. On the same date, formal responses were requested from the respondents giving them until 08 August 2024 to file responses. The employer submitted its response on 30 July 2024. The complainant made submissions on 28 August 2024. The fund made further submissions on 07 August 2024

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

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and 05 September 2024. No further submissions were received from the parties.

1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant was employed from 01 February 2016 until his resignation on 29 March 2024. He was a member of the fund under the participation of the employer.

2.2 Upon the termination of his employment, the complainant became entitled to receive a withdrawal benefit. The fund is withholding the complainant's withdrawal benefit at the instance of the employer pursuant to section 37D(1)(b)(ii) of the Act. The complainant had a gross fund credit of R141 437.35 as at 26 June 2024.

[3] COMPLAINT

3.1 The complainant stated that the employer refuses to sign his withdrawal claim forms and forward same to fund for payment.

3.2 The complainant provided a copy of his payslip for February 2024 reflecting a provident fund deduction of R2 270.50 and a membership certificate reflecting a pensionable service date of 01 March 2023.

3.3 The complainant requests the Adjudicator to investigate the matter and order the payment of his withdrawal benefit.

[4] RESPONSE

Fund

4.1 The fund submitted that the employer commenced participating in it on 01 March 2023. The complainant became its member on 01 March 2023. In terms of the special rules, the complainant was a category 1 member, and the employer

contributed at a rate of 2% and 7.5% of the complainant's pensionable salary per month.

4.2The fund submitted that it received contributions on behalf of the complainant from March 2023 to March 2024, and the complainant had a fund credit of R141 437.35 as at 26 June 2024, including R104 309.75 transferred in terms of section 14 of the Act.

4.3The fund stated that it only became aware of the complainant's termination of employment upon receipt of the complaint from the Adjudicator. It requested the withdrawal claim from the employer. The employer then confirmed that it is in the process of instituting criminal proceedings against the complainant and requested him to sign an acknowledgement of debt and same would be provided to the fund together with the case number.

4.4The fund submitted that it informed the employer that criminal proceedings alone are not sufficient to meet the requirements of section 37D(1)(b)(ii). It stated that a written admission of liability or civil judgment was required. It, therefore informed the employer that it was unable to withhold the complainant's withdrawal benefit unless it receives the details of the pending legal proceedings, preferably civil, a South African police Service ("SAPS") case number, further if the employer opted to institute a criminal proceeding against the complainant, the employer must confirm that it has applied for a compensation order in terms of section 300 of the Criminal Procedure Act and provide the quantum of the damage or losses suffered. It allowed the employer until 22 July 2024 to provide it with the above information. Should it not receive the information by 22 July 2024, it will proceed with payment of the complainant's withdrawal benefit.

Fund's further submissions

4.5On 07 August 2024, the fund submitted that the employer provided it with a criminal case number 495/7/2024 opened at the Honeydew Police Station against the complainant regarding his unauthorised use of the employer's issued credit card in the amount of R537 861.34. The employer advised that the matter would be referred to the Commercial Crimes Court and the Directorate of Priority Crimes Investigation.

4.6 The fund submitted that the employer requested it to withhold the complainant's withdrawal benefit. On 07 August 2024, it sent a letter to the complainant allowing him to submit his response to the employer's request and potential financial hardship. It would therefore allow the complainant until 21 August 2024 to make his submissions and thereafter decide whether to withhold or pay the complainant's withdrawal benefit.

4.7 On 05 September 2024, the fund submitted that the complainant provided it with a response on 21 August 2024 indicating as follows:

- He resigned because he was not given a promotion and has secured another employment;
- He requested that the employer provide him with a statement of account detailing the misuse of the credit card;
- The employer ignored his request to sign his withdrawal claim form;
- On 01 July 2024, the employer sent him an admission of liability to sign;
- There are no criminal or civil proceedings instituted against him; and
- On 16 July 2024, the employer sent him a letter of demand.

4.8 The fund submitted that on 21 August 2024, the employer provided it with a combined summons and particulars of claim as proof of legal proceedings instituted against the complainant at the Johannesburg High Court under case number 2024-092582. In terms of the particulars of the claim, the complainant is accused of theft in that in November 2020 he was issued with a company credit card for business use only. However, the complainant used the credit card for his own authorised personal expenses or withdrew money for his personal use, amounting to R537 861.34.

4.9 The fund submitted that the employer is seeking judgment against the complainant for R537 861.34 and interest at a rate of 11.25 % per annum from the date of service of the summons to the date of payment. It received proof of service as proof that the summons was served on the complainant's mother on 22 August 2024.

4.10 The fund submitted that on 22 August 2024, it contacted the complainant to obtain his response to the employer's summons and whether he would be defending the matter; however, it could not reach him. On 05 September 2024, it requested the employer amend the summons as the current one does

not include an order or request for the fund to attach the complainant's benefit if the employer is successful.

4.11 The fund submitted that it is satisfied that a *prima facie* case has been made against the complainant, which provides sufficient grounds to withhold his benefit until a court order is obtained.

Employer

4.12 The employer submitted that the complainant was its employee from February 2016 until his resignation in March 2024. On or about January 2021, he was promoted and appointed GQ CS Sales Manager. His appointment entitled him to be provided with the company credit card, which card was issued to him on or about November 2020.

4.13 The employer submitted that the credit card was issued to the complainant for business use only, subject to its general regulations and Travel Policy. Further, by virtue of Article 2 of his employment contract, the said policies formed part of his contract of employment and constituted directives which he was aware of and required to comply with at all times.

4.14 From 2022 to 2024, he began using a credit card to pay for his unauthorised personal expenses. The complainant concealed the unauthorised expenditure by passing its internal systems and submitting his statements directly to its other division, which was unfamiliar with the credit card process.

4.15 The complainant resigned on or about 21 February 2024; it then discovered his misuse of the credit card on or about March 2024 while he was serving his one-month notice. In the interests of *audi alteram partem*, and to provide him with a fair opportunity to state his case, it suspended him on full pay as per its procedures and issued disciplinary proceedings against him. The complainant indicated that he was aware of the policy prohibiting the use of the card for personal use, and personally signed a form acknowledging this. However, the complainant declined to sign an acknowledgement of debt.

4.16 The employer submitted that while it maintained an open-door policy with the complainant to resolve the matter, he did not make himself available for discussion. Instead, he excused himself from his disciplinary hearings scheduled for 19 March 2024 and 25 March 2024 by providing a sick note. As a last resort, it had no choice but to halt the release of his pension fund benefit and seek legal recourse against him to recover its loss.

4.17 The employer submitted that between March 2024 and July 2024, it undertook an internal investigation and gathered evidence regarding the complainant's theft and/or fraud regarding his use of the credit card over the three-year period of 2022 to 2024. On 22 July 2024, it opened a criminal case of theft and fraud against the complainant with case number 495/7/2024 at Honeydew Police Station. It confirms that should the complainant be convicted on charges of theft and/or fraud in this matter, it intends to apply for compensation for pecuniary loss as per Section 300 of the Criminal Procedure Act 51 of 1977.

4.18 The employer submitted that on or about 29 July 2024, it initiated civil proceedings against the complainant by sending him a letter of demand for the recovery of R537 861.34. Should the complainant not pay the funds outlined in the letter of demand, it intends to institute civil proceedings against him in the High Court to recover the loss. In the circumstances, it submits that it has a *prima facie* case against the complainant and a reasonable chance of success in the civil proceedings. The State believes that the complainant has a case to answer in the criminal proceedings. It is not responsible for any undue delay in the prosecution of the civil and criminal proceedings. It requests the fund to withhold the complainant's benefit as it has met legislative requirements. It would not be in the interests of justice for payment to be made to the complainant before the civil and criminal proceedings have been concluded.

Complainant's reply

4.19 On 28 August 2024, the complainant submitted that he was employed with the employer for a period of eight years in the position of Sales Support. He tendered his resignation, which was eventually accepted after initial reluctance. The complainant submitted that he has not received payment of

his withdrawal benefit, leave pay, fringe benefit letter, and last payslip remain outstanding.

4.20 The complainant submitted that his resignation was a decision based on personal reasons, and he ensured that all his accounts and dues with the employer were cleared before his departure. According to the Basic Conditions of Employment Act (BCEA) and the Pension Funds Act, employees are entitled to receive their pension benefits promptly upon termination of employment. Any delay or withholding of these funds without legitimate cause violates his rights under South African law.

4.21 He has also not received payment for his accumulated leave days up to the end of March 2024. The BCEA mandates that employees are entitled to payment for any accrued leave upon termination. Further, he has not received the fringe benefit letter for the employer vehicle he used during his employment. This letter is necessary for tax purposes and must be provided promptly. He must have this document for his personal records and any necessary financial reconciliations.

4.22 The complainant submitted that he requests the employer to facilitate the immediate processing, signing, stamping, and sending of his withdrawal claim form to the fund. Calculate and pay his outstanding leave days up to the end of March 2024, issue and provide the fringe benefit letter for the employer vehicle he used during his employment and provide the last payslip for the month of March 2024.

4.23 The complainant submitted that failure to address these matters promptly may compel him to seek further legal recourse, including, but not limited to, lodging a complaint with the Adjudicator and pursuing a claim for unfair labour practices with the appropriate forums.

4.24 In the letter addressed to the fund on 21 August 2024, the complainant submitted that when he lodged his complaint with the Adjudicator, no criminal or civil proceedings were instituted against him because there was no basis or there remains basis for such. The employer only initiated criminal proceedings more than four months after his resignation. He only received a letter of demand from the employer on 30 July 2024, long after the fund's letter of 16

July 2024, and only after his attorney's addressed correspondence to the employer on 01 July 2024.

4.25 The complainant submitted that the R537 861.34 claimed is not supported by any documentary evidence, except for a breakdown of the above amount over three years (2022, 2023, and 2024). The employer sent him an admission of liability letter and letter of demand to appear to have satisfied the requirement of section 37D in their bid to persuade the fund to withhold his benefit.

4.26 The complainant submitted that it is grossly unfair that his benefit has been withheld for more than 4 months due to an unsubstantiated claim by the employer. He takes offence at the fund for affording him an opportunity to give his side of the story only after he lodged a complaint with the Adjudicator, and when the fund had already decided to withhold his benefit. The fund had no reason to exclude him from proceedings that affected his rights and engage only with the employer.

4.27 He stated that the fund did not apply its mind appropriately, impartially, and in a balanced manner before taking a decision. He is not aware of any civil proceedings that have been instituted against him, it was only after the fund wrote to the employer on 16 July 2024 that the employer initiated commercial criminal proceedings against him.

4.28 The complainant submitted that financial prejudice is immense due to withholding his accrued benefit. His first child was born in May 2024; his mother and siblings are dependent on chronic medication and fully dependent on him; he has a chronic condition. He is forced to go back home to live with his sickly parent, siblings, partner, and newborn baby. This has affected his new employment. He has several missed payments on multiple accounts, including two large hospital bills for his daughter. He is desperately in need of funds to get legal assistance to defend and clear his name on all allegations levelled against him by the employer.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issue that falls for determination is whether or not the fund can lawfully withhold the complainant's withdrawal benefit in terms of section 37D(1)(b)(ii) of the Act. In this regard, it is not the function of the Adjudicator to determine whether there is merit to the employer's claim against the complainant but to determine whether the fund complied with its duties before taking a decision to withhold the complainant's benefit.

Fund rules and the complainant's benefit entitlement

5.2 In the Supreme Court of Appeal (SCA) matter of *Municipal Employees Pension Fund v Mongwaketse* (969/2019) [2020] ZASCA 181 (23 December 2020) at paragraphs [42] to [44], Wallis JA held that the rules of a fund are its constitution, and that the doctrine of *ultra vires* applies. If the rules of a fund do not afford a fund the legal power or capacity to do something, then such purported act by the fund is *ultra vires* and accordingly null and void. The Constitutional Court affirmed the SCA's findings in *Municipal Employees Pension Fund and Another v Mongwaketse* (CCT34/21) [2022] ZACC 9 at paragraph [39] where it stated that the application of the *ultra vires* doctrine to pension funds is consistent with the constitutional principle of legality.

5.3 Rule 12 of the fund provides for deductions from benefits and reads as follows:

"12.1 The BOARD shall have the right to make such deductions from the benefit which a MEMBER or other BENEFCIARY is entitled to in terms of the RULES as are permitted in terms of Section 37D(1)(a), (v) and (c) of the ACT and in respect of which a claim has been lodged in writing within such reasonable time (as the BOARD may from time to time determine) of the benefit giving rise to the benefit; provided that where a PARTICIPATING EMPLOYER has instituted criminal proceedings and the MEMBER concerned in respect of damages caused to the PARTICIPATING EMPLOYER as contemplated in Section 37D(1)(d) of the ACT and following prosecution in a criminal court, the MEMBER has been convicted, the BOARD shall only effect a deduction from the MEMBER'S benefit if the PARTICIPATING EMPLOYER has obtained a compensation order from such courts in terms of Section 300 of the Criminal Procedure Act, 1977.

12.2...

12.3 Notwithstanding any other provisions of these RULES, the BOARD may, where a PARTICIPATING EMPLOYER has instituted legal proceedings in a court of law against the MEMBER concerned in respect of damages to the

PARTICIPATING EMPLOYER as contemplated in Section 37D(1)(b) of the ACT, withhold payment of the benefit until such time as the matter has been finally determined by a competent court of law or as been settled or formally withdrawn; provided, that:

12.3.1 the amount withheld shall not exceed the amount that has been deducted in terms of Section 37D(1)(b)(ii) of the ACT;

12.3.2 the BOARD in their reasonable discretion are satisfied that the PARTICIPATING EMPLOYER has made out a prima facie case against a MEMBER concerned and the reason to believe that the PARTICIPATING EMPLOYER has a reasonable chance is succeeding in the proceedings”.

5.4 As a general principle of law, pension benefits are not reducible, transferable or executable save for certain exceptions as outlined in sections 37A and 37D of the Act. The relevant section of the Act in this complaint is section 37D(1)(b), specifically sub-section (ii) thereof. Section 37D(1) provides as follows:

“37D(1) A registered fund may-

- (a) ...
- (b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of-

- (i) ...

- (ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which –

- (aa) the member has in writing admitted liability to the employer; or

- (bb) judgment has been obtained against the member in any court, including a magistrate’s court,

- from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;”

5.5 On a plain reading of the provision, section 37D(1)(b)(ii) does not authorise the withholding of a member’s benefit where he is potentially liable for theft, fraud

or misconduct against the employer. However, the Supreme Court of Appeal (“SCA”) in the matter of *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen* [2009] 1 BPLR 1 (SCA) held at paragraph [19] that:

“Such an interpretation would render the protection afforded to the employer by section 37D(1)(b) meaningless, a result which plainly cannot have been intended by the Legislature. It seems to me that to give effect to the manifest purpose of the section, its wording must be interpreted purposively to include the power to withhold payment of a member's pension benefits pending the determination or acknowledgement of such member's liability. The Funds therefore had the discretion to withhold payment of the Respondent's pension benefit in the circumstances.”

5.6 It is accordingly permissible for a board of a fund to deduct or withhold a benefit in terms of section 37D(1)(b)(ii) of the Act.

5.7 The process of balancing the competing interests can be achieved by assessing the potential harm that will be suffered by the employee if the remedy (provided in section 37D(1)(b)(ii)) is granted as compared with, or balanced against, the potential harm to the employer if the remedy is not granted (see *Shoba v Officer Commanding, Temporary Police Camp, Wagendrift Dam, and Another; Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg, and Others* [1995] 2 All SA 300 (A) which dealt with the issue of granting an Anton Piller order and cited with approval in *Non-Detonating Solutions (Pty) Ltd v Durie and another* [2015] 4 All SA 630 (SCA) at paragraph [20]).

5.8 In *SA Metal Group (Pty) Ltd v Jeftha and others* [2020] 1 BPLR 20 (WCC) (“Jeftha”) it was held that the duties placed on a board in terms of section 7C envisages careful scrutiny of claims made against benefits by employers, and a weighing of the competing interests of the parties after affording the member an opportunity to place his case properly before the fund.

5.9 Further, it was held in *Jeftha* that the question is whether the fund applied its mind appropriately, impartially, and in a balanced manner in deciding to withhold a benefit. It was held that mere satisfaction by the board that the employer has placed allegations before it which, if true would show damages arising from dishonest conduct by the employee, would not on its own be sufficient to meet the test set by the Supreme Court of Appeal in *Highveld Steel* matter.

5.10 It was also held that where a benefit has accrued, as in this matter, the member enjoys full ownership of the pension benefit. Thus, any claim that would have the effect of depriving such a member of the use and enjoyment of this asset must be carefully scrutinised. This is done by weighing the competing interests of the parties after affording a member the opportunity to place his case properly before the fund. This is also to ensure that a fund does not abuse the system or merely rubber-stamp the employer's request to withhold a member's benefit without any investigation into the merits of the allegations or the financial prejudice a member may suffer.

5.11 The High Court in *Jefftha* further held that:

- The withholding of an employee's benefit is analogous to that of an anti-dissipation order, which requires a well-grounded apprehension of irreparable harm or loss and because of its Draconian nature, invasiveness, and conceivably inequitable consequences, the courts have been reluctant to grant it except in the clearest of cases (citing *DS v DS and Others* (43425/11) [2012]ZAGPJHC 227, at para 17 – 18).
- The duties placed on a board of fund in section 7C of the Act envisages scrutiny of claims made against benefits by employers, and a weighing of the competing interests of the parties after affording the member an opportunity to place his case properly before the fund. The failure by the board to comply with its duties constitutes an inability by the board of the fund to comply with their legally prescribed fiduciary duties.

5.12 Members of the board must actually be independent and be seen to be independent and must act in such a way that there should be no suspicion about its impartiality.

Analysis

5.13 The facts indicate that the complainant exited employment on 29 March 2024 and his withdrawal benefit became payable to him. He had a fund credit of R141 437.35 as at 26 June 2024. The fund submitted that it received the combined summons from the employer stating that the complainant used a company credit card for his unauthorised personal expenses, which resulted in a financial loss of R537 861.34. The fund submitted that it is satisfied that

a *prima facie* case has been made against the complainant, which provides sufficient grounds to withhold his benefit until a court order is obtained.

5.14 In terms of the *Highveld* decision, the fund was required to:

- (a) balance the competing interests of the employer and the member; and
- (b) have due regard to the strength of the employer's case.

The fund could not have done either of the aforesaid without properly hearing from the member about:

- What prejudice will the member suffer if the benefit is withheld; and
- What response did the member have to the employer's case.

5.15 In *Jeftha*, it was further held that the duties placed on a board in terms of section 7C envisages careful scrutiny of claims made against benefits by employers, and a weighing of the competing interests of the parties after affording the member an opportunity to place his case properly before the fund. The failure by the board to comply with its duties constitute an inability to comply with its legally prescribed fiduciary duties.

5.16 The fund submitted that it was unaware of the complainant's termination of employment until it received his complaint from the Adjudicator in June 2024. After that, it engaged the employer, who indicated that it was instituting criminal proceedings against the complainant and requested him to sign an acknowledgment of debt. The fund informed the employer that criminal proceedings were insufficient to meet the requirements of section 37D and allowed the employer until 22 July 2024 to make submissions, failing which it would pay the benefit to the complainant. On 07 August 2024, the fund addressed a letter to the complainant allowing him an opportunity to make submissions in response of the employer's allegations. The complainant responded to the fund on 21 August 2024. The employer instituted civil proceedings and served the complainant with a summons on 22 August 2024.

5.17 The fund put the employer's case to the complainant and afforded him an opportunity to place his case properly before the fund. Therefore, the board of management of the fund applied its mind appropriately, impartially, and in a balanced manner. Without the same, the fund

would not have been capable of balancing the competing interests of the parties before arriving at its decision to withhold. As a result, the fund properly exercised its discretion.

5.18 It was held in the matter of *Moodley v Local Transitional Council of Scottburgh Umzinto North and Another* [2000] 9 BPLR 945 (PFA) at 951D-H, that misconduct referred to in section 37D includes dishonest conduct or at least an element of dishonesty. In this matter, the complainant's conduct has an element of dishonesty as there is an allegation of unauthorised use of a company credit card for his personal expenses, which resulted in a financial loss of R537 861.34. The submissions indicate that the employer suffered financial loss as result of the alleged misconduct. In terms of section 37D(1)(b)(ii) the damage must be by reason of theft, dishonesty, fraud or misconduct by the complainant. Thus, the complainant's conduct in this matter falls within the ambit of section 37D(1)(b)(ii) of the Act as there is an element of dishonesty.

5.19 The complainant submitted that no criminal or civil proceedings had been instituted against him at the time he lodged his complaint. The fund confirmed that a civil claim has been instituted against the complainant under case 2024-092582. Therefore, legal action has been instituted against the complainant. The submissions indicate that the employer has made a *prima facie* case against the complainant for theft and is not responsible for any delay in the conclusion of the civil proceedings instituted against the complainant. The complainant exited employment on 29 March 2024. The employer opened a criminal case with the SAPS in late 22 July 2024. It instituted civil proceedings in August 2024 and served the complainant at his residence on 22 August 2024. Thus, there was no undue delay by the employer in instituting a civil claim against the complainant as it had to investigate first.

5.20 The new amendments to the Pension Funds Act, which became effective 01 September 2024, now state that a judgment in terms of section 37D(1)(b)(ii) obtained against a member includes a compensation order granted in terms of section 300 of the Criminal Procedure Act. This means that where an employer has instituted criminal proceedings, the fund must allow the employer time to pursue the recovery of the misappropriated funds through a section 300 compensation order. As these new amendments became

effective on 01 September 2024, the application of the law changed. However, the application of the amendments is not retrospective.

5.21 In *Mudau v Municipal Employees' Pension Fund and Others* [2023] ZACC 26, paragraph 65, the court held that legal proceedings should be determined in accordance with the law applicable at the time the legal proceedings were instituted unless a contrary intention is indicated. Therefore, complaints lodged before 01 September 2024 will be dealt in accordance with the prevailing law and interpretation at the time. That is, in line with the *Fundsatwork Umbrella Provident Fund v Ngobeni and Another* PFA 64/2020 decision, which held that a fund may not withhold a member's benefit based on a criminal case alone.

5.22 The Adjudicator received this complaint on 09 June 2024 before 01 September 2024. Thus, the Adjudicator will apply the law and the interpretation applicable to this matter before 01 September 2024, in line with the Ngobeni Matter discussed above.

5.23 It was held in the Highveld Steel Judgment at paragraph [62] that:

“I agree with the argument of Mr. Freund SC, that one can safely assume that the employer's case, as related to the fund, must be put to the employee to afford him an opportunity to respond thereto before the fund should assume the liberty to take a decision impacting on the rights of the employee ... The question remains whether the fund applied their mind appropriately, impartially and in a balanced manner”.

5.24 Therefore, there was a balancing of competing interests by the fund. Thus, the fund must be ordered to withhold the complainant's withdrawal benefit pending the outcome of the civil proceedings instituted by the employer against the complainant. It follows that the complaint falls to be dismissed.

[6]ORDER

6.1In the result, the complaint cannot succeed and is therefore dismissed.

DATED AT PRETORIA ON THIS 31ST DAY OF OCTOBER 2024

**MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR**

Section 30M Filing: High Court

Fund and Employer: Unrepresented

Complainant: represented by BWAWUSA