

Pension Lawyers Association Conference 2005

Case Law Update

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FINANCIAL SERVICES BOARD APPEAL

BKB Group Retirement vs Registrar of Pension Funds

Principle:

- There is nothing in the Pension Funds Act to prohibit an amendment from being registered with retrospective effect.



FSB APPEAL, CONT.

- Section 12 (4) of the Act provides that an alteration to the rules shall take effect as from the date determined by the Fund concerned, or, if no date has been determined as from the date of registration.



FSB APPEAL, CONT.

- Pension Funds Second Amendment Act No 39 of 2001 not intended to have retrospective effect.
- Section 15B(6): distinction between “improper” and “unlawful” use of surplus



PENSION FUNDS ADJUDICATOR (Jurisdiction)

*Mdluli & Others Vs Anglo American
Corporation Retirement Fund & Others
(2004/11BPLR6236(PFA))*

Principle:

- Where Registrar of Pension Funds has issued a Section 14 Certificate,



PFA (Jurisdiction) Cont.

any disagreement with that finding has to be taken up with the Registrar and not the Adjudicator.



PFA (Jurisdiction) Cont.

Lo Smith Vs Sentinel Mining

Industry Retirement Fund

(PFA/GA/9764/03/MR) 24 Jan 2005)

Principle:

- The Adjudicator will not interfere with the executive powers of the Registrar of Pension Funds.



PFA (Jurisdiction) Cont.

- Once the Registrar has issued a Certificate approving a Rule Amendment, it is not appropriate for the Adjudicator to question that decision.
- The proper forum for any person that disagrees with the Registrar's decision in that regard is the FSB.



PFA (Jurisdiction) Cont.

*Mine Employees Pension Fund Vs
Murphy No & Others
(2004)11BPLR6204(W)*

Principle:

- The Adjudicator is constrained to decide on issues as pleaded in a complaint.
- A decision that goes beyond the matters pleaded in the complaint is ultra-vires.



CHANGE OF VALUATION BASIS AFTER ACCRUAL OF BENEFITS

*Lucas Marais Vs Joint Municipal Pension
Fund & Others (PFA/KZM/1544/04/KM)*

Principle:

- There is no authority to justify a new valuation basis being applied to benefits which have already accrued.



CHANGE OF VALUATION cont.

- In order for a fund to change the valuation basis, which will adversely affect accrued benefits, it would have to follow the requirements of section 18 of the Pension Funds Act.



MAINTENANCE OF SURVIVING SPOUSES ACT 27 OF 1990

Volks NO Vs Roberson & Others

(Constitutional Court Cct 12/04 21 February05)

Principle:

- The Maintenance of Surviving Spouses Act is intended to deal with the perceived unfairness arising from the fact that maintenance obligations of spouses ceases upon death.



MAINTENANCE OF SURVIVING SPOUSES cont.

- Distinction between married and unmarried people cannot be said to be unfair when considered in the larger context of the rights and obligations uniquely attached to marriage.



MAINTENANCE OF SURVIVING SPOUSES cont.

- Whilst there is a reciprocal duty of support between married persons, the law imposes no such duty upon an unmarried persons.



MAINTENANCE OF SURVIVING SPOUSES cont.

- To extend the provisions of the Act to the estate of a deceased person who was not obliged during his lifetime to maintain his partner would amount to imposing a duty after death where none existed during his lifetime.



MAINTENANCE OF SURVIVING SPOUSES cont.

The differentiation in relation to the provision of maintenance in terms of the Act does not amount to unfair discrimination, neither does it violate the dignity of surviving partners of life partnerships.

NB: Relevance to pension funds will be discussed

