



20th Annual Pension Lawyers Association
Conference 2015

CASE LAW UPDATE

This update is divided into two parts:

1. A focused discussion dealing with two recent cases involving freedom of choice in relation to pension funds;
2. A general discussion of a selected number of recent pension related decisions.

- Focused discussion:

TERRITORIAL STRUGGLES AND THE RIGHT TO CHOOSE

- *City of Johannesburg and others v South African Local Authorities Pension Fund and others: case number 20045/2014*
- *Chemical Industries National Provident Fund v Sasol Limited and others [2014] 3 BPLR 321 (GJ)*

*City of Johannesburg and others v South African Local Authorities
Pension Fund and others*
(awaiting SCA judgment)

- MAIN ISSUE:

Employer's right to terminate participation in the SALA fund on reasonable notice to the fund.

- GENERAL BACKGROUND

- Umbrella fund;
- Rules silent on the right to terminate;
- Employer gave six months' notice of intention to terminate participation and commence participation in a new fund;
- SALA challenged the withdrawal and sought to declare the notice unlawful on a number of grounds, both in labour law and pension law.

- PENSION RELATED ISSUES RAISED :
 - **Section 7C of the PFA:** The extent to which s7C entitles the board of trustees to litigate on behalf of the fund's members or should the members have been joined?
 - **Section 14 of the PFA:** Can an employer withdraw from a fund and commence participation in a new fund prior to the Registrar's approval under section 14?
 - **Contractual right to terminate:** Absent an express provision governing withdrawal, is an employer entitled to terminate its participation in a fund on reasonable notice to the fund?

- DECISION OF THE COURT *A QUO*
 - Section 7C entitles the board to act on behalf of its members and members need not be joined;
 - Section 14 must be complied with before an employer can commence participation in a new fund;
 - Where the rules are silent on termination an employer cannot withdraw from the fund.

- DECISION OF THE SCA

Matter argued on 24 February so not judgment yet. But hopefully when the judgment is delivered it will resolve –

- the extent to which section 7C enable boards of management to litigate on behalf of members;
- the extent to which section 14 (and therefore the approval of the Registrar) has application in a decision by an employer to cease participation in a fund; and
- absenting an express provision governing withdrawal, whether an employer is entitled unilaterally to withdraw from a fund on reasonable notice.



Chemical Industries National Provident Fund v Sasol Limited and others [2014] 3 BPLR 321 (GJ)

- MAIN ISSUE:

Whether compliance with the rules of the fund relating to transfer of membership to a new fund requires approval by the board.

- GENERAL BACKGROUND

- Case primarily concerns the interpretation of the rules of the CINPF;
- Rules provided for the transfer of membership from one approved fund to another;
- Rules state that the fund must be satisfied that a transfer is reasonable and equitable and that it accords full recognition to the rights and reasonable expectations of members;
- Subject to the fulfillment of the provisions set out in the rules relating to the exercise by the member of the election to transfer, the board shall transfer accrued benefits to the new fund;
- SGHC found that there had not been compliance with the rules and so no transfer had taken place.

- RELEVANT DICTA:

- Section 14 of the PFA: the judgment gives recognition to the important distinction between the TRANSFER OF BUSINESS and the TRANSFER OF MEMBERS.
- At para [44] the following is said:

“s14 does not regulate the transfer of members from one fund to another. This section specifically applies to transfers of assets and liabilities (or the ‘business’) from one fund to another. ... [P]aid up benefits (such as accrued retirement saving) may remain in the ‘old’ fund when the member concerned becomes a contributing member of the ‘new’ fund.”

- So, for e.g., where employer terminates contributions in one fund and starts contributing to a new fund, this does not per se trigger s14.

General discussion

- Recent case law update

The Printing Industry Pension Fund for SATU Members and another v John Sibanda N.O and another case no. 17619/12

High Court of South Africa, Gauteng Division, Johannesburg, delivered on 11 November 2014 per Lamont J

Interpretation of fidelity insurance policy and cover for “officers” of the fund. A claim must first be brought against fund before claiming from insurer

Ghandi Square Property Holdings (Pty) Ltd v Pension Fund Adjudicator 2014 JDR 0183 (GNP)

Withdrawal benefit – jurisdiction of PFA – PFA had ordered employer to register its participation with the fund and register member and pay benefit due to member

Mathebula v South African Post office Limited and Post Office Retirement Fund

Case no. 12240/14 High Court of South Africa, Gauteng Division, Pretoria, delivered on 14 November 2014 per Strydom AJ

Deduction from pension benefit – member in Post Office PF – dismissed due to gross negligence

A blurred cityscape at dusk or dawn. The sky is a mix of blue and purple, with some clouds. In the foreground, a multi-lane highway is visible, illuminated by streetlights, creating a warm orange glow. The city buildings in the background are out of focus, with some lights visible.

THANK YOU