

**IN THE FINANCIAL SERVICES TRIBUNAL**

CASE: PFA61/2019

In the matter between:

**ANGUS ROBERT WEIR**

**APPLICANT**

and

**FNB PENSION FUND**

**1<sup>ST</sup> RESPONDENT**

**MOMENTUM RETIREMENT ADMINISTRATORS**

**2<sup>ND</sup> RESPONDENT**

**WESBANK DIVISION OF FIRST NATIONAL**

**BANK LTD**

**3<sup>RD</sup> RESPONDENT**

**PENSION FUNDS ADJUDICATOR**

**4<sup>TH</sup> RESPONDENT**

---

**DECISION**

---

**Appearances**

**Coram** : Adv. Mocheodi Elias Phiyega  
Ms. Neo Phakama Dongwana



Adjudicator (“the PFA”) dated 14 March 2019 in terms of which the PFA refused to hear the complaint to her lodged by the Applicant on the 4<sup>th</sup> December 2017. The PFA’s refusal to entertain the Applicant’s complaint was based on her conclusion that the complaint was filed out of time and had therefore become time-barred. The Applicant puts a different interpretation of when a time-barring commences. The Tribunal is called to settle the issue between the two interpretations.

## **FACTUAL MATRIX**

2.

The Applicant was in the employment of Wesbank from 2007. By virtue of his employment with Wesbank, which is a subsidiary of First National Bank, he became a member of the FNB Pension Fund, which we were informed at the hearing had changed its name to “First Rand Retirement Fund”.

3.

The Applicant stated that around May 2014, Wesbank made an offer to its employees who were 55 years and above that they could apply to go on early retirement. The Applicant, who was 56 years old at the time, accepted the offer to go on early retirement. Wesbank accepted the Applicant’s acceptance of the offer and started the process of effecting the early retirement.

4.

Applicant states that his last day as an employee of Wesbank was the 30 September 2014. He states that although he retired from Wesbank on 30 September 2014, he only signed and delivered the pension exit claim forms in respect of his pension on 4 March 2015. Wesbank signed the forms as the fund employer on the 18<sup>th</sup> March 2015.

5.

At the hearing of the application, Applicant informed the Tribunal that when he accepted the offer of early retirement, he was not in a good state of mind and had not properly weighed up the consequences of the decision that he took, which he now wishes, through this application, to reverse to either a retrenchment or resignation. He stated that because he had been in the employment of Wesbank for only seven years before his early retirement, his pension benefit was the sum of R 365 000.00, a puny sum of money which, on reflection he realised would not take him far during his retirement. He felt that if he could reverse the early retirement, he could commute his retirement benefit to a lump sum so that he could then be able to invest it in a vehicle of his own choice.

6.

Applicant states that after completion of the pension exit forms, he was paid out one third of the amount of his pension and that, with effect from 20 April 2015, he was

paid an annuity. The annuity paid to him was predated to October 2014. He stated that it became even clearer to him when he started receiving the annuity that the annuity that he had purchased with the two-third amount of his pension benefit was insufficient to cater for his needs, hence his desire to commute his retirement benefit to a lump sum payment.

7.

He reckoned that if he could be allowed to reverse the early retirement to a retrenchment or resignation he could then be paid out the lump sum of R 356 000.00 and that he could take this and invest it himself in a vehicle of his own choice.

8.

He approached various persons at Wesbank, FNB and Momentum to assist him to reverse his early retirement and the pension pay out that went with it. He states that he was given vague responses at every turn about the prospects of succeeding with the mission to reverse the process which started with his taking early retirement. He stated that all the vague promises to assist him came to nought and that he has been left frustrated as a result.

9.

He stated that the initiative he had embarked on to reverse the early retirement and have it changed to a resignation or retrenchment was suddenly and unexpectedly blocked by the legal division of Momentum Retirement Administrators.

10.

He stated that after his attempts to reverse the early retirement to a resignation was blocked by Momentum, he lodged a complaint with the PFA on 4 December 2017.

11.

The PFA, after investigations, reverted to him with the answer that the PFA lacked jurisdiction to hear the matter as it had become time-barred.

12.

The PFA indicated that she calculated the running of the period leading to her being time barred to hear the complaint from the date of Applicant's retirement, that is 1 October 2014. The Applicant, on the other hand, argues that this period should be calculated from the date on which he submitted his pension claim forms to the Pension Fund, that is, effective from 1 April 2015.

13.

It is the PFA's refusal to entertain the Applicant's complaint that is the subject of this application.

### **LEGAL QUESTION**

14.

The crisp legal question is therefore whether in this instance time-barring or prescription starts running on the actual date of Applicant's retirement from employment with Wesbank or whether it starts running on submission by the Applicant of the pension exit forms to the Pension Fund.

### **LEGAL PRINCIPLES**

15.

It is currently settled law that the rules of a Pension Fund are binding on all parties to a Pension Fund. This position has been authoritatively settled in the matter of **Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR227 (SCA)**.

16.

The position regarding the supremacy of the rules of a pension fund has been applied on numerous occasions by the office of the PFA such as in **Black v Corporate Selection Retirement Fund [2001] 11 BPLR2665 (PFA)** where it was held as follows:

*“11 As I have held previously, the right or entitlement to a pension benefit is regulated by the rules of the fund, regardless of the views or practices of any functionary within the fund, including a director of the participating employer. Therefore, the rules are paramount and binding on all parties. The binding nature and supremacy of rules have been recently confirmed by the Supreme Court of Appeal” [See Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR227 (SCA), and Moster FNO Void Mutual Life Assurance Company (South Africa) Ltd]”.*

## **APPLICATION OF LEGAL PRINCIPLES**

17.

The rules of the pension fund were made available to the PFA in the process of enabling her office to investigate the complaint brought to her office by the Applicant on 4 December 2017. Clause 7.3.5 of the Rules, where they deal with the time when a pension commences is to the following effect *“7.3.5 the pension will commence on the first day of the month following the member’s date of actual retirement and the first payment will be due at the end of that month”*



18.

Section 30I of the Pension Funds Act bars the Adjudicator from investigating a complaint if the act or a omission to which it relates occurred more than three years before the date on which the complaint is received by her in writing. For the sake of completeness the sub-section is quoted in full

“30I

- (i) *The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing”*

19.

Time-barring in the Pension Funds Act is made subject to the Prescription Act in the calculation of the three years period in respect of a debt. In this instance, and having regard to rule 7.3.5 of the Rules of the FNB Pension Fund referred to supra, time barring started to run on 01 October 2014. The time-barring process or prescription ran its course on 30 September 2017. The Applicant’s complaint was received by the PFA on 04 December 2017, that is, some two and a half months after the process had run its course.

20.

**CONCLUSION**

We therefore agree with the PFA that when the complaint was lodged with her on 4 December 2017, she had no jurisdiction to hear the matter as it had been rendered no longer justifiable through the effluxion of time.

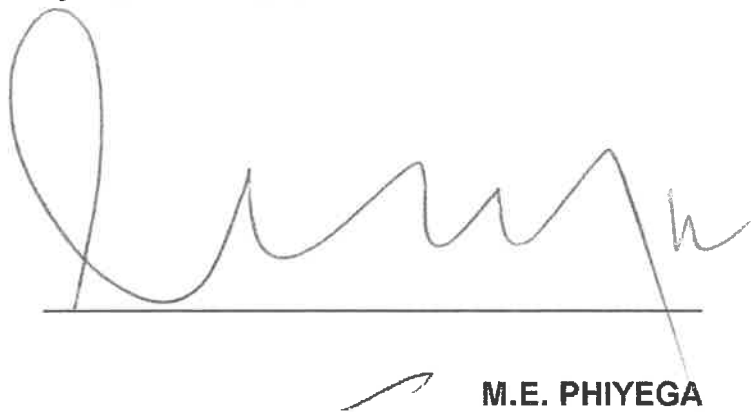
**ORDER**

21.

We make the following order:

- a) The application is dismissed.
- b) No cost order.

**DATED AT PRETORIA ON THE DAY OF 29<sup>TH</sup> NOVEMBER 2019**



A handwritten signature in black ink, consisting of a large loop followed by several smaller, connected loops, ending in a short horizontal stroke. The signature is written above a solid horizontal line.

**M.E. PHIYEGA**

**ON BEHALF OF THE TRIBUNAL**