



Employment Law

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SOUTH AFRICA

- When is withholding payment of pension fund benefits to an employee facing recovery action permitted?



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When is withholding payment of pension fund benefits to an employee facing recovery action permitted?

The withholding of benefits by a fund following fraud, corruption, dishonesty and related misconduct which causes financial loss to an employer is nothing new. However, in recent years we have found a reluctance by trustees of a fund to exercise their discretion in favour of withholding benefits pending civil and/or criminal litigation against, typically, a former employee.

The 20 November 2025 decision in *Sasol South Africa v Sasol Pension Fund and Others* (Case No. [2025] ZAGPJHC), delivered by the Gauteng Division of the High Court is useful in this regard.

In this case, the court interdicted the Sasol Pension Fund (Fund) from paying a former employee's pension benefits pending the finalisation of related criminal and civil proceedings.



Background Facts

The matter arose following serious allegations of fraud, corruption/misconduct investigated by Sasol against Ms Mbakaza, who occupied a senior managerial position and was a member of the Sasol Pension Fund. Mbakaza was suspended and subsequently resigned before the commencement of an internal disciplinary hearing. Sasol thereafter instituted proceedings to freeze funds allegedly misappropriated by her, laid criminal charges and obtained preservation orders under the Prevention of Organised Crime Act 121 of 1998 in respect of certain bank accounts.

In August 2024 Sasol also formally requested that the Fund withhold payment of Mbakaza's pension benefit, valued at approximately R2,7 million, in terms of section 37D(1)(b)(ii) of the Pension Funds Act 24 of 1956 (Pension Funds Act) pending the finalisation of civil and criminal proceedings. The Fund initially acceded to this request. In January 2025, however, following a complaint lodged by Mbakaza with the Pension Funds Adjudicator, the Fund reversed its earlier position and indicated its intention to proceed with payment of the benefit to her. This is a situation which is often faced by aggrieved employers in the midst of legal proceedings to recover its losses. Sasol then approached the High Court to interdict the release of the pension benefit.



Section 37D(1)(b)(ii) of the Pension Funds Act

The court reaffirmed that pension benefits enjoy strong statutory protection and may only be deducted or withheld in the limited circumstances expressly authorised by the Pension Funds Act. An employer's request to withhold the payment of pension benefits in terms of section 37D(1)(b)(ii) constitutes one such exception. The provision is intended to safeguard an employer's right to recover damages in particular circumstances.

Although the section refers to deductions following the obtaining of a judgment or acknowledgment of liability from the member, the court confirmed that it also permits a pension fund to withhold payment of benefits pending the final determination of liability.

A central feature of the judgment is the clarification of the test to be applied by trustees when exercising their discretion to withhold benefits:

- The power to withhold payment is discretionary and must be exercised independently by the fund's trustees.
- In exercising this discretion, trustees must adopt the stance of a fair minded and reasonable decision maker, applying an objectively reasonable standard to the information before them. This process should, where appropriate, include affording both the employer and the member an opportunity to present their respective positions.
- Trustees must be satisfied that the employer has established a prima facie case and that there is a reasonable prospect of success in the proceedings instituted. The court emphasised that a prima facie right is sufficient.

The court interdicted the release of the benefit.



Key takeaways

This judgment reinforces that section 37D(1)(b)(ii) permits the withholding of pension benefits before liability is finally determined, provided that a prima facie case exists and reaffirms the independent and active role trustees must play when exercising their discretion, requiring an objective and procedurally fair assessment of the employer's claim before making a final decision on the request for the release of benefits.

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