



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 July 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Municipal Gratuity Fund v The Pension Funds Adjudicator & Another (364/2022) [2023] ZASCA 116
(31 July 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a judgment of the full court of the Gauteng Division of the High Court, Pretoria (the full court).

The issue before the SCA was whether a determination by the Pension Funds Adjudicator (Adjudicator) dated 8 September 2014 should be set aside. In terms thereof the Adjudicator inter alia set aside a decision of the Municipal Gratuity Fund (the Fund) regarding the distribution of death benefits to certain beneficiaries.

During his life time a municipal employee, Mr TE Mutsila (the deceased) was a member of the Fund. Upon his death a dispute arose as to whom the death benefits should be awarded. On 9 April 2014 the Fund resolved ‘after careful consideration of the requirements of s 37C’ of the Pension Funds Act 24 of 1956 to distribute the death benefits to the deceased’s widow, Ms TS Mutsila and their five children, as well as the deceased’s life partner, Ms Masete and her two children.

Ms Mutsila, the second respondent in this appeal, filed a complaint with the Adjudicator, inter alia based on allegations made in an application by Ms Masete’s customary law husband relating to the custody of their two children. The Adjudicator informed the Fund of the complaint. The Fund did not deal with any of Ms Mutsila’s averments, but suggested that the matter be kept in abeyance pending finalisation of the custody application. The Adjudicator proceeded to set aside the Fund’s award without giving the Fund an opportunity to comment on the allegations and ordered it to pay R300 000.00 to Ms Mutsila.

She also directed the Fund to 'investigate and effect an equitable distribution of the balance of the proceeds within three weeks' after finalisation of the custody application. Notwithstanding the lapse of nine years, the parties could not shed any light on the outcome of the custody application.

The Fund applied to the high court (the court of first instance) for setting aside of the Adjudicator's determination, relying mainly on the Adjudicator's failure to apply the *audi alteram partem* principle as recognised in s 30F of the Act. The application was dismissed with punitive costs. The appeal to the full court suffered the same fate.

The SCA was satisfied that the Adjudicator failed to apply the *audi alteram partem* principle. Also, based on the available facts and the Fund's duties and discretion in disposing of a member's death benefits, the SCA held that the Fund's determination of factual dependants was correct. Consequently, the Adjudicator's determination was set aside.

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