



4<sup>th</sup> Floor  
Riverwalk Office Park  
Block A, 41 Matroosberg Road  
Ashlea Gardens, Extension 6  
PRETORIA  
SOUTH AFRICA  
0181

P.O. Box 580, MENLYN, 00683  
Tel: 012 346 1738 / 748 4000  
Fax: 086 683 7472  
E-Mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

---

Please quote our reference: **PFA/EC/00062735/2019/TD**

**REGISTERED POST**

Mr B Dhludhlu  
5 Galjoen Street  
Pellsrus  
**JEFFREY'S BAY**  
6330

**Email:** [brdhludhlu@kouga.gov.za](mailto:brdhludhlu@kouga.gov.za)

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,  
24 OF 1956 ("the Act"): B DHLUDHLU ("complainant") v MUNICIPAL  
COUNCILLORS PENSION FUND ("first respondent") AND KOUGA LOCAL  
MUNICIPALITY ("second respondent")**

**[1] INTRODUCTION**

1.1 The complaint concerns the withdrawal of the complainant from the first respondent whilst still in employment.

1.2 The complaint was received by this Tribunal on 14 November 2019. A

---

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

**Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)**

letter acknowledging of the complaint was sent to the complainant on 21 November 2019. On the same date, the complaint was sent to the respondents to file their responses by 20 January 2020. Follow-up letters were sent to the respondents on 21 January 2020, requesting a response by 3 February 2020. A response was received from the first respondent on 12 February 2020. On 24 February 2020, a response was forwarded to the complainant to file his reply by 9 March 2020. No response was received from the second respondent and no reply was received from the complainant.

- 1.3 After considering the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are already known to the parties, they shall be repeated only to the extent that they are relevant to the issues raised herein. The determination and reasons therefor appear below.

## **[2] FACTUAL BACKGROUND**

- 2.1 The complainant commenced his employment with the second respondent from 5 August 2016 (according to payslip) to date. He is a member of the first respondent by virtue of his employment with the second respondent. He attached a copy of his payslip for the period 25 January 2017 indicating that an amount of R5 329.78 was deducted from his salary. He also attached a copy of his benefit statement as at 30 September 2019 reflecting his fund credit of R62 832.64. He further provided a breakdown of the monthly contribution document from the second respondent indicating the following:

### Contributions

Member	13.75% or 7.5%
Council	<u>15%</u> or <u>7.5%</u>
Total	28.75% or 15%

Member's share account (fund credit) is completed as follows:

(a) Own contributions	13.75%	7.5%
(b) Portion of council's contributions	15.00%	7.5%
Minus Risk and operational costs	-6%	-6%
GLA	-3.25%	
Operational costs	-2.75%	
Allocation to member	22.75%	9%
(c) Plus interest and investment returns		
Total fund credit		

2.2 The complainant provided this Tribunal with a letter from the first respondent dated 3 September 2019 informing him that the second respondent is in arrears with the payment of contributions on behalf of its councillors who are its members. In the letter, the first respondent provided the complainant with the calculation of his arrear contributions for April 2018 to July 2019 as follows:

Member portion including Interest	Council portion with interest	Total outstanding
R95 100.43	R103 745.99	R198 846.42

### [3] COMPLAINT

3.1 The complainant submitted that the second respondent failed to pay its portion of contributions in accordance with the rules of the first respondent. He stated that the first respondent informed him that he can either contribute 13.75% or 7.5% of his total salary and the second respondent will contribute 15% or 7.5%. He mentioned that he later discovered that the presentation made by the first respondent is in contradiction of the Remuneration of Public Office Bearers Act No. 20 of 1998, which limits the remuneration of Councillors to their total remuneration package and does not permit the second respondent to contribute. He submitted that he would not have joined the first respondent had he been apprised of the true facts. He stated that he

elected to contribute 28.75% based on the proposition that he will pay 13.75% and the second respondent will then pay 15%. He mentioned that he is paying the entire 28.75% contribution, an option he would never have selected. He requested to cancel his membership with the first respondent and was denied.

- 3.2 The complainant requests this Tribunal to order the first respondent to terminate his membership and refund all the contributions paid.

#### **[4] RESPONSES**

##### *First respondent*

- 4.1 The first respondent submitted that the complainant has been a non-contributing member since August 2016, which is not per its rules. It stated that the complainant must take note of the fact that its rules provide options of choosing between 15% and 28.75%, in line with his financial circumstances. It denied the fact that the second respondent does not contribute as the total contributions are reflected on the complainant's monthly salary advice. It stated that contributions are made in terms of rule 28.1 of its rules. It stated that the complainant's misapprehension stems from the common mistake of employees who are remunerated on a cost-to-company basis. This basically means that all expenses relating to an employee to his employer including remuneration, all deductions and other related expenses are reflected in the employee's payslip. It stated that both contributions by the employee and the employer are reflected as deductions in the employee's salary, which in actual fact is not the case.
- 4.2 It stated that the curators in their capacity as the trustees have no discretionary powers to grant the complainant's request. It mentioned that there is no option in the rules allowing a member to stop contributing or to transfer his benefit whilst he remains a municipal

councillor. It requests this Tribunal to instruct the second respondent and the complainant to pay the arrear and current contributions. It further requests this Tribunal to dismiss this complaint.

### *Second respondent*

- 4.3 The second respondent was afforded an opportunity to comment on the allegations made against it, as is required by section 30F of the Act. However, no response was received from it. In the circumstances, this Tribunal will dispose of the matter on the basis of available facts.

## **[5] DETERMINATION AND REASONS THEREFOR**

### *Introduction*

- 5.1 The initial complaint lodged with this Tribunal concerned the failure by the first respondent to allow the complainant to withdraw as its member whilst still employed. Upon investigation by this Tribunal, it transpired that there is another issue that should be adjudicated upon to ensure that the complaint is properly resolved. Therefore, the issue that falls to be determined is whether or not the second respondent failed to pay all contributions on behalf of the complainant.
- 5.2 The rules of a fund are supreme and binding on its officials, members, shareholders, beneficiaries and anyone so claiming from the fund (See Section 13 of the Act and *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]).

### *Complainant's membership with the fund*

- 5.3 Rule 24 of the first respondent dealing with membership of the fund provides as follows:

**"24 MEMBERSHIP OF THE FUND**

- (1) ALL MUNICIPALITIES are entitled to associate with the FUND on or after COMMENCEMENT DATE.
- (2) ALL COUNCILLORS of a participating MUNICIPALITY are entitled to become members of the FUND on or after the COMMENCEMENT DATE, subject to the conditions specified in the PUBLIC OFFICE BEARERS ACT, if any. Membership shall be retrospective from the later of the first day of the month following the date on which such person:
  - (a) became a Councillor; or
  - (b) elected in writing to become a Member.
- (3) A MEMBER may not cease to be a MEMBER while he remains a COUNCILLOR of a participating MUNICIPALITY.
- (4) ...
- (5) A MEMBER who ceases to be a COUNCILLOR of a participating MUNICIPALITY shall cease to be a MEMBER."

*Commencement date refers to 1 May 1988.*

- 5.4 It is common cause that the complainant commenced his employment with the second respondent on 19 August 2016 and was registered as a member of the first respondent in January 2017. When reading the provisions of rule 24 of the first respondent's rules, it is not compulsory for Councillors to become members of the first respondent when they are appointed as Councillors as they may still elect to become members at a later stage. Therefore, this Tribunal finds no fault on the part of the second respondent in registering the complainant as a member of the second respondent on 1 January 2017. The complainant has also not raised an issue regarding his registration date.

*Payment of contributions*

5.5 Rule 26 and 28 of the first respondent provides for contributions and read as follows:

**"26. CONTRIBUTIONS BY MEMBERS**

26.1 (a) Subject to the provisions of sub-RULES 26.22, 26.3, 26.4 and 26.5, every MEMBER shall every month contribute to the FUND at the rate of 13.75 per cent of his monthly PENSIONABLE REMUNERATION in respect of future SERVICE.

**28. CONTRIBUTIONS BY MUNICIPALITIES**

A MUNICIPALITY shall, in respect of its COUNCILLORS who are MEMBERS, deliver to the FUND on or before the fifteenth day of every month a CONTRIBUTION statement in such format as the TRUSTEES may determine, containing such information as the ACT prescribes and the TRUSTEES may determine and which shall be accompanied by the following: -

- (a) the CONTRIBUTIONS payable by each MEMBER in respect of the preceding month;
- (b) an amount equal to such percentage of each MEMBER'S monthly PENSIONABLE REMUNERATION as determined in terms of the PUBLIC OFFICE BEARERS ACT, payable by the MUNICIPALITY;
- (c) The premium in respect of the funeral benefit to be provided for each COUNCILLOR and credited to the RISK RESERVE ACCOUNT from which that premium must then be paid to the funeral benefit service provider.

5.6 The second respondent has a duty placed on it by the provisions of section 13A(1)(a) and (b) of the Act and the rules of the first respondent to pay contributions and submit schedules in terms of Regulation 33(1) of the Act. Regulation 33(1)(a) outlines the requirements in terms of section 13A of the Act in that the minimum

information to be furnished by employers with regard to contribution schedules includes, the name and registration number of fund, contribution period, name and address or pay-point of the employer, responsible person to contact at the employer, identification details of the member, date of membership, percentage or amount of contributions split between member and employer as well as an indication of any additional voluntary contributions. The first respondent in turn has a duty to take all reasonable steps to ensure that contributions are paid timeously as indicated in section 7D(1)(d) of the Act (see *Martin v The Printing Industry Pension Fund for SATU Members* [2003] 4 BPLR 4562 (PFA)). Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's bank account and section 13A(3)(a)(ii) states that the contributions must be paid in such a manner as to have the fund receive the contributions no later than seven days after the end of that month for which contributions are payable.

5.7 Further to the above, section 13 of the Remuneration of Public Office Bearers Act No. 20 of 1998 provides for pension fund contributions and reads as follows;

"13. Upper limits of pension, provident or retirement annuity fund contributions and medical benefits of councillors

(1) Pension, provident or retirement annuity contributions

- (a) A councillor may participate in a pension, provident or retirement annuity fund registered in terms of the Pension Fund Act, 1956 (Act No. 24 of 1956).
- (b) If a councillor elects to participate in a pension, provident or retirement annuity fund, the municipality must pay from his or her monthly salary, on behalf of that councillor, the monthly council contributions and councillor contributions to a pension, provident or retirement annuity fund to which the councillor is a member in accordance with the rules of such



pension, provident or retirement annuity fund. The contributions by the municipal council and the councillor are included in the total remuneration package as a total cost to the municipality.

Contributions are made in accordance with the Remuneration of Public Office Bearers Act No.20 of 1998 and subsequent Government Notices that get issued in this regard from time to time. The complainant provided this Tribunal with the computation of contributions as stated in paragraph 2.1 above.

5.8 The Remuneration of Public Office Bearers Act provides that contributions by the municipal council and the councillor are included in the total remuneration package as a total cost to the municipality. The first respondent submitted that provident fund is part of the complainant's cost to company and contributed over and above his salary. This Tribunal takes cognisance of the fact that the provident fund contribution amount that appears on the complainant's payslip is part of his cost to company which is the total amount that the company is paying for the employee based on a package and includes all the benefits e.g company contribution to provident fund. It is not a deduction as the complainant's payslip reflects no provident fund deduction. The complainant's payslip indicates that an amount of R5 329.78 equals 15% of the second respondent's portion of contributions from his pensionable salary. Therefore, the complainant's allegation that the Remuneration of Public Office Bearers Act does not permit the second respondent to pay provident fund contributions and he is paying the entire 28.75% provident fund contributions cannot be accepted by this Tribunal.

5.9 The facts indicate that the complainant requested the second respondent to cease deducting provident fund contributions from his salary from 30 April 2018 as he indicated his intention to join another fund. The complainant's decision not to contribute towards the first

respondent whilst still in employment is in contravention of rule 26(1) of the first respondent's rules which require members to pay contributions every month and section 13A of the Act. On the evidence submitted, it is the finding of this Tribunal that the second respondent owes contributions on behalf of the complainant for April 2018 to date. The second respondent ought not to have ceased paying the complainant's contributions over to the first respondent.

- 5.10 The second respondent owes a duty of good faith derived from common law to its employees. By failing to pay the outstanding contributions on behalf of the complainant, the second respondent has breached this duty. The second respondent must pay the outstanding contributions on behalf of the complainant (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839F-G and *Mabale v Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F).
- 5.11 The complainant requested this Tribunal to order the first respondent to terminate his membership and refund the contributions already paid. It should be noted that what the board may do with the fund's assets is set forth in the rules. If what the board propose to do or have been ordered to do is not within the powers conferred upon it by the rules, it may not do it (see *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA)). The rules of the first respondent do not allow for the complainant's funds to be refunded to him whilst still employed with the second respondent. The complainant is obliged to remain a member of the first respondent until he leaves the service of the second respondent in terms of the provisions of rule 24 of the first respondent's rules. By refunding the complainant's contributions, the first respondent will be acting contrary to its rule 24.

**[6] ORDER**

**6.1 In the result, the order by this Tribunal is as follows:**

- 6.1.1 The second respondent is ordered to submit outstanding contribution schedules in respect of the complainant for the period April 2018 to date, to the first respondent, in order to facilitate the computation of the complainant's outstanding contributions, within five weeks of this determination;**
- 6.1.2 Should the second respondent fail to comply with paragraph 6.1.1, the first respondent is ordered to reconstruct the complainant's contribution schedules based on the information already in its possession within two weeks of the second respondent's failure to submit the schedules;**
- 6.1.3 The first respondent is ordered to compute the arrear contributions due by the second respondent, together with late payment interest owed by the second respondent in terms of section 13A(7) of the Act, within one week of receiving the contribution schedules in terms of either paragraph 6.1.1 or 6.1.2 (whichever is applicable);**
- 6.1.4 The first respondent is ordered to transmit to the second respondent its computations in paragraph 6.1.3, within three days of completing them;**
- 6.1.5 The second respondent is ordered to pay to the first respondent the arrear contributions plus late payment interest as computed in accordance with paragraph 6.1.3 above within one week of receiving the computations from the first respondent; and**

6.1.6 The first respondent is ordered to provide the complainant with his latest benefit statement within two weeks of allocating contributions from the second respondent in paragraph 6.1.5 above and annually thereafter for as long as his membership subsists.

**DATED AT PRETORIA ON THIS 19<sup>TH</sup> DAY OF MAY 2020**



**MA LUKHAIMANE**  
**PENSION FUNDS ADJUDICATOR**

**Cc:** Municipal Councillors Pension Fund  
The Willows Office Park  
MCPF Block 1 Unit 1&2  
276 George Road  
Erand Gardens  
**MIDRAND**

**Email:** [elias@mcpf.co.za](mailto:elias@mcpf.co.za)

**Cc:** Kouga Local Municipality  
PO Box 21  
**JEFFREYS BAY**  
6330

**Email:** [ddejager@kouga.gov.za](mailto:ddejager@kouga.gov.za)

**Section 30M Filing: High Court**  
*Parties unrepresented*