

SOUTH AFRICA / JUDGMENT

Konono v MEC for the Department of Education, Eastern Cape Province and Others (278/2011) [2013] ZAECHGHC 105 (1 October 2013)

[2013] ZAECHGHC 105

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J M Roberson

CASE / FILE NUMBER

278/2011

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION –

GRAHAMSTOWN)

CASE NO 278/2011

DATE HEARD: 27/08/2013

DATE DELIVERED:

In the matter between

JOE KONONO

.....APPLICANT

and

THE MEMBER OF THE EXECUTIVE
COUNCIL,DEPARTMENT OF EDUCATION,
EASTERN CAPE PROVINCE

.....1ST

RESPONDENT

THE HEAD OF DEPARTMENT,
EASTERN CAPE PROVINCE

.....2ND

RESPONDENT

THE GOVERNMENT EMPLOYEES
PENSION FUND

.....3RD

RESPONDENT

JUDGMENT

ROBERSON J:-

[1] The applicant in this matter was formerly employed as an educator by the Eastern Cape Department of Education. His employment ended on 31 March 2005, when he was 60 years old, after 28 years of service. The dispute in this matter is whether he retired or resigned from employment. He maintains that he retired (so-called early retirement) while the first and second respondents maintain he resigned. The dispute is of material importance to the applicant because of the difference between the benefits payable on retirement and those payable on resignation. It was common cause that on retirement, in addition to pension benefits, an employee is entitled to a leave gratuity, a pro-rata bonus and medical assistance, but forfeits these benefits if he or she resigns. The applicant sought an order in the following terms:

“1. Declaring the Applicant to be entitled to an appropriate leave gratuity, pro rata bonus and medical benefits as a consequence of his retirement as an educator on 31 March 2005, from the then Department of Education, Eastern Cape Province.

2. Directing that the First and Second Respondents take such administrative or other steps as may be necessary and required:

2.1 To submit to the Third Respondent, all forms as may be required, including form Z102, recording the Applicant's retirement as an educator in the employ of the then Department of Education, Eastern Cape Province, with effect from 31 March 2005.

2.2 To procure payment of the Applicant of the latter's leave gratuity and pro rata bonus, consequent upon the Applicant's

retirement as an educator in the employ of the then Department of Education, Eastern Cape Province upon the basis of his retirement on 31 March 2005; and

2.3 To procure and/or arrange for the Applicant's entitlement to medical benefits as a retired educator with effect from 31 March 2005.

3. Directing that the First and Second Respondents comply with paragraph 2 above within 30 days as from the date of the service of the order granted herein.

4. Directing that upon receipt of the documents referred to in paragraph 2.1 above, the Third Respondent reconsider the Applicant's

entitlement to pension benefits as an educator who retired from employment by the then Department of Education, Eastern Cape Province

with effect from 31 March 2005 and thereafter make such adjustments to the Applicant's aforementioned entitlement to pension

benefits as may be appropriate.

5. Directing that the Third Respondent comply with paragraph 4 above within a period of 60 days as from the date of receipt of the

documents referred to in paragraph 2.1 above.

6. Granting such further and/or alternative relief as to the above Honourable Court may seem meet.

7. Directing that the First and Second Respondents pay the Applicant's costs, jointly and severally, the one paying the other to be absolved."

[2] I shall refer in this judgment to the first and second respondents as the Department, and to the third respondent as the GEPP.

[3] It is useful at this stage to refer to the provisions of the GEPP Rules (contained in Schedule 1 to Government Employees Pension Law, 1996) which applied at the time. Rule 14.3.3 (b) provided that an employee who retired with at least 10 years of pensionable service and who retired before his pension-retirement date (age 65 years in the case of Department employees) was entitled to a gratuity, an annuity, and a supplementary amount of R360 per year. It further provided that such benefits were reduced by one third of 1% for each complete month between the member's actual date of retirement and his pension-retirement date.

[4] Rule 14.4.1 provided as follows (it is preferable for the purposes of this judgment to quote the exact wording):

"14.4 BENEFITS ON RESIGNATION OR DISCHARGE

14.4.1 A member who resigns from his or her employer's service or is discharged from his or her employer's service because of misconduct or ill-health occasioned by his or her own doing or for a reason not specifically mentioned in the rules and who is not entitled to receive benefits provided elsewhere in the rules, is entitled on the written choice of the member, to –

- (a) a gratuity calculated at 7,5% of his or her final salary multiplied with the period of his or her pensionable service, and increased by ten percentage points for each full year of pensionable service between 5 and 15 years, or
- (b) a transfer benefit to an approved retirement fund equal to the aggregate of –
 - (i) the amount referred to in paragraph (a), which amount shall become an entitlement of the member on the condition that he or she deposits the amount into the approved retirement fund immediately upon becoming entitled thereto; and
 - (ii) the difference between the member's actuarial interest in the Fund and the amount referred to in paragraph (a), if any.

Interest shall be added to the transfer benefit to account for any delay in payment thereof to the approved retirement fund. Such transfer shall be made subject to the rules of the approved retirement fund specifying that, with reference to the transfer benefit, any subsequent lump sum benefit payable by that fund or any successor fund to the member and/or his beneficiaries shall be limited to one third of the said transfer benefit, with interest. The balance of the member's transfer benefit with interest after deduction of any lump sum payment referred to above, shall be applied for the purchase of an annuity, albeit immediately or upon the member's ultimate retirement."

[5] In his founding affidavit the applicant stated that the application was aimed at rectifying errors made by the Department at the time he retired, and that the Department's officials had confused the basis on which his employment terminated.

[6] Matters commenced with the following letter dated 2 September 2004 written by the applicant to the Department:

"RE: APPLICATION FOR RETIREMENT

Sir/Madam

On the 09 March 2005, I will be 60 years old, I therefore wish to retire by then.

It would be highly appreciated if the Department could at the most, release me on the 31 March 2005.

I fervently wish that my request would meet your favourable consideration.

Thanking you in anticipation.

I am, Sir, Madam

Yours sincerely

JOE KONONO"

[7] The applicant stated that he intended to re-invest his pension monies with Old Mutual. He approached ABSA Brokers in Cradock and was advised by one Richard Kortman to co-sign a letter drawn up by Kortman, which reflected his resignation and not retirement. Kortman explained to the applicant that the resignation would be viewed as resignation from the pension fund and not from the Department. The purpose was to procure payment of the pension. The applicant signed the letter on this basis and in ignorance of its implications. He said that had Kortman been aware that the Department would deprive him of his leave gratuity, pro-rata bonus and medical benefits, he would never have advised the applicant to use the word "resign". The letter, dated 23 February 2005, was on an ABSA Brokers letterhead and addressed to the Pensions Directorate of the Department of Finance, and read as follows:

"Dear Sir/Madam

TRANSFER OF PENSION BENEFITS OF JOE KONONO

PERSAL NO : 11143231

PENSION NO : 96480770

JOE KONONO who has resigned from the Department of EDUCATION. Has requested that his/her Retirement Benefit monies be transferred to SOUTH AFRICAN RETIREMENT ANNUITY FUND, Registration no. 12/8/3904.

RICHARD KORTMAN of ABSA BROKERS can be reached at 083 483 5305 or 048-881 3019.

The cheque is to be made out to OLD MUTUAL. The bank details is as follows:

STANDARD BANK – ADDERLEYSTREET

ACCOUNT NO. : 070265038

BRANCH CODE : 020009

DEPOSITO REFERENCE NO. : N91012682C”

[8] Kortman prepared a further letter dated 23 February 2005 for signature by the applicant. It was addressed to the Department and read as follows:

“Re: RESIGNATION : JOE KONONO

WITH ACTURIAL INTEREST.

I hereby want to resign with actuarial interest and request that my pension must be transferred to OLD MUTUAL.

I opt to take 1/3 in CASH and the balance (2/3) must be transferred to Old Mutual. The Payment Instruction are attached.

My last day will be 31 MARCH 2005.

Yours truly

.(signed) “J. Konono”.....

.....

Persal no. : 11143231

Pension no. : 96480770

Id. No. : 450309 5482 088”

[9] The applicant attached to his affidavit five letters written by Department officials, namely A Mabuya, principal personnel officer, or D Smeda, district director at the Cradock office, which recorded that the applicant had retired. In addition, four of the letters recorded that he was due to receive his pension benefits shortly, and one of the letters mentioned that “the

quotation of the gratuity is plus minus one million rand.” The letters were written over the period 29 March 2005 to 15 February 2006. Two were headed “To whom it may concern” and the other three were addressed to ABSA bank. A further letter dated 10

May 2006 was written by Smeda to the GEPP, in which he officially complained about the delay in payment of the applicant’s

pension benefits. He recorded the numerous enquiries made by the Department concerning payment and issued an ultimatum to the GEPP to respond. He also mentioned in the letter that the applicant was making persistent enquiries at his office about the delay in payment, because he (the applicant) was being threatened with legal action by his creditors, amongst whom were banks.

[10] The applicant was finally paid during July 2006. A letter from the GEPP to Galaxy Retirement Annuity Fund (Galaxy) recorded that the applicant had been a member and contributor to the GEPP from 1 January 1977 to 31 March 2005, and that his benefit was R1 236 045.72, less the sum of R5 942.00 which the applicant owed to the Department. The letter further recorded that the balance of R1 230 103.72 would be transferred to Galaxy’s bank account. During October 2006 interest in the sum of R93 533.94 which had accrued as a result of the late payment of the pension benefits, was paid into Galaxy’s bank account.

[11] The applicant thereafter became concerned at the non-payment of his leave gratuity, pro-rata bonus and medical benefits, to which a retired employee is entitled. He wrote to the Department on 25 March 2008 requesting its assistance in obtaining payment of his gratuity. He did not mention medical benefits or a bonus in this letter. He did not hear from the Department and eventually consulted his attorneys, who wrote to the Department on his behalf on 20 January 2010. In the letter his attorney contended that it seemed that the applicant had been “inveigled” into signing the letter of 23 February 2005 and that the subsequent correspondence from the Department confirmed that the applicant had retired. Reference was made in the letter to a conversation between the applicant and Smeda during which Smeda assured the applicant that the Department was aware that he had retired. The Department was put on terms to provide written reasons why the applicant had not been paid his leave gratuity and pro-rata bonus. After a long delay, the Department wrote to the applicant’s attorneys and informed them that according to its records the

applicant had “resigned from the department on the 31 March 2005 with actuarial interest” and as a result had forfeited his leave gratuity and pro-rata bonus.

[12] Further correspondence with the Department yielded no results and the applicant’s attorneys resorted to a request for information in terms of the Promotion of Access to Information Act 2 of 2000. The Department responded by providing correspondence from the Cradock office stating that the applicant first applied for retirement and later chose to resign with actuarial interest. Attached to the correspondence from the Cradock office was a letter dated 8 February 2005 from the applicant to the Department in which he said:

“Re: RESIGNATION : Joe Konono

WITH ACTUARIAL INTEREST.

I hereby want to resign with actuarial interest and request that my pension must be transferred to MOMENTUM.

My last day will be 31.03.05

Yours truly

.....

(signed) “J. Konono”.....

Persal no. : 1143231

Pension no. : 96480770

Id no. : 4503095482088”

The applicant said that this was a letter drawn up by Old Mutual which he had been requested to sign.

[13] A further document provided from the Cradock office was a form Z102, which is a form submitted to the National Treasury pensions administration section containing the terms of a member’s withdrawal from the GEPPF. The form reflected that the reason for termination of the applicant’s service was “resignation”, that payment was to be made into the bank account of a trust fund, SAMLAS Old Mutual, and that the “exit rule” was 14.4.1 (a) (referred to in paragraph

[4] above). The applicant signed this Z102 form on 5 January 2006.

[14] The applicant’s attorneys wrote a last letter to the Department, the relevant portions of which were:

“Our client on reaching the age of 60, sought to retire. This was his entitlement. He was however advised by the relevant departmental

official in the pension department, that he should sign certain documents. These consisted of Form Z102 in which the reason for

termination was defined as “resignation” in terms of Pension fund rule 14.1.1(a). That occurred on 5th January 2006. He also signed a letter dated 8th February 2005 in which he recorded that

“I hereby want to resign with actuarial interest and request that my pension must be transferred to Momentum.”

Apparently our client was advised that in order to procure the transfer of his pension monies from the Government Employees Pension Fund to another pension fund of his choosing, he would need to sign the aforementioned letter and Form Z102.

Our client signed the aforementioned forms in good faith, not intending to resign, but intending to retire.”

And further

“Would you kindly confirm that the matter may be rectified as soon as possible with a corrected form Z102 form. Our client will then be able to approach the Government Employees Pension Fund for remedial administrative steps to be taken.

It certainly would never have made sense for our client to have resigned when he was on the verge of retiring.”

The applicant confirmed the truth of the contents of the letter.

- [15] The applicant alleged that there was no rational basis for the Department deliberately to deprive him of his benefits and that his right to equality and retirement benefits had been violated.
- [16] The Department and the GEPPF opposed the application and filed answering affidavits. The Department’s answering affidavit was deposed to by Mabuya.
- [17] In his affidavit Mabuya raised a point in limine to the effect that the matter was a labour issue and this court did not have jurisdiction. This point was wisely not pursued when the matter was argued.
- [18] Mabuya confirmed the difference in benefits on retirement as opposed to resignation, as described by the applicant, and further confirmed that the applicant had been dealt with as an employee who had resigned. He referred in general terms to employees like the applicant who are entitled to early retirement at age 55 or 60 years, who have been advised by financial brokers to resign rather than retire. He advises these employees of the adverse consequences of resignation and the benefits which they will forfeit, and tries to convince them to retire rather than resign. In addition to being advised to retire, these employees are advised, within the time permitted by legislation, to transfer their retirement benefits from the GEPPF to an approved retirement fund, if they so wish. Mabuya said that almost all the employees heed his advice but the applicant chose to resign.
- [19] With regard to the letters written by him and Smeda which reflected that the applicant had retired, Mabuya said that the applicant told them he was being harassed by his creditors. They knew that the applicant was awaiting a pension payout and the letters were written in order to convince the creditors that the applicant was going to receive a pension payout. Mabuya stated that the use of the word retire in the letters did not confer any rights on the applicant nor did it mean that the Department knew that the applicant intended to retire.

- [20] Mabuya stated that it was clear from the contents of the applicant's letter of 2 September 2004 that the applicant knew that the retirement age for educators was 65 years and that he was requesting to be released at age 60. In such an event, the Department issues a standard form letter informing the person requesting early retirement that their application has been granted, and sets out details of what benefits will be paid on retirement. A specimen of such a letter, dated 7 May 2011, with the name of the person to whom it was addressed deleted, was annexed to Mabuya's affidavit. According to Mabuya, no such letter was sent to the applicant.
- [21] Mabuya disagreed that the Department had not responded to the applicant's letter of 25 March 2008 and attached a copy of a letter dated 31 March 2008 from the Department to the applicant, in which the following was stated:
- "Your letter dated 25 March 2008 directed to the Director: Labour Relations refers. Please be informed that since you opted to leave the service on Resignation: Transfer of actuarial interest in the fund, you do not qualify for the payment of Leave Gratuity. Trusting that the above is clear to you."*
- [22] A confirmatory affidavit by Smeda was filed.
- [23] The answering affidavit of the GEPP was deposed to by its legal advisor, Kesiamé Moloi. Not only was it filed out of time without an application for condonation, but it consisted mostly of comment on the merits of the dispute between the applicant and the Department and did not take the matter any further. In the affidavit the defence of prescription was also raised, and the point taken that the applicant had not complied with the provisions of s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002. This point was not pursued.
- [24] In his replying affidavit the applicant dealt with the reason put forward by Mabuya for the letters indicating that the applicant had retired, as follows:
- "Nothing contained in this paragraph supports the view that I had resigned as opposed to retire."*
- [25] The applicant also apparently misunderstood the example of the standard form letter granting early retirement, as being a letter granting his own application for early retirement, and stated that this letter had been sent to him.
- [26] The applicant denied that Mabuya had advised him to retire, and said that Mabuya had suggested that he see a broker and had given him a telephone number. That is how the applicant met Kortman, who said this was the first transaction he had come across involving a transfer from the GEPP to a private investment. The applicant queried the position with Mabuya and showed him the letter drafted by Kortman. Mabuya assured him that he was not resigning from the Department but from the GEPP. The applicant said he had asked Smeda why he should record that he had resigned and Smeda told him not to worry and that he would reverse the references to resignation. Smeda did not revert to him.

- [27] When the matter was first heard, the affidavits referred to above were all that was before the court. After counsel for the applicant had made submissions, I indicated I was concerned about the lack of information concerning the pension benefits the applicant would have received on retirement, instead of the sum which was paid to Galaxy. I was also concerned about the implications for Galaxy were the applicant to succeed in his application, taking into account that the applicant's pension payout had been invested with Galaxy, subject to Galaxy's own rules.
- [28] The matter was postponed by agreement. The GEPPF was to file a further affidavit and the Department and the applicant were granted leave to file further affidavits if they wished.
- [29] Moloi deposed to a further affidavit, which to some extent once again expressed his views on the merits of the applicant's case, but also set out the benefits the applicant would have received on retirement. These were a gratuity of R306 929.26 and a lifetime monthly pension of R6 950.30. Moloi stated that the GEPPF had processed the applicant's pension benefits based on the information contained in the Z102 form. Moloi attached a further form Z1525 which, according to its contents, has to be completed for the transfer of the actuarial interest value to an approved external retirement fund. A further Z102 form was attached to this form which again recorded that the reason for the termination of the applicant's service was resignation and the exit rule was stated as 14.4.1 (b).
- [30] In his further replying affidavit, the applicant now stated that it was Mabuya who had drafted the letter in which it was said he wanted to resign with actuarial interest. He refused to sign this letter because he knew there was a distinction between resignation and retirement. He consulted Mabuya who told him he was not resigning from the Department but from the GEPPF, which was a separate entity and merely a scheme. As a result of this advice, he signed the letter.
- [31] When the matter resumed, the applicant narrowed the relief claimed to a declaratory order that he had retired. If he succeeded, various calculations would have to be done to consider the effect of the order in relation to his current financial situation as a result of the investment with Galaxy. The applicant did not deal at all in his affidavits with the benefits he received from this investment.
- [32] As I understand the applicant's case, he always intended to retire and the Department was aware of his intention and in error submitted incorrect information to the GEPPF. The various letters and the Z102 form were signed as a result of a misunderstanding on the part of the applicant and the Z102 form sent to the GEPPF should have reflected that the reason for termination of his employment with the Department was retirement. The applicant went further (in reply) and effectively alleged that Mabuya had given him the wrong advice, namely that the resignation only meant resignation from the GEPPF and not from the Department.

[33] The dispute is whether the applicant intended to retire or to resign. If he intended to retire, did the Department know of his intention and in error submit the wrong information to the GEPPF, and did the Department subsequently wrongfully refuse to rectify the error?

[34] These are motion proceedings. In *National Director of Public Prosecutions v Zuma*

[2009] ZASCA 1; 2009 (2) SA 277 (SCA) Harms DP said the following at para [26] (footnotes omitted):

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts

alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.¹³ The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's

version.”¹⁴

[35] In my view, the letters of 8 February and 23 February 2005, and the Z102 form signed by the applicant, indicate a clear intention to resign. I say so not merely because of the use of the words “resignation” and “resign”, but also because of the full contents of these various documents. The use of the term “actuarial interest” in two of the letters could only have been a reference to that term as contained in GEPPF rule 14.4.1. Actuarial interest is mentioned in the rule dealing with retirement, but only in respect of employees with less than 10 years of pensionable service. The reference in the letters to Momentum, Old Mutual and the South African Retirement Annuity Fund is also consistent with the provisions of Rule 14.4.1. There is no reference to a transfer to an approved retirement fund in the Rule dealing with benefits on retirement. Moreover the

applicant's case grew somewhat in reply in relation to the advice he received and the letters he signed, when he alleged that he was following Mabuya's and Smeda's advice, and that it was Mabuya who had drawn up one of the letters. This was not his case in the founding affidavit. In the founding affidavit he said he followed the advice of Kortman and signed letters which Kortman or Old Mutual had prepared for him.

[36] The applicant had very little to say about the circumstances in which he signed the Z102 form, other than to confirm what was said by his attorney, namely that he had signed it in good faith, not with the intention to resign but with the intention to retire. Although in his attorney's letter it was said that he was advised by Department officials to sign the form, the form contained detailed information which must have been provided to the Department to

enable it to submit the form to the GEPP. For example the name and registration number of the trust fund, and its bank details were inserted. The form required the trust fund registration number to be inserted “in case of actuarial interest transfer”. In addition the section in the form headed “Medical Benefit Particulars”, was left blank, whereas the form stated that it was mandatory to complete this section in the case of retirement or death. The applicant did not say that he did not read the form and its contents are clearly consistent with resignation and the accompanying benefits. On the applicant’s version the Department submitted a form Z102 to the GEPP which clearly reflected resignation with all its consequences, knowing that in fact the applicant intended to retire.

- [37] The applicant stated that he was aware of the difference between benefits on retirement and resignation. He nonetheless requested and accepted payment of a lump sum into a trust fund, which must have been a fund of his choice, and appears not to have been concerned about the lack of a further payment in the form of a lifetime monthly pension, which is what he would have received on retirement, in addition to a lump sum gratuity. It is significant in my view that the benefits on which he focused in his application were the leave gratuity, the pro-rata bonus and the medical benefits, but he had no complaint about the money which had been paid to Galaxy for his benefit, or the benefits he has presumably been receiving from Galaxy since the investment was made.
- [38] In the light of these clear indications of a conscious decision to resign in the letters and the Z102, the Department’s contention that, as far as it was concerned, the applicant resigned and did not retire, is not untenable or far-fetched. Mabuya’s position as principal personnel officer was an appropriate one to give advice to employees on whether to retire or resign. Given his general advice to employees to retire and not resign, and the reasons for that advice, his averment that in spite of his advice the applicant chose to resign is not untenable. The applicant’s indication of an intention to resign was sustained from the time he wrote the first letter of 8 February 2005 until he signed the Z102 form on 5 January 2006, nearly a year later. If there was a mistake or a misunderstanding, in my view, according to the available evidence, it was on the part of the applicant, and not the Department. I think it is significant that there is no affidavit from Kortman to support the applicant’s contention that he signed the various documents in ignorance and on the wrong advice. There may be reasons why there was no such affidavit, for example Kortman gave the applicant the wrong advice, but the letters which were written are clear.
- [39] The strongest point raised by the applicant was the reference to the applicant’s retirement in the five letters written by Mabuya and Smeda. It was submitted on behalf of the applicant that their explanation for these letters was untenable and did not raise a genuine dispute of fact. While the sustained reference to retirement in the letters does indicate that the Department regarded the applicant as having retired, I am of the view that the explanation by Mabuya, confirmed by Smeda, is not so untenable or far fetched as to be rejected out of hand. The applicant did not dispute that he had asked them for help because he was being

harassed by his creditors, and the letters appear to have been written for that purpose, because they were either addressed to ABSA bank or “to whom it may concern.” In view of the applicant’s request to resign with actuarial interest and to have the pension benefit paid into a trust fund, Mabuya and Smeda would not have been able to appease creditors if they had disclosed that the applicant was not going to be paid his pension benefits directly. Further, the reference in one of the letters to a gratuity of “plus minus one million rand” accords with the amount which was eventually paid, and is substantially more than the R306 929.26 he would have received as a gratuity had he retired.

[40] For the above reasons I am unable to reject the Department’s version, with the result that the applicant is not entitled to the relief sought.

[41] It was submitted on behalf of the applicant that in the event of the application not succeeding, the applicant should not be ordered to pay the GEPF’s costs, because, as I understood the argument, it was not necessary to oppose the application and it could have abided the court’s decision. In my view it was prudent for the GEPF to appear and be heard. Part of the relief was that it be ordered to re-consider the applicant’s entitlement to pension benefits as a member who had retired, and make

the necessary adjustments to such benefits within 60 days on receipt of the amended documents. Such an order would have involved complex financial calculations, which would also have involved information of the applicant’s Galaxy investment benefits. As it happened, it was the GEPF which provided the information of what the applicant would have received had he retired. The applicant was unable to enlighten the court on this aspect, which was important. In the result the applicant should pay the GEPF’s costs, but such costs should not include the costs incurred in the drawing and delivery of the first answering affidavit, which was not only out of time but also of no assistance.

[42] The following order will issue:

[42.1] The application is dismissed.

[42.2] The applicant is to pay the first and second respondents’ costs.

[42.3] The applicant is to pay the third respondent’s costs, such costs not to include the costs incurred in the drawing and delivery of the third respondent’s answering affidavit dated 14 November 2011.

J M ROBERSON

JUDGE OF THE HIGH COURT

Appearances:

For the Applicant: Adv S Clark (on 31 July 2012), Adv C Wood (on 27 August 2013), instructed by Michael Randell Attorneys, C/o Hutton & Cook Attorneys, King Williams Town

For 1st & 2nd Respondents: Adv S Swartbooï, instructed by the State Attorney, C/o Shared Legal Services, King Williams Town.

For the 3rd Respondent: Adv Z M Maseti, instructed by Modzuka Moagolego Incorporated, C/o Bacela Bukula & Associated, King Williams Town

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