

Case Law Update



Speaker: Jonathan Mort

Actuarial Society, Retirement Matters Committee Seminar

Sandton, 28th July 2025

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PENSION FUND ATTORNEYS

Agenda



1. Bokamosa Retirement Fund v FSCA (member trustee exemption)
2. Ward v Allan Gray RA and Pension Preservation Funds (s 37C death benefit)
3. Edward Snell & Co v PFA (s 37D deduction)
4. L du Plessis v Unisa RF (pensioner death benefit)

Bokamoso RF v FSCA

FST Case A26/2024 19 May 2025

- Fund is an umbrella fund, had exemption ito s 7B(1)(i) (exempt from having member elections) granted 7 August 2017. Exemption granted for 3 years.
- Exemption thus lapsed on 31 August 2020 (during Covid).
- Fund applied in January 2022 for a further exemption; FSCA refused, saying board could not make the application because not properly constituted.
- FSCA refused registration of special rules for the same reason.
- FST held that:
 - Quoted High Court decision in FSCA v Municipal Workers RF that the FSCA had no power to impose a time limit on the exemption because the PFA does not provide for that.

Bokamoso RF v FSCA

- FST held that (cont):
 - The exemption granted in 2017 was valid; the time limit was not (the FSCA was ultra vires its powers to impose a time limit)
 - Noted that the FSCA had not appointed a new board ito s 26(2)

Ward v Allan Gray RAF and Pres Fund

FST Case PFA76/2024 decided 2 May 2025

- Deceased survived by husband (age 61, married 18 years), 3 adult non financially dependent daughters and her mother (age 78).
- Husband and mother were financially dependent.
- Total death benefit from both funds was R7, 944 m (incl R24 000 in RA fund)
- Nomination in Pres Fund was husband 10%, daughters 30%, 28% and 32%. In RA fund husband 20%, daughters 20%, 20% and 40%.
- Final decision was follow nomination iro RA fund; but for Pres Fund
 - Husband 58,44%
 - Daughters 11,22%, 9,82% and 10,52%
 - Mother 10%

Ward v Allan Gray RAF and Pres Fund

- Complainant (daughter) a CA and objected to allocation alleging miscalculation of husband's life expectancy; as a result too much allocated to him.
- According to complainant, the life expectancy seemed to have been 29 years; which she said was excessive per the tables used by SARS (14 years), SA Stats census (13,3 years).
- In fact the fund's applied a life expectancy of 16,81 years which she conceded was reasonable; but still disputed the capital value of the dependency.
- Funds took into account what husband received from life policy, inheritance and accrual claim, his own income and calculated capital value of financial dependency to be R4,35m.

Ward v Allan Gray RAF and Pres Fund

- Fund said methodology consistent with what the Courts use for a loss of support, also taking into account that deceased's income would have dropped by a third on retirement at 63.
- FST agreed with PFA that PFA does not decide the fairest distribution; but only checks that the board acted rationally and arrived a proper and lawful decision.

Edward Snell & Co v PFA/NBC Umbrella RF

FST Case PFA77/2024 dated 23 June 2025

- Mr Sbiya was a member of NBC Umbrella RF 2010 – 2023.
- Reason for withdrawal was his dismissal for fraud.
- Employer had laid a criminal charge against Sbiya before he lodged his complaint on 27 March 2024.
- PFA held that as complaint was made before PFA changed the new provision (that a judgment includes a compensation order ito the Criminal Procedure Act) does not apply.
- PFA ordered the Fund not to withhold the benefit and to pay it to Sbiya.

Edward Snell & Co v PFA/NBC Umbrella RF

- Employer raised two issues: firstly, a legal basis for why the PFA was incorrect, and secondly that the PFA incorrectly usurped the discretion of the Fund.
- FST decided it should first consider the second issue.
- Apparently after the complaint was laid the Fund wrote to Sbiya and asked him to make submissions as to why the benefit should not be withheld. His attorney had responded, with the representations but the Fund did not receive that response.
- FST found that the PFA's function was to see whether the Fund had exercised its discretion properly, which it did not do because the Fund had not exercised that discretion. Application succeeded, matter sent to PFA.

Du Plessis v UNISA RF

FST case PFA74/2024 dated 1 April 2025

- Deceased was a pensioner of the Fund who was in a same sex life partnership with the complainant (du Plessis). Complainant was aggrieved that he did not get a spouse's pension on the deceased's death.
- The deceased had retired early at age 63. Fund benefit was R6,1 m.
- Rules allowed him to elect
 - In fund life annuity
 - In fund living annuity
 - Life or living annuity from an insurer.
 - Commutation of full benefit for a lump sum.

Du Plessis v UNISA RF

- Deceased requested a quote for an in fund life annuity, with commutation of R605 000 on the basis that he was not married.
- Quote accepted by him, with zero provision for spouse's pension.
- Pension commenced 1 April 2019.
- Pensioner died four years later at age 67.
- However, at retirement and on death deceased was in a permanent life partner relationship with the complainant who met the requirements of Qualifying Spouse.
- Rules require spouse consent if elect life annuity with zero provision for spouse.

Du Plessis v UNISA RF

- Complainant argued Fund breached rules by not obtaining consent of spouse; deceased made an error on form; annuity application forms were flawed; and Fund's RBC process was inadequate.
- FST found Fund had to rely on deceased's representation that he was not married; deceased had not made a mistake because all the documents he signed were consistent with not providing for a spouse; the annuity application form was not flawed because based on a quote he must have requested; and Fund's RBC resources were acceptable.
- Appeal dismissed.



Thank You.

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