



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: 8 April 2022

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 judgments of the Supreme Court of Appeal

Municipal Employees' Pension Fund and Another v Pandelani Midas Mudau and Another
(Case no 1159/2020) [2022] ZASCA 46 (8 April 2022)

Today the Supreme Court of Appeal upheld an appeal from the Gauteng Division of the High Court (high court) and substituted the order with one upholding the appeal and setting aside the order made by the Pension Fund Adjudicator (the Adjudicator) with one dismissing the complaint.

The first appellant was a pension fund (the Fund) whose members were previously disadvantaged persons employed by local government authorities. The second appellant was the Fund's administrator. The first respondent was employed by the second respondent, being the Vhembe District Municipality and, as such, qualified to become a member of the Fund.

At the time, the Fund's rules indicated that a member who joined the fund after June 1998 would be entitled to withdraw benefits to a certain specified extent. The Fund was cautioned about the unsustainability of this arrangement, and the rules were altered retroactively in order to protect the Fund from members who sought to capitalise on the old rule. An application to have the rule altered was submitted on 22 July 2013 and approved on 1 April 2014. In the meantime, the first respondent had applied for his withdrawal benefits, which he discovered had been substantially reduced. Aggrieved, the first respondent approached the Adjudicator, contending that the benefits ought to be calculated in terms of the original rule. The Adjudicator

upheld the appeal, who held that the first respondent's withdrawals should not be affected because the amended rule was not yet in place at the time of the withdrawal.

The high court and the full bench dismissed the respective appeals as the high court was of the view that the Adjudicator did not commit a reviewable irregularity and the full bench was of the view that an amended rule could not be applied before it came into effect. The SCA, however, found that rule 48(1) of the Fund's rules authorised the Fund to amend its rules, subject to s 12 of the Pension Funds Act 24 of 1956. The effect hereof would be that the amended rule would take effect on a date determined by the Fund and if no date has been determined, on the date that the rule is registered. The SCA found that this unequivocally authorised the Fund to amend its rules and to determine the effective date thereof.

The SCA cautiously bore in mind the presumption against retroactive legislation but maintained that if the wording of a statute is unambiguous and the intention of the legislature, which was equated to the Fund in this instance, was to interfere with vested rights retroactively, then such intention must be given effect to. The SCA was satisfied that the amended rule was intended to operate retroactively.

In the result, the SCA upheld the appeal and substituted the order of the high court with one upholding the appeal and substituting the order of the Adjudicator with one dismissing the complaint.

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