



**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 23 December 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

*Municipal Employees Pension Fund v Mongwaketse (969/2019) [2020]
ZASCA 181 (23 December 2020)*

The SCA today, by a majority, dismissed an appeal by the Municipal Employees Pension Fund (MEPF) against a decision by the Gauteng Division of the High Court, Johannesburg, sitting on appeal against a determination by the Pension Funds Adjudicator, in which it upheld Ms Mongwaketse's claim to be repaid all the contributions made to the MEPF by her employer and deducted from her salary.

Ms Mongwaketse had been employed on a five year fixed term contract by the Ngaka Modiri Molema District Municipality (the Municipality), with effect from 1 December 2011. She applied for membership of the MEPF and was accepted as a member, even though the rules of the MEPF showed that she was not qualified to be a member. Contributions were made purportedly on her behalf and on behalf of the Municipality, but in reality the full amount of the contributions was deducted from her salary. When the problem was discovered and could not be resolved she stopped making contributions.

The majority judgment held that the subject matter of Ms Mongwaketse's complaint to the Adjudicator was that she had not been repaid everything to which she was entitled as a result of her having made contributions. The MEPF contended that she was only entitled to a benefit under the rules as if she had resigned her membership.

The court was unanimous in holding that she had never in truth become a member of the MEPF because granting her membership was in breach of the rules and accordingly void. The majority held that in those circumstances the MEPF was incorrect in saying that Ms Mongwaketse was limited to payment of a benefit as on resignation, because her membership was void and neither party was bound by the rules of the fund. She was entitled to recover an amount from the MEPF reflecting its enrichment at her expense as a result of her having made contributions for a period of nearly four years. It held that the requirements for such a claim were satisfied and upheld the determination of the Adjudicator and the judgment of the High Court.

The minority judgments held that, because Ms Mongkwetse's claim was based on enrichment and she had never been a member of the MEPF, the Adjudicator did not have jurisdiction to determine the claim. In those circumstances they would have upheld the appeal. The majority held on an analysis of the provisions of the Pension Funds Act governing the Pension Funds Adjudicator that they did give the Adjudicator the power to entertain the complaint on this basis and make the determination that she made.