REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED: ✓

Date: ***29th June 2022*** Signature: _____

APPEAL CASE NO: A5041/2021

COURT *A QUO* CASE NO: 03656/2020

DATE: 29TH JUNE 2022

In the matter between:

MOROPA, CHRIS LEGAKWA	First Appellant
MAKAMOLE, ESAU FRANS	Second Appellant
NKOSI, SHALIMANE RICHARD	Third Appellant
SELEPE, VUSI JOHANNES	Fourth Appellant
RAMBAU, MATHAPELO SHIRLEY	Fifth Appellant
GAMEDE, DINEO PRISCILLA	Sixth Appellant
MAZWISIKHWEBU, CHRISTOPHER	Seventh Appellant
NKGAPELE, JACK TEMA	Eighth Appellant
NBC HOLDINGS (PTY) LIMITED	Ninth Appellant
NBC FUND ADMINISTATION SERVICES (PTY) LIMITED	Tenth Appellant

and

CHEMICAL INDUSTRIES NATIONAL PROVIDENT FUND	First Respondent
DANGAZELE, BONGINHLANHLA	Second Respondent

SEMA, REGINALD	Third Respondent
SITHOLE, AYANDA	Fourth Respondent
MASHEGO, LUCAS	Fifth Respondent
BALOYI, JOHN	Sixth Respondent
MOTLAKENG, POPPY	Seventh Respondent
MAKHABA, CASWELL Z	Eighth Respondent
TJIANE, DAN	Ninth Respondent
DYONTA, MONDE	Tenth Respondent
NGONYAMA, ZWELIHLE REGINALD	Eleventh Respondent
ZUNGU, BHEKI	Twelfth Respondent
SIQITI, TEMBA	Thirteenth Respondent
ARENDSE, ALEXANDER	Fourteenth Respondent
PELO, SINA	Fifteenth Respondent
TSHAMBU, JOHN	Sixteenth Respondent
OLIVIER, LIZETTE	Seventeenth Respondent
SHOLOKO, SBONGILE	Eighteenth Respondent
MATLOGA, WILLIAM	Nineteenth Respondent
SIBIYA, GLORIA JOYFUL	Twentieth Respondent
JOHN, SHANDRIKA	Twenty First Respondent
LOOTS, ENRNOLENE	Twenty Second Respondent
DE VOS, LAURA	Twenty Third Respondent
NOLINGO, BULELANI	Twenty Fourth Respondent
MAGAGULA, ZANELE ESTHER	Twenty Fifth Respondent
DAVIDS, FAIZ	Twenty Sixth Respondent
AKANI RETIREMENT FUND ADMINISTRATORS (PTY) LIMITED	Twenty Seventh Respondent
NOVARE ACTUARIES AND CONSULTANTS (PTY) LIMITED	Twenty Eighth Respondent
MORUBA CONSULTANTS AND ACTUARIES	Twenty Ninth Respondent
CHEMICAL, ENERGY, PAPER, PRINTING, WOOD AND ALLIED WORKERS' UNION	Thirtieth Respondent
THE FINANCIAL SECTOR CONDUCT AUTHORITY	Thirty First Respondent

Coram: Adams J, Dippenaar J *et* Lenyai AJ

Heard: 21 February 2022 – The 'virtual hearing' of the Full Court Appeal was conducted as a videoconference on *Microsoft Teams*.

Delivered: 29 June 2022 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 29 June 2022.

Summary: Administrative law – review – appeal against dismissal of review application – review application based on fraud and corruption, legality and the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – some decisions of a Pension Fund are 'administrative actions' –

Standing of erstwhile Pension Fund Administrator to apply for review of termination of its contractual relationship with Pension Fund – administrator not similar to ordinary service provider – and has *locus standi* – Courts should be hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits –

Factual dispute – Courts have a duty to decide disputes before it, even investigated by other entities – a robust approach to be adopted – fraud and bribery inferred –

'Fraud unravels all' – principle discussed – decisions to be set aside on the basis of this principle –

Principle of legality – appointment of Pension Fund Administrator – powers of the Board of Trustees of a Pension Fund to appoint an Administrator – interpretation of the Pension Funds Act –

Appeal upheld and decision of Pension Fund reviewed and set aside.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Vally J sitting as Court of first instance):

(1) The appellants' appeal against the order of the court *a quo* is upheld, with costs.

(2) The order the court *a quo* is set aside and in its place is substituted the following: -

'(a) The decision of the first to twenty-sixth respondents taken on 21 and 22 November 2019 to terminate the suite of agreements with the ninth and tenth applicants be and is hereby reviewed and set aside.

(b) The decision of the first to third respondents to appoint the twenty-seventh to twenty-ninth respondents as the administrators, consultants and actuaries to the first respondent, be and is hereby reviewed and set aside.

(c) The third and fourth respondents are hereby removed as trustees of the CINPF and its Board of Trustees be and is hereby directed to replace those trustees in terms of and in accordance with the Rules of the CINPF.

(d) The first to twenty-seventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of this review application, inclusive of the costs of Part A and the costs of the application to join the thirty-first respondent, all such costs to include the costs consequent upon the employment of two counsel, one being a Senior Counsel.'

(3) The first to twenty-seventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the appellants' costs of the appeal, including the costs of the application for leave to appeal to the court *a quo* and the costs of the application for leave to appeal to the Supreme Court of Appeal, all such costs to include the costs consequent upon the employment of two Counsel, one being a Senior Counsel.

JUDGMENT

Adams J (Dippenaar J *et* Lenyai AJ concurring):

[1] This appeal arises from an application to review and set aside the appointment by the first respondent, the Chemical Industries National Provident Fund (CINPF), of the twenty seventh respondent (Akani Retirement Fund Administrators (Pty) Ltd or 'Akani'), the twenty eighth respondent (Novare Actuaries and Consultants (Pty) Ltd or 'Novare') and the twenty ninth respondent (Moruba Consultants and Actuaries or 'Moruba') as the administrative, consulting and actuarial service providers to the CINPF. The appointment of these entities (Akani, Novare and Moruba) was in the stead and in the place of the tenth appellant (NBC Holdings (Pty) Ltd) and the eleventh appellant (NBC Fund Administration Services (Pty) Ltd), who shall be referred to collectively in this judgment as 'NBC', and who had been the administrators of the CINPF from its inception during 1987 for more than thirty years.

[2] NBC's appointment as Fund Administrator of the CINPF was terminated during November and December 2019 and it was not afforded the opportunity to bid for its reappointment. Aggrieved at having its services terminated and not being reappointed, NBC, together with certain members of the CINPF (the first to eighth appellants or the 'appellant members'), approached the High Court to have set aside the appointment of Akani, Novare and Moruba, as well as the decision by CINPF to terminate the agreements in terms of which NBC had acted as the CINPF's fund administrators. Vally J (the court *a quo*) dismissed the application with costs[1] and refused a subsequent application for leave to appeal. This appeal is with special leave from the Supreme Court of Appeal (SCA) granted to the first to eighth appellants on 22 February 2021 and to the ninth and tenth appellants on 31 July 2021.

[1] The judgment of the court *a quo* is reported as *Moropa and Others v Chemical Industries National Provident Fund and Others* 2021 (1) SA 499 (GJ).

[3] The main issue to be decided in this appeal is whether there was conduct on the part of certain trustees of the CINPF, which tainted the decisions taken by the CINPF, which, in turn invalidated those decisions. Therefore, at a factual level, the first question to be asked and answered is whether these trustees committed acts of bribery and corruption, which influenced the decision taken by all of the trustees of the CINPF to terminate the contractual relationship between it and NBC. Secondly, should those decisions be set aside?

[4] The CINPF is a pension fund worth billions of rands in pension fund money, held on behalf of its members, predominantly blue-collar workers in the chemical, pulp and paper and pharmaceutical industries. The second to the twenty sixth respondents are the trustees of the CINPF (the trustees). At the centre of the dispute between the parties are the second, third and fourth respondents (Messrs Dangazele, Sema and Sithole), who, according to the appellants, received bribes from Akani with a view to influencing the decision to appoint it (Akani) as the Fund Administrator to CINPF. At the relevant time, Mr Dangazele was the Principal Officer of the CINPF, Mr Sema was the Chairperson of its Board of Trustees and Mr Sithole the deputy Chairperson. Mr Dangazele has, in the interim passed away, rendering any relief sought against him moot.

[5] The impugned decisions by the trustees of CINPF were taken during November and December of 2019 and it is not in dispute that during or about that time Messrs Dangazele, Sema and Sithole received from a company related to Akani, Neighbour Funeral Scheme (NFS), certain amounts of money. It is however disputed by these individuals that the monies received were bribes and they proffer explanations which, if accepted, explain why – coincidental as it may seem – these sums were paid to and received by them.

[6] The CINPF was established by NBC in collaboration with several trade unions representative in the chemical industry on 1 September 1987. After the creation of the CINPF, the relevant unions merged to form one union, the Chemical, Energy, Paper, Printing, Wood and Allied Workers' Industry, the thirtieth respondent (‘CEPPWAWU’). CEPPWAWU initially opposed the relief

sought in the application in the High Court, but has since been placed under curatorship and no longer participates in these legal proceedings. It has delivered a notice to abide.

[7] NBC was the administrator of the CINPF since it was founded, and continued to provide administration, actuarial and consulting services to the CINPF until 31 July 2020 when the judgment by Vally J was handed down. At the relevant time, the CINPF had approximately 21 600 members and the participating employers were located throughout the Republic. These members were serviced through walk-in service centres around the country, set up and maintained by NBC.

[8] The Rules of the CINPF were approved by the Registrar of Pension Funds (now the Financial Sector Conduct Authority) and are statutorily binding on the CINPF, the Board and the members. The Financial Sector Conduct Authority (FSCA) is the thirty first respondent, having been joined, at the insistence of the appellants, as a respondent in the review application. As a worker-controlled fund, and as an essential feature of its governance, the CINPF made provision within its Rules for various members' representative committees, the Local Advisory Committees (LAC's) and Regional Advisory Committees (RAC's). In terms of the Rules, these committees are to be consulted on material decisions to be made by the Board concerning the operation of the CINPF and are, as a fact, usually consulted on such decisions.

[9] It is the case of the appellant members of the CINPF (the first to eighth appellants) that on numerous instances the RACs were consulted with regard to the detailed operations of the Fund, illustrating the extent to which the RAC's were involved in the governance and decision-making of the CINPF. In stark contrast to this consultative approach, the Board took the decision to terminate all of NBC's contracts and to engage the services of Akani, Novare and Moruba, without any prior notice to, or consultation with, the LACs and the RACs. This is disputed by the CINPF and its trustees. The court *a quo* found that the CINPF was not under any legal obligation to consult these bodies on material issues, as

the Board of Trustees was and remained responsible for the administration of the Fund.

[10] Prior to the termination of the NBC Agreements, the relationship between NBC and the CINPF was managed on behalf of NBC by Mr Chaane and his subordinate, Mr Ginya, leading a large team of NBC employees. During the course of 2019, Messrs Chaane and Ginya (assisted by several of NBC's other employees, many of whom are now employed by NFS) engineered, so it is alleged by NBC and the appellant members, a basis for the CINPF to contend that the trust relationship between the CINPF and NBC had broken down. It is the case of the appellants that none of these allegations withstand scrutiny. This contention was rejected by the court *a quo*, who in fact accepted, as reasonable, the explanations proffered by the CINPF and its trustees as the reasons why it had become necessary to replace NBC as the Fund Administrator of CINPF.

[11] The court *a quo* rejected the claim by NBC that the Messrs Ginya and Chaane – who were also recipients of sums of monies from NFS on the same day as payments were received by Messrs Dangazele, Sema and Sithole – were instrumental in plotting the downfall of NBC. The reason why it became necessary for the CINPF to terminate the mandate of NBC, so the court *a quo* found, was *inter alia* the latter's poor service delivery, as well as the fact that its fees for services rendered were 'not market-related'.

[12] At a meeting on 21 and 22 November 2019, the Trustees appointed a sub-committee to find replacement service providers for NBC ('the sub-committee'), consisting of the second to seventh respondents (namely, Messrs Dangazele, Sema and Sithole, who all received payments a week after Akani was appointed, Mr Mashego, the First Deputy President of CEPPWAWU, Mr John Baloyi and Ms Poppy Motlakeng).

[13] The sub-committee then engaged in what is described by NBC as 'a highly truncated procurement process' from 27 November 2019 (when the sub-committee met for the first time) until 11 December 2019, when the Board resolved to appoint Akani, Moruba and Novare, with numerous procedural shortcomings, so NBC avers. After shortlisting twelve potential candidates for the

provision of administrative services, for instance, the sub-committee then proceeded to eliminate nine of those candidates, and invited three to submit a tender.

[14] The procurement processes culminated at the Board meeting on 11 December 2019, where the other two candidates were rejected, by design according to NBC, leaving Akani as the only viable candidate. Akani was there and then appointed as the CINPF's administrative service provide, despite a suggestion by one of the other Trustees that the Board considers other applicants. This proposal was rejected by the chairperson on the basis that there was ostensibly no time to do so.

[15] A week later, on 20 December 2019, and within four minutes of one another Mr Dangazele (the Principal Officer of the CINPF) was paid R40 000; Mr Sema (the Chairperson of the CINPF Board of Trustees) was paid R25 000; Mr Sithole (the Deputy Chairperson of the CINPF Board of Trustees) was paid R25 000; Mr Chaane was paid R50 000; and Mr Ginya was paid R40 000.

[16] As already indicated, a material factual dispute in this matter relates to whether or not the payments made to Messrs Dangazele, Sema and Sithole one week after Akani's appointment, were *bona fide* payments from NFS, an entity closely related to Akani in that it has the same shareholders and directors, made as a result of the death of alleged family members of each of them, in terms of funeral policies which were in operation with effect from 1 August 2019, as they allege. Put another way, were these payments made *bona fide* pursuant to the second, third and fourth respondents' membership of NFS and, if so, did these payments give rise to a conflict of interest between these respondents' respective duties as principal officer and Trustees for CINPF and their personal interests.

[17] The court *a quo* did not deal in any way with this dispute as it was of the view that the legitimacy of these payments to Messrs Dangazele, Sema and Sithole were being investigated by the South African Police Services and the FSCA. I am not convinced of the correctness of this reasoning. As rightly pointed out by Mr Watt-Pringle SC, who appeared on behalf of NBC together with Ms MacLean, a Court cannot decline to hear evidence and decide a matter on the

basis that the same issue is being investigated by other bodies. A Court can and should determine a material dispute before it, irrespective of whether that dispute is under investigation by another body of agency. I am therefore of the view that this issue – whether Akani bribed CINPF trustees and the Principal Officer of the CINPF in order to procure its appointment – was an issue properly before the court *a quo*, and that it had not only the power but also the duty to decide it. As Nicholls JA put it in *Solidarity and Another v Black First Land First and Others*[2]:

'One of the primary functions of a court is to bring to finality the dispute with which it is seized. It does so by making an order that is clear, exacts compliance, and is capable of being enforced in the event of non-compliance.'

[18] Also, as was said by Weiner AJA in *P M obo T M v Road Accident Fund*[3]:

'[14] … ... The issues in any particular litigation will be determined by the pleadings or affidavits and may be expanded by the parties in the course of the proceedings. It is not for the court to vary the issues so defined. But, once the case has been placed before the court for adjudication, it is obliged to adjudicate upon the issues it raises by rendering a judgment, unless the parties specifically withdraw all or some of the issues from judicial consideration.'

[19] I therefore proceed to deal with that issue and inquire into whether or not that factual dispute between the parties is capable of determination on the papers which were before the court *a quo*.

[20] But before that, I need to deal with an aspect which formed the basis of the court ***a quo's*** judgment against NBC, which effectively non-suited it. In that regard, the court *a quo* found that NBC acted purely in its 'own interests' in relation to the relief which it sought and concluded that NBC lacked standing, which meant, so the court *a quo* found, that there was 'no need to examine the merits of its case'.

[21] I am not convinced that this finding of the court *a quo* was correct. As submitted on behalf NBC, as administrator to the fund, it was no ordinary service provider in the mould of a contract cleaning company, or supplier of stationary.

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[2] *Solidarity and Another v Black First Land First and Others* [2021] ZASCA 26 (24 March 2021) at para 10;

[3] *P M obo T M v Road Accident Fund* (1175/2017) [2019] ZASCA 97; [2019] 3 All SA 409 (SCA); 2019 (5) SA 407 (SCA) at para 14

Administrators of pension funds are statutorily regulated and have duties to the fund that far exceed their contractual obligations.

[22] So, for example, s 13B of the Pension Funds Act (PFA)[4] provides that the administrator of a fund shall be approved by the registrar and has onerous duties both to the fund and to the regulator, relating to the interests of the members and the proper administration of the fund. In terms of s 13B(5)(a) an administrator must endeavour to avoid conflict between his interests and the duties owed to the fund, and any conflict of interest or potential conflict of interest must be disclosed by the administrator to the board setting out full particulars of how such conflict will be managed. And ss (b) requires the administrator to administer the fund in a responsible manner.

[23] Importantly, s 13B(10) provides as follows:

'When an administrator becomes aware of any material matter relating to the affairs of a fund, which in the opinion of the administrator may prejudice the fund or its members, the administrator must inform the registrar of that matter in writing without undue delay.'

[24] Moreover, so it was further submitted on behalf of NBC, as a fact, NBC together with CEPPWAWU was instrumental in the founding of the CINPF and was, as administrator, responsible for servicing the day-to-day interests of its members. I find myself in agreement with these submissions. To cast NBC into the mould of a mere service provider with a purely commercial interest in the CINPF is untenable.

[25] For these reasons, I am of the view that NBC had the necessary standing to bring the review application in the court *a quo*. In determining the issue of standing, the validity of the NBC's legal challenge should have been assumed. It follows that, at the stage of deciding NBC's standing, Vally J was obliged to assume that the impugned Board decisions constituted administrative action liable to be set aside under PAJA, or on the basis of the doctrine of legality, or on the basis that 'fraud unravels all'. A so-called 'own interest litigant' acquires standing not from the invalidity of the challenged decisions, but from its 'interests or potential interests'. It can hardly be contended that NBC has no interest in a

[4] Pension Funds Act 24 of 1956;

decision to terminate its contracts which, it alleges, is tainted by fraud and bribery of the decision makers by a competitor.

[26] Additionally, and as was held by Cameron J in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd:*[5], '[i]t seems plain that a commercial interest in the subject-matter of the transaction will be sufficient to establish own-interest standing to challenge it'. And, applying the further findings by Cameron J, NBC's statutory responsibilities to the CINPF and to the regulator require the Court, in the interests of justice under the Constitution, to be hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits.

[27] I am therefore of the view that NBC has standing in relation to the relief that it sought in the review application in the court *a quo*. I agree with the submission by Mr Watt-Pringle SC that by bringing the application, NBC together with the Members, have acted in the broader public interest of the CINPF, its tens of thousands of members and clean administration in the pension fund industry.

[28] That brings me back to the issue of the alleged corrupt payments made to the top three CINPF officials and to other individuals allegedly averse to the interest of NBC. As indicated earlier in this judgment, the simple question is this: can the explanation by the respondents that the payments from Akani to the top CINPF officials were *bona fide*, and not bribes, be accepted as true?

[29] In a nutshell, the explanation by Akani and the CINPF in respect of the payments to Messrs Dangazele, Sema and Sithole, which, it will be recalled, all happened on the same day and within an hour of each other, is that it related to the proceeds of claims pursuant to and in terms of funeral policies upon the deaths of relatives of these officials. So, for example, Mr Dangazele simply stated that he had joined NFS in August 2019 and upon the death of one of his nominated beneficiaries, was paid out R40 000 under the policy. In substantiation of this version, he put up his application for membership of NFS and the death certificate. Mr Sema provided a similarly bland version in a separate affidavit, as

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[5] *Giant Concerts CC v Rinaldo Investments (Pty) Ltd* 2013 (3) BCLR 251 (CC) at para 5;

did Mr Sithole and both sought to persuade the court *a quo* that their versions were true because their applications to join the NFS were signed and dated in August 2019, well before the Board's November board meeting at which it decided to terminate NBC's contracts.

[30] In support of their death benefits claims, they furnished death certificates in respect of the deceased relatives – in the case of Mr Dangazele, for his 'Uncle'. Mr Mosesenyane Abel Ndukula, who died on 29 November 2019 of natural causes; in the case of Mr Sema, for his 'Aunt', Ms Topisa Maria Somo, who died on 5 December 2019 of natural causes; and in the case of Mr Sithole, for his 'Aunt', Ms Betty Nwashiburi Sithole, who died on 30 November 2019 of natural causes.

[31] As submitted by NBC, there are obvious questions left unanswered by the explanation by Akani and the CINPF. Those included the remarkable coincidence that all three joined the same funeral scheme, independently of one another, three months before they were instrumental in the appointment of Akani, which happens to be appointed to administer the scheme. Despite the remarkable coincidence that they all three lost 'family members' within weeks of one another and all received their payments on the same day, they failed to state how they are in fact related to the deceased.

[32] The version which Akani and the CINPF wants the court to accept is that Messrs Dangazele, Sema and Sithole all subscribed for funeral policies from NFS, all in August 2019, and all independently of one another, notwithstanding that there are 11 100 registered FAIS representatives licenced to sell funeral policies in South Africa. There is no explanation as to why, of all the funeral policy vendors in the country, all three obtained funeral policies within days of one another, from the same one. This, despite the fact that Mr Dangazele lives in Durban, whilst Messrs Sema and Sithole in Kempton Park and Orange Farm respectively, and NFS is based in Kempton Park in Gauteng.

[33] The explanation or explanations by Akani and the CINPF bring to mind the expression that it only has to be stated for it to be rejected – it is so far-fetched that it can and should be rejected on the papers. And this does not even take into

account the myriad of other anomalies and discrepancies highlighted in their papers by the appellant members and NBC, which demonstrate that the claims made by NFS were fraudulent. Most notable is the evidence presented by the NBC that the death benefit claims by Messrs Dangazele, Sema and Sithole were made in respect of the deaths of persons seemingly unrelated to them.

[34] What is even more astounding is the fact that there is no explanation how NFS could have issued the policies, given that it is not a registered financial service provider. No proof was provided that it was entitled to sell funeral policies. Considering all the objective and documentary evidence, the versions by CINPF (Dangazele, Sema and Sithole) and Akani can and should be rejected on the papers – they are inherently contradictory, vague and/or implausible. This then also means that there is no need for any disputed issue to be referred to oral evidence. The court a quo should simply have rejected the far-fetched and implausible explanations proffered by CINPF and Akani for the irregular pay-outs received by the senior office-bearers of CINPF.

[35] For these reasons, I am of the view, applying irrefutable inferential reasoning, that the true purpose of the payments to Messrs Dangazele, Sema and Sithole was a bribe. The implausibility of the CINPF's explanation is self-evident. The explanations for the receipt of substantial payments all on the same day, all from one funeral scheme vendor, which happens to be a company related to Akani, one week after the appointment of Akani, in which decision they were directly involved, implies a series of truly remarkable and very unlikely coincidences. There is no explanation offered in the affidavits by Akani and the CINPF as to why these remarkable coincidences are plausible.

[36] The explanation for the three payments to Messrs Dangazele, Sema and Sithole therefore ought to be rejected as a fabrication. In my view, these payments were corrupt payments constituting bribes for the roles played by Messrs Dangazele, Sema and Sithole in the decision to terminate NBC's services and in the appointment of Akani, Novare and Moruba. Therefore, in my judgment, the termination of NBC's services is tainted with fraud and corruption.

[37] They fall squarely into the category of nominal factual disputes that can and should be resolved on paper on the basis of the *Plascon Evans* rule. The explanations given by the CINPF, Akani and its Trustees are 'so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers'[6]. Additionally, the explanations consist of and are nothing more than 'bald or uncreditworthy denials, [which] raises fictitious disputes of fact, [are] palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers'.[7]

[38] I now turn my attention to the question whether this conduct on the part of Messrs Dangazele, Sema and Sithole translates or should translate into the invalidation of the impugned decisions. First I deal with this question relative to the Promotion of Administrative Justice Act (PAJA)[8] and the principle that 'fraud unravels all'. This, in turn, requires that I canvass the issue as to whether PAJA finds application *in casu* in view of the fact that the CINPF is not an Organ of State. The question therefore is whether the impugned decisions of the CINPF fall within the definition as provided for in s 1(b), which reads as follows:

'"administrative action" means any decision taken, or any failure to take a decision, by –

(a) … …

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

which adversely affects the rights of any person and which has a direct, external legal effect, …'.

[39] It was submitted on behalf of the appellant members and NBC that the two decisions sought to be reviewed in the review application, constitute administrative action as envisaged in section 33 of the Constitution of the Republic of South Africa, 1996 (the Constitution), and accordingly fall to be reviewed and set aside in terms of the PAJA or the common law.

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[6] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C; *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd and Another* 2011 (1) SA 8 (SCA) at paras 19 and 20;

[7] *National Director of Public Prosecutions v Zuma 2009 (2) SA 277* (SCA) at para 26;

[8] Promotion of Administrative Justice Act 3 of 2000;

[40] As correctly contended by Mr Watt-Pringle SC, a Pension Fund is a private institution which may exercise public power in certain circumstances, and the conduct of the Fund may, in these cases, be challenged as constituting administrative action, either as defined under PAJA, or under the common law. Not all decisions of a pension fund constitute administrative action. The question whether the exercise of a particular power by a private functionary amounts to an exercise of public power or a public function must be determined on a case-by-case basis.

[41] This matter specifically concerns the termination of a suite of contracts with existing service providers and the appointment of new service providers, and whether these decisions amount to an exercise of public power.

[42] The appellants contend that s 1(b) of PAJA is applicable for the simple reason that pension funds are, for good reason, highly regulated and operate within the strictures of the four corners of the PFA and other delegated legislation. In s 7D of the PFA, the duties and responsibilities of the Board of Trustees of a Pension Fund are set out in detail and include a provisions that a board shall ensure that the rules and the operation and administration of the fund comply with this Act, the Financial Institutions (Protection of Funds) Act[9], and all other applicable laws. Section 7D(2)(a), read with section 13B, of the PFA provides that the Trustees may delegate the administration of a pension fund to an administrator, provided that that administrator is approved by the Registrar of Pension Funds ('the Registrar') and remains compliant with the conditions for approval.

[43] A good example of the strict manner in which the administration of pension funds is regulated is a Circular PF No 130 – Good Governance of Retirement Funds – issued by the Registrar of Pension Funds during 2007, which provides in its preamble that the assets of a retirement fund are administered for the main purpose of providing the benefits promised in terms of the registered rules of that fund. And that '[t]he board of management (sometimes referred to as trustees)

[9] Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001);

therefore holds fund assets in trust for those persons who will ultimately benefit from them'.

[44] Under the heading 'Approved Service Providers', paragraph 70 of the Circular provides as follows:

'(70) When selecting and appointing service providers the board should be alert to possible conflicts of interest in acceptance of advice ... These conflicts of interest must be proactively identified and disclosed. Acceptable, workable policies and directives to deal with such situations must be determined.'

[45] It is so that the obligation to administer a pension fund is a statutory one. So too are the fiduciary duties of the pension fund to its members and those of the Trustees, as further evidenced by the provisions of the Financial Institutions (Protection of Funds) Act 28 of 2001, expressly referred to in section 7D(f) of the PFA, which regulates expressly the duties of persons dealing with funds of, and with trust property controlled by, financial institutions.

[46] For all of these reasons, I am of the view that the power of the Trustees to delegate their statutory obligation to properly administer a pension fund, to an external administrator, which is one both empowered and circumscribed by Legislation, is a decision which involves the exercise of public power or the exercise of a public function. This is so because, considering the definition of 'administrative action' in PAJA, a Pension Fund, being a juristic person, in appointing an administrator, exercises such power 'in terms of an empowering provision', being the PFA and the regulations promulgated thereunder. The term 'empowering provision' is broadly defined as 'a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken'. In this matter, the point is simply that the public has an interest in the lawful administration of pension funds, irrespective of whether they are members of a particular pension fund or not. Pension fund trustees administer money in trust on behalf of members of the fund and are carefully regulated and controlled by statute and the Registrar.

[47] Moreover, in my view, the decisions have a direct, external legal effect and affects the rights of members. Nothing more needs to said about this requirement

– it is self-evident. The decisions have the potential to impact materially on the right of members to have their pension funds properly and lawfully administered.

[48] Accordingly, I am of the view that the decisions sought to be reviewed and set aside in the review application, constitute administrative action as defined in section 1 of PAJA. This conclusion is consistent with a number of decisions where courts have held that decisions of a pension fund taken in terms of section 37C of the PFA (which deals with the paying out of benefits upon the death of a member) constitute administrative action and are reviewable under PAJA. See, for example, *Titi v Funds at Work Umbrella Provident Fund*[10], in which Smith J held as follows at para 14:

'The respondent, when acting in terms of the provisions of the Act and administering the funds on behalf of its members, is exercising a public power. The decisions which it is empowered to take in terms of s 37C of the Act, and in particular the power to effectively override the express wishes of its members, may conceivably affect members of the public. Any decision made in pursuance thereof and which could negatively impact on members of the public would therefore be subject to judicial scrutiny and review in terms of the provisions PAJA.'

[49] That brings me back to the review of the two impugned Board decisions on the basis of PAJA and the doctrine of legality, as well as the primary submission on behalf of the appellants that, on the basis of first principles, the bribery of Messrs Dangazele, Sema and Sithole is sufficient basis to set aside both decisions, irrespective of whether those decisions are reviewable.

[50] As regards the latter issue – the so-called 'fraud unravels all' principle – there can be little doubt that the bribery of these officials shows that the termination of NBC's contract is inextricably tied to Akani's appointment. NBC's services were terminated to make way for Akani. As contended, by the appellants, there can be no other plausible reason for Akani to have bought off the individuals that it did.

[51] It requires emphasising that, in my view, the impugned decisions – irrespective of whether they are reviewable on the basis of the doctrine of legality

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[10] *Titi v Funds at Work Umbrella Provident Fund* [2011] JOL 23125 (ECM);

or in terms of PAJA or the common law – stand to be set aside on the grounds that they were underpinned by acts of fraud and bribery. This in and of itself is a sufficient ground to set aside the said decisions and would have cloaked NBC with the necessary *locus standi in iudicio* to apply to the high court for a setting aside of the said decisions.

[52] As was held by the SCA in *Namasthethu Electrical (Pty) Ltd v City of Cape Town*[11], it is trite law that fraud is conduct which vitiates every transaction known to the law. In affirming this principle, the SCA, in *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others*[12], referred with approval to Lord Denning's dicta in *Lazarus Estates Ltd v Beasley*[13], when he said:

'No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever . . .'.

[53] Fraud unravels everything – that is our law. And I have already found that Messrs Dangazele, Sema and Sithole committed fraud in that they received bribes from NFS aimed at securing Akani's appointment as a Fund Administrator to CINPF. That appointment required and resulted in the two impugned decisions, which therefore need to be 'unravelled' as being based on fraud and bribery. For this reason alone, the decisions stand to be set aside.

[54] I reiterate that, because of the fraud and the bribery, the two decisions ought to have been set aside by the court *a quo*.

[55] Even if I am wrong on this aspect – whether regarding the factual conclusion or the application of the law – the decisions, in my view should still be reviewed and set aside on the basis of and under the principle of legality, which is a fundamental principle of our law. Where an entity is accorded public power by law, it may act only in accordance with those powers. If the entity acts outside

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[11] *Namasthethu Electrical (Pty) Ltd v City of Cape Town* 2020 JDR 1279 (SCA);

[12] *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others* [2014] ZASCA 2; [2014] 2 All SA 493 (SCA) para 11;

[13] *Lazarus Estates Ltd v Beasley* [1956] 1 QB (CA) at 712;

of those powers, the action lacks legality and may be reviewed and set aside. This was articulated clearly in the matter of *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*[14], which held as follows:

'It seems central to the conception of our constitutional order that the legislature and executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.'

[56] In making the decision to give NBC notice of termination, the Board is constrained to act lawfully. The Trustees can only act within the four corners of the PFA and the Rules of the CINPF and for the benefit of the Fund, when passing any resolution, including the one they purported to pass on 21 and 22 November 2019, in terms of which it was resolved that the contracts with NBC would be terminated. The same principles apply to the Board's decision to appoint Akani, Novare and Moruba. In addition, but for the 21 and 22 November 2019 resolution, the Board would not have been in any position to appoint a new administrator, consultant or actuary.

[57] When the Board makes a decision to terminate the appointment of an administrator, it acts not in its own interest, but in the interests of the Fund. It (and each member of the Board) is obliged to act in accordance with their fiduciary duties and duties to act with due diligence, independence and impartiality in accordance with section 7C(2) of the PFA.

[58] Where the Chairperson and Deputy Chairperson of the Board are conflicted by them having accepted, or having agreed to accept, payment of a bribe in order to pave the way for Akani's appointment, both they and the Board as a decision-making body, are fatally compromised. No lawful decision can emerge from a Board whose members have been bribed to decide an issue, not according to what they truly believe to be in the best interests of the CINPF, but in their own personal interests.

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[14] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) at para 58;

[59] What is more, the non-disclosure of their conflict of interest (and that of the Principal Officer) constitutes fraudulent non-disclosure to the Board. Messrs Sema, Sithole and Dangazele were all present at the Board meeting on 21 and 22 November 2019. Mr Sema, as Chairperson led the discussion on a report (the GFIA Report), which formed the basis of the decision to terminate the relationship between NBC and CINPF, and the ensuing decision to terminate NBC's services. Mr Dangazele, although not a Board member, steered the discussion to the issue of NBC's fees by raising questions on the issue. None of the compromised office-bearers disclosed their financial arrangements with Akani, through NFS. The failure of Messrs Dangazele, Sema and Sithole to disclose those facts to the Board is highly material – there can be no doubt about this.

[60] For these additional reasons – based on the principle of legality – I am of the view that the Board's decision to give NBC notice of termination of the contracts with the CINPF, not being a decision as contemplated by the Rules of the CINPF, was invalid and of no force or effect. They therefore stand to be reviewed and set aside.

[61] The doctrine of legality requires, at the very least, that the exercising of the public powers and functions conferred on the CINPF must be *intra vires*, understood, exercised in good faith, and rational in both purpose and process.

[62] In terms of section 7C of the PFA, the Board and each of its members are required to act with due care, diligence and good faith (section 70(b)) to avoid conflicts of interest; (section 7C(c)); to act independently (section 7C(e)); to exercise a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as a fiduciary duty to the fund, to ensure that the fund is financially sound and is responsibly managed and governed in accordance with the rules and this Act; (section 7C(f)); and to comply with any other prescribed requirements (section 7C(g)).

[63] In light of my factual finding *supra* it cannot possibly be said that the Board and the individual Trustees constituting the Board complied with any of these prescripts. Far from it. They have failed to apply due diligence in that the Board acted on a preliminary report and it has done so without obtaining NBC's

response to any adverse findings in the report. The procurement process leading to the appointment of Akani, Novare and Moruba Consultants was engineered to ensure that at least Akani was appointed. in this regard too, there's been a lack of due diligence, in contravention of section 7C of the PFA. Certain Board members are in the pocket of Akani and have accordingly failed to act independently or to avoid a conflict of interest in relation to both the termination of NBC's services and in the appointment of Akani.

[64] I reiterate that the impugned decisions of the Trustees fall to be reviewed and set aside under the doctrine of legality.

[65] The first decision which the appellants seek to review and set aside, is the decision of the CINPF Board to terminate the suite of agreements between the CINPF and NBC. It has been submitted on behalf of the applicants that, in addition to the aforegoing grounds of review, there are further bases on which this decision should be reviewed and set aside. Those include issues relating to the non-compliance by the Board of Trustees with public procurement processes, which, according to the appellants, the CINPF are bound to follow. Moreover, so the appellants contend, the decision was *ultra vires* the empowering provision (namely the CINPF Rules), as there was a failure by the Board to consult with the RACs and LAGs.

[66] In view of my findings that the first impugned decision stands to be reviewed and set aside on the basis *inter alia* of the fraudulent conduct of certain members of the Board and in terms of PAJA, I do not deem it necessary to deal with those aspects further.

[67] The second decision which the appellants required the Court *a quo* to set aside and review was the decision to appoint Akani, Novare and Moruba as fund administrators in the place of NBC. This decision too, so the appellants contend, stands to be reviewed and set aside on the basis that same was tainted by the fraudulent and corrupt conduct on the part of three of the senior office bearers of the CINPF. Further grounds of review exist, so the submissions are continued, for the review and setting aside of this decision.

[68] Whilst I do not intend dealing in detail with those submissions in light of my finding that the second decision should be reviewed and set aside on the basis of the aforementioned fraud and corruption, I find myself in agreement with same.

[69] So, by way of an example, there can be little doubt that CINPF's second decision to appoint Akani, Novare and Moruba lacked procedural fairness. The Trustees' failed to ensure that they had before them the relevant information necessary to make an informed decision about the termination of the NBC agreements. The decision is thus reviewable on the basis that the Trustees failed to take into consideration relevant considerations (section 6(2)(e)(iii) of PAJA). This is so especially with regard to the appointment of Akani, which, by all accounts, was nothing other than a sham aimed at avoiding a competitive tender process and to exclude potential competitors to Akani. There were also material discrepancies in the Akani tender, such as its failure to provide a letter from its auditors stating that its business continuity and disaster recovery plans are adequate for CINPF's circumstances, as required by the bid conditions.

[70] The procedure followed for the appointment of Novare and Moruba was far simpler and it cannot be said that that procedure suffered from the same defect in the appointment of Akani. It cannot be suggested, for instance, that these appointments were tainted by fraud and bribery – there were no irregularities nor were the processes undertaken with unseemly haste or professional bumbling. There were however shortcomings in that Novare was, for instance, unable to provide a fee proposal due to the limited time afforded to them to prepare a tender. Moreover, Novare was appointed by the CINPF without any due diligence being carried out by the time of its appointment, and without any discussion or agreement of the fees they would charge.

[71] From the rule 53 record, it appears that the procedure for the appointment of Moruba as the Fund actuary is equally flimsy. No specifications were provided to the short-listed candidates, or even a description of the actuarial services provided. As NBC explained, it was important for the CINPF to issue specifications on the actuarial services required because the CINPF has a unique

approach to accounting for Fund expenses. However, on 11 December 2019, the Board resolved to appoint Moruba subject to a due diligence being undertaken to the satisfaction of the CINPF. On 9 February 2020, the Principal Officer issued a letter of appointment to Moruba – notwithstanding the fact that the due diligence had not yet been carried out.

[72] For all of these reasons, I am of the view that the two decisions by the CINPF ought to have been reviewed and set aside by the court *a quo*.

[73] I interpose here to deal with an aspect which, on my reading of the judgment of the court *a quo*, weighed heavily on that court's mind. And that relates to alleged improper and inappropriate conduct of NBC and whether there were grounds not to reappoint them.

[74] In para 51 of the judgment the court *a quo* noted that '[t]he Fund says that the termination of the contracts with NBC was based on the following facts and circumstances', which are then listed as numbers (a) to (j). These relate, for example, to the appointment and the ineffective use by NBC of asset managers to the detriment of the CINPF and its assets and members; the recommendation by NBC of other service providers to the Fund, who turn out to be inefficient and not properly qualified for the appointments; poor service delivery by NBC to the CINPF, as well as the poor performance of the investments embarked upon by NBC; a report by an auditing firm, Gobodo Forensic and Investigative Accounting (GFIA), uncovered a string of problems, resulting in them making a number of recommendations, including that fees charged by NBC were not market-related and therefore not in the best interest of the Fund and that the Fund was over dependent on NBC.

[75] At para 53 of the judgment, the court *a quo* then concludes, relative to these issues, that the board of the CINPF was anxious about the conduct of NBC in general, the treatment it was receiving from NBC, the impact of NBC's conduct on the investments of the Fund, and about the fees it was being charged. The court *a quo* therefore concludes that there can be no doubt that the anxieties and concerns of the board bore substance, and that the board acted prudently by resolving to embark on the forensic investigation.

[76] I do not consider that it is for this court to decide on whether there is merit in the complaints by the board against NBC, which the court *a quo* appears to have accepted as valid. Nor do we express a view on whether the alleged improper conduct on the part of NBC entitled the board to terminate the suite of contracts in terms of which NBC acted as the CINPF's Fund Administrator. The intention is not to hold that there is no merit in the criticism levelled against NBC. This judgement deals only with the impropriety in the process in terms of which the appointment of NBC was terminated. It makes no findings as to whether NBC misconducted itself, thus entitling CINPF to terminate its services as a Pension Fund Administrator.

[77] Lastly, I need to deal with the relief claimed by NBC that certain trustees be removed from their positions as trustees.

[78] On the basis of their misconduct in relation to the bribes received by them from Akani, Messrs Dangazele, Sema and Sithole, should be removed, so NBC contends, as principal officer and trustees. As indicated earlier on in this judgment, Mr Dangazele, who was the principal officer at the relevant time, has since passed away and any relief granted against him would be moot. No further attention will therefore be given to the relief claimed against Mr Dangazele, who is the second respondent in this appeal.

[79] Mr Watt-Pringle SC submitted that, regardless of the existence of statutory powers conferred on the Authority to remove trustees and the principal officer of a Pension Fund, this Court has the inherent power to remove any person in a fiduciary position on grounds of misconduct, which demonstrate that that person is not fit and proper. Additionally, pursuant to section 8 of PAJA, this Court has the power, in addition to the setting aside of the impugned decisions, to grant relief that is just and equitable.

[80] I have already indicated that, in my view, the two impugned decisions should be reviewed and set aside. The main reason for such review is the fact that these individuals misconducted themselves in that they fraudulently accepted and received bribes from Akani with a view to ensuring that it is appointed as a Pension Fund Administrator. The effect of this finding is an

unavoidable conclusion that Messrs Sema and Sithole had failed in their fiduciary duties to the CINPF and that they are not fit and proper to hold office in a pension fund. This, in itself, would justify their removal as trustees, to be replaced by the rest of the Board in accordance with the rules of the CINPF.

[81] The point is that, as trustees of the CINPF and as the leading figures on the Board (Chairperson and Deputy Chairperson, respectively), Messrs Sema and Sithole accepted bribes from Akani via NFS, in order to influence decisions of the CINPF to the detriment of the CINPF and NBC, and to the benefit of Akani, Novare and Moruba. I agree with the submission on behalf of appellants that their conduct was not only improper, but also criminal.

[82] They also failed to disclose their conflicts of interest. They are clearly not fit and proper persons to be Trustees. The PFA requires that all trustees are fit and proper persons. The duties of the Trustees to the fund are governed both by the common law principles and by statutory law, notably section 7C of the PFA, which provides in the relevant parts that the object of the Board is to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund. In pursuing its object, the board is enjoined to take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of the PFA Act are protected at all times. Moreover, members of the Board are required to act with due care, diligence and good faith.

[83] Messrs Sema and Sithole have clearly acted in breach of the duty not to allow their personal interests to conflict with their duty, in the most egregious manner possible, by accepting payment from Akani of what can only be regarded as bribes, in order to ensure that NBC's services were terminated so as to make way for Akani and so that Akani was appointed. In doing so they have also committed criminal offences under the Prevention and Combatting of Corrupt Activities Act 12 of 2004[15].

[84] Finally, I need to briefly deal with a ‘moot point’ raised, almost in passing in his updated practice note by Mr Maleka SC, who appeared on behalf of the

[15] The Prevention and Combatting of Corrupt Activities Act 12 of 2004;

first to twenty sixth respondents with Ms Kekana. In the practice note the Court's attention was directed to the fact that Akani's mandate with the CINPF was terminated on 1 November 2021 and Momentum has since been appointed as the Fund administrators. This means, so the submission went, that the order sought against Akani would have no practical effect or outcome and that the appeal could conveniently be disposed of on this ground alone, in terms of section 16(2)(a)(i) of the Superior Courts Act, 10 of 2013.

[85] Mr Botha SC, who appeared for the appellant members together with Ms Martin, contended that this issue is not properly before this court and for that reason alone, the point should be dismissed. I agree. In *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*[16], the court held that the issue of mootness stands or falls on the case made for it by the litigant claiming mootness. In casu, no such case in made out on behalf the respondents. For that reason alone, the point of mootness should fail.

[86] There may very well be other reasons for the point to be rejected. In that regard the following was said by Unterhalter AJA in *Capitec*:

'[19] This court has a discretion to entertain the merits of an appeal, even where the matter is moot. Where a case poses a legal issue of importance for the future that requires adjudication, that may incline the court to hear the appeal. The appeal before us, for the reasons given, is of practical consequence. It is not moot. But even if it were, the interpretation of clause 8.3 is a legal issue of consequence for the future of the parties' commercial relationship. That would warrant the exercise of our discretion to hear the merits of the appeal. I accordingly decline to dismiss the appeal on the basis of mootness.'

[87] These principles, in my view, finds application in the appeal before us. I therefore reiterate that the point of mootness should fail.

Conclusion and Costs of Appeal

[88] For all of these reasons the appeal must succeed and the order of the court *a quo* should be replaced with one in terms of which the impugned decisions

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[16] *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA);

are reviewed and set aside. The third and fourth respondents should also be removed as trustees of the CINPF.

[89] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so. See: *Myers v Abramson*[17]. There are no grounds in this case to depart from the ordinary rule that costs should follow the result.

[90] The appellants have urged this court to show its displeasure with the conduct on the part of certain of the respondents by awarding punitive costs on the scale as between attorney and client. I am not persuaded that a case has been made out by any of the litigants for a punitive costs order against any of the other litigants. I therefore intend granting ordinary costs on the scale as between party and party. The complexity of the matter does however, in my view, warrant costs to include the costs of two counsel, with one being a Senior Counsel.

[91] The first to twenty seventh respondents should therefore pay the appellants' costs of the appeal.

Order

[92] In the result, the following order is made: -

(1) The appellants' appeal against the order of the court *a quo* is upheld, with costs.

(2) The order the court *a quo* is set aside and in its place is substituted the following: -

'(a) The decision of the first to twenty-sixth respondents taken on 21 and 22 November 2019 to terminate the suite of agreements with the ninth and tenth applicants be and is hereby reviewed and set aside.

(b) The decision of the first to third respondents to appoint the twenty-seventh to twenty-ninth respondents as the administrators, consultants and actuaries to the first respondent, be and is hereby reviewed and set aside.

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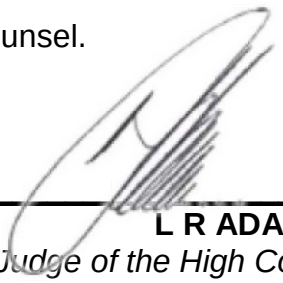
[17] *Myers v Abramson*,1951(3) SA 438 (C) at 455

(c) The third and fourth respondents are hereby removed as trustees of the CINPF and its Board of Trustees be and is hereby directed to replace those trustees in terms of and in accordance with the Rules of the CINPF.

(d) The first to twenty-seventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of this review application, inclusive of the costs of Part A and the costs of the application to join the thirty-first respondent, all such costs to include the costs consequent upon the employment of two counsel, one being a Senior Counsel.'

(3) The first to twenty-seventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the appellants' costs of the appeal, including the costs of the application for leave to appeal to the court *a quo* and the costs of the application for leave to appeal to the Supreme Court of Appeal, all such costs to include the costs consequent upon the employment of two Counsel, one being a Senior Counsel.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	21st February 2022 – in a 'virtual hearing' during a videoconference on the *Microsoft Teams*.
JUDGMENT DATE:	29th June 2022 – judgment handed down electronically
FOR THE FIRST TO EIGHTH APPELLANTS:	Adv Adrian Botha SC, together with Advocate Samantha Martin
INSTRUCTED BY:	Knowles Husain Lindsay Inc, Sandton.
FOR THE NINTH AND TENTH APPELLANT:	Adv C E Watt-Pringle SC, with Advocate K S Maclean.
INSTRUCTED BY:	Shepstone & Wylie Attorneys, Sandton
FOR THE FIRST TO TWENTY SIXTH RESPONDENTS:	Adv I V Maleka SC, together with Advocate N B Kekana
INSTRUCTED BY:	T D Mashele Incorporated, Northriding, Randburg,
FOR THE TWENTY SEVENTH RESPONDENT:	Adv A Franklin SC, together with Advocate P McNally SC and Advocate B L Manentsa
INSTRUCTED BY:	Webber Wentzel, Sandton.
FOR THE TWENTY EIGHTH TO THIRTIETH RESPONDENT:	No Appearance
INSTRUCTED BY:	No appearance
FOR THE THIRTY FIRST RESPONDENT:	Adv Jason Mitchell
INSTRUCTED BY:	M F Jassat Dhlamini Incorporated, Johannesburg