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**IN THE HIGH COURT OF SOUTH AFRICA**
**(GAUTENG DIVISION, PRETORIA)**

DATE: 31/07/2014
CASE NO: 25095/2013

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHERS JUDGES: YES/~~NO~~
(3) REVISED

31/7/2014 .....
DATE SIGNATURE

In the matter between:

| | |
|---|---|
| **JOHAN PIETER HENDRIK PRETORIUS** | **1ST APPLICANT** |
| **JOHAN MICHAEL KRUGER** | **2ND APPLICANT** |

And

| | |
|---|---|
| **TRANSNET SECOND DEFINED BENEFIT FUND** | **1ST RESPONDENT** |
| **TRANSPORT PENSION FUND** | **2ND RESPONDENT** |
| **METROPOLITAN RETIREMENT ADMINISTRATORS (PTY) LTD** | **3RD RESPONDENT** |
| **TRANSNET SOC LIMITED** | **4TH RESPONDENT** |
| **MININSTER OF PUBLIC ENTERPRISES** | **5TH RESPONDENT** |
| **MINISTER OF FINANCE** | **6TH RESPONDENT** |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | **7TH RESPONDENT** |

**JUDGMENT**

MAKGOBA, J

[1] The applicants seek leave to institute a class action pursuant to the provisions of section 38(c) of the Constitution of the Republic of South Africa Act, 1996 as representatives of the members of the Transnet Second Defined Benefit Fund (first respondent) and the Transport Pension Fund (second respondent) against one or more or all of the respondents.

The first applicant is a pensioner member of the Transport Pension Fund ("the TPF") and the second applicant is a pensioner member of the Transnet Second Defined Benefit Fund ("the TSDBF").

[2] The applicants annexed to the founding affidavit *inter alia* draft particulars of claim in which they set out the proposed cause of action against the respondents.

[3] The essence of the relief sought by the applicants in the proposed class action is to enforce legislative provisions which they interpret as creating an obligation on Transnet (the fourth respondent) and a guarantee on the State (fifth and sixth respondents) to pay a pension deficit which existed in 1990 and which allegedly is due and payable to the TSDBF and TPF (first and second respondents).

[4] No order is sought against the third and seventh respondents.

The application is opposed by all the other respondents against whom the order is sought.

**Factual Background**

[5] A brief sketch of the pension scheme relevant to this case and the functioning thereof is necessary to provide the setting for the present litigation.

At all material times the second respondent ("the TPF") was the successor in title of the pension fund continued by section 2 of the Railways and Harbours Pension Act, 1971, and the pension fund instituted by section 2 of the Railways and Harbours Pensions for Non-Whites Act, 1974. These pension funds were disestablished by the commencement of the Transnet Pension Fund Act, 1990 on 1 October 1990.

[6] On 1 April 1990 the fourth respondent ("Transnet") became the successor in title of the South African Transport Services ("SATS") by virtue of the provisions of section 3 of the Legal Succession to the South African

Transport Services Act, 1989. In terms of the provisions of section 16 of the Legal Succession to the South African Transport Services Act, 1989, the state guaranteed all obligations transferred to Transnet in terms of section 3(2) of the aforesaid Act including all obligations of the SATS in respect of its pension funds.

[7] The guarantee of the State in terms of section 16 regarding the pension fund continued by section 2 of the Railways and Harbours Pensions Act, 1971, and the pension fund instituted by section 2 of the Railways and Harbours Pensions for Non-Whites Act, 1974, was limited to the amounts payable to such funds by SATS immediately prior to 1 April 1990 in terms of sections 12(3) and 11(3) of the aforementioned Acts, respectively, as calculated by the State Actuary in consultation with an actuary appointed by the Minister plus interest at such rate as shall be determined from time to time by the State Actuary. The rate of such interest was set at 12% per annum on the outstanding amount.

[8] On or about 1 April 1990 the amount payable to the pension funds referred to in section 16(2) of the Legal Succession to the South African Transport Services Act 1989 was calculated in accordance with the provisions of section 16 of this Act in consultation with an actuary

appointed by the Minister. The amount so determined amounted to R18.180 billion. The applicants refer to this amount as "the legacy debt".

[9] On or about 1 April 1990 and in order to redeem the amount of R18.180 billion Transnet issued T011 stocks to the TPF in the amount of R10.394 billion. The said T011 stocks had a coupon of 16.5%, was payable monthly in advance and would expire on 31 March 2010.

According to the applicants the balance of the legacy debt of R6.786 billion as well as the interest liability on the whole of the legacy debt remained unsecured and unpaid from 1 April 1990.

[10] On 1 November 2000 the first respondent ("the TSDBF") was established by the commencement of section 14B of the Transnet Pension Fund Act, 1990 and the pensioner members of the TPF were transferred from the TPF to the TSDBF.

[11] Section 14B of the Transnet Pension Fund Amendment Act, 2000 provided as follows in respect of the assets, liabilities and management of the fund:

11.1 All the assets, liabilities and obligations pertaining to members as determined by a valuator appointed by the Minister in consultation with an actuary appointed by the Transport Pension Fund (TPF) and an actuary appointed by Transnet would rest in and devolve upon the Transnet Second Defined Benefit Fund (TSDBF) without any formal transfer or cession with effect from the date of publication of such determination in the gazette by the Minister;

11.2 The TSDBF would be vested with legal personality and shall be capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules; and

11.3 The control and management of the TSDBF, the benefits due to pensioners and beneficiaries would be governed by the rules of the TSDBF set out in the schedule to the Transnet Pension Fund Amendment Act, 2000.

[12] On 1 February 2000 Transnet cancelled the T011 stocks which were issued to the TPF to redeem the amount of the legacy debt and replaced

the cancelled stock with 75 million MTN shares to be held in trust to the value of R1.4 billion. The applicants aver that the portion of the legacy debt outstanding and due and payable to the TPF as at 31 March 2013 amounts to R34.211 billion. The applicants aver further that the portion of the legacy debt outstanding and due and payable to the TSDBF as at 31 March 2013 amounts to R45.752 billion. The total legacy debt allegedly owed is thus R79.963 billion.

[13] The applicants allege that the legacy debt amounts due and payable to the TPF and TSDBF respectively are assets of the aforesaid funds, the object of which are to provide benefits to pensioners, special pensioners and beneficiaries and that the failure to redeem the debt towards the funds have materially and adversely affected the rights of the members of the class.

[14] The applicants further allege that the unilateral cancellation of the T011 stocks and the swap thereof with 75 million M-Cell shares was unconstitutional and unlawful and materially and adversely affected the rights of the applicants or the members of the class, alternatively materially and adversely affected the legitimate expectations of the applicants or the members of the class.

**Issues for determination**

[15] The issues to be determined in these proceedings are

(1) Whether on the conspectus of the evidence or facts and/or legal submissions set out in the applicants' founding papers and the draft particulars of claim annexed thereto, the applicants have made out a case for the certification of a class action to be instituted against any one or more or all of the respondents.

(2) Whether the applicants have established the factors and/or requirements for certification of a class action for this court to make a finding that it is in the interest of justice to certify such a class action.

**Legal Principles**

[16] A class action is a novelty in the area of our procedural law. A class action is one where a party brings an action on behalf of a class of persons, each member of which is bound by the action's outcome. Such an action is available where a constitutional or non-constitutional right is involved.

[17] Section 38(c) of the Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution") provides:

> "*38. Anyone listed in this section has the right to approach a competent Court, alleging that a right in the Bill of Rights has been infringed or threatened, and the Court may grant appropriate relief, including a declaration of rights. The persons who may approach a Court are –*
>
> *(a)* ...
>
> *(b)* ...
>
> *(c) anyone acting as a member of, or in the interest of, a group or class of persons.*"

Accordingly, the Constitution recognises a class action specifically in relation to infringements of or threats to rights guaranteed in the Bill of Rights.

[18] The Supreme Court of Appeal in its groundbreaking decision in the case, *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013 2 SA 213 (SCA) laid down the requirements for a class action. The party seeking to represent a class must apply to a court for it to certify the action as a class action. Thereafter it may issue summons. The court faced with the application for certification need consider and be satisfied of the presence of the following factors before certifying the action –

(1) the existence of a class identifiable by objective criteria;

(2) a cause of action raising a triable issue;

(3) that the right to relief depends on the determination of issues of fact, or law, or both, common to all members of the class;

(4) that the relief sought or damages claimed flow from the cause of action and are ascertainable and capable of determination;

(5) that where the claim is for damages, there is an appropriate procedure for allocating the damages to the class members;

(6) that the proposed representative is suitable to conduct the action and to represent the class;

(7) whether, given the composition of the class and the nature of the proposed action, a class action is the most appropriate means of determining the claims of class members.

[19] With regard to "raising a triable issue" the Supreme Court of Appeal authoritatively decided that the applicant must show a cause of action with a basis in law and the evidence. That is, the claim must be legally tenable and there needs to be evidence of a *prima facie* case. This requirement is emphasised at this early stage of the judgment in view of the fact that all the respondents who oppose this application have raised this issue as their defence, i.e. that the applicants' proposed claim does not raise a triable issue.

[20] The application for certification must be accompanied by draft particulars of claim setting out the cause of action, the class, and the relief sought. The affidavits in support of the application need to set out the evidence available to support the cause, as well as evidence it is anticipated will become available.

[21] The representative plaintiff may be a member of the class or a person acting in its interest. This applies both to class actions based on a constitutional right and to other class actions. The representative's interests should not conflict with those of the class members; and he must also have the capacity to properly conduct the litigation. The capacity requirement entails the ability to procure evidence, to finance the litigation and to access lawyers. The payment arrangement with the lawyers need also be disclosed and should not give rise to a conflict of interest of the lawyers and the class members.

See ***Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others supra*** **at 237D/E-238D, paragraph [46]-[48].**

[22] In ***Mukaddam v Pioneer Foods (Pty) Ltd and Others*** **2013 5 SA 89 (CC)** the Constitutional Court did not wholly accept the notion that the factors identified by the Supreme Court of Appeal in the aforementioned case were requirements that had to be satisfied before a class action would be certified. JAFTA J said the following:

> *"[35] In* ***Children's Resource Centre*** *the Supreme Court of Appeal laid down requirements for certification. These*

*requirements must serve as factors to be taken into account in determining where the interests of justice lie in a particular case. They must not be treated as conditions precedent or jurisdictional facts which must be present before an application for certification may succeed. The absence of one or other requirement must not oblige a court to refuse certification where the interests of justice demand otherwise.*"

[23] In my view the Constitutional Court endorsed the approach set out by the Supreme Court of Appeal and in addition thereto the Constitutional Court laid down the principle applicable for certification, to wit the interests of justice principle.

[24] In the earlier decision in ***Permanent Secretary Department of Welfare, Eastern Cape and Another v Ngxuza and Others*** **2001 4 SA 1184 (SCA)** the Supreme Court of Appeal laid down an approach to be adopted when considering a class action. It was held that the matter involving a class action was no ordinary litigation; that a class action is expressly mandated by the Constitution. The Courts are enjoined by section 39(1)(a) of the Constitution to interpret the Bill of Rights, including its

standing provisions, so as to promote the values that underlie an open and democratic society based on human dignity equality and freedom. The courts are also enjoined by section 39(2) to develop the common law so as to promote the spirit, purport and objects of the Bill of Rights.

[25] In the aforementioned case CAMERON JA had this to say:

> "*[6] It is precisely because so many in our country are in a poor position to seek legal redress and because the technicalities of legal procedure, including joinder, may unduly complicate the attainment of justice that both the interim Constitution and the Constitution created the express entitlement that 'anyone' asserting a right in the Bill of Rights could litigate as a member of, or in the interest of a group or class of persons.*"

[26] The situation in the present case seems pattern-made for class proceedings. This is so in that the class the applicants represent in this case is drawn from the very poorest within our society; (old pensioners) those in need of statutory social assistance. They also have the least chance of vindicating their rights through the ordinary legal process. As

individuals they are unable to finance a legal action given their meagre income in the form of pension monies. What they have in common is that they are victims of official excess, bureaucratic misdirection and what they perceive as unlawful administrative methods.

[27] It is against the background of these pensioners' Constitutional entitlements that this court must interpret the class action provision in the Bill of Rights. The court is enjoined in terms of section 39(2) of the Constitution to promote the spirit, purport and object of the Bill of Rights when developing the common law and moreso section 173 of the Constitution confers inherent power to this court to develop the common law taking into account the interest of justice.

Therefore the provisions regarding a class action must be interpreted generously and expansively, consistently with the mandate given to the Courts to uphold the Constitution, thus ensuring that the rights in the Constitution enjoy full measure of protection to which they are entitled.

**Claims against TPF and TSDBF (the Funds)**

[28] In the founding affidavit as well as in the draft particulars of claim the applicants' cause of action in so far as the TPF and the TSDBF are concerned is as follows:

- a claim based on the failure by the trustees of the TPF and TSDBF to implement pension increases in accordance with a substantive reasonable benefit expectation by members of those pension funds to receive such pension increases.

The funds oppose the relief sought in the certification application on the grounds that the applicants have not raised a triable issue in respect of the claims against the TPF and TSDBF. In that regard the funds contend that the draft particulars of claim do not disclose a cause of action in that the applicants cannot, in law, seek substantive relief premised on a reasonable benefit expectation.

[29] The applicants allege that prior to the establishment of Transnet, the executive of the erstwhile SATS gave an undertaking to the employees that the commercialisation of the SATS would not affect any of the

service benefits enjoyed by employees, including pension benefits and that implicit in this undertaking was that the benefits would only be adjusted if it was to the advantage of the employees. However, on 24 August 1999 the trustees of the TPF adopted a written pension increase policy which constituted a material departure from the existing pension increase policy and no provision was made to counter the effects of inflation.

[30] As against the TSDBF the applicants allege that on1 November 2000 the pension members of the TPF were transferred to the TSDBF and by operation of law, all assets, liabilities and obligations pertaining to such members were to vest in and devolve upon the TSDBF. However, during 2001 the trustees of TSDBF established a pension increase policy which constituted a material departure from the existing pension increase policy.

[31] The applicants contend that the adoption and implementation of the new pension increase policy by the funds was in breach of the established substantive pension benefit expectation of members of the funds. The applicants therefore seek the following relief against the funds:

31.1 that the new pension increase policy be declared unlawful and is reviewed and set aside;

31.2 that the pension increase policy that applied prior to 24 August 1999 be declared to have established a substantive pension benefit expectation for members of the funds;

31.3 an order directing the funds to recalculate members' pension increase in accordance with the pension increase policy which applied prior to 24 August 1999.

31.4 that the funds pay to members the recalculated pension increases.

[32] It was argued on behalf of the funds that the concept of "substantive reasonable pension benefit expectation" has been borrowed by the applicants from English law and that South African Courts have declined to extend the doctrine to cover the substantive protection of legitimate expectation. That on this basis the applicants have failed to establish any cause of action against the funds and therefore the court should find that there exist no triable issue between the applicants and the funds.

[33] The main defence raised on behalf of the funds appears to be the submission that the concept "reasonable pension benefit expectation" only applies to procedural requirements for fair administrative action and does not create substantive rights.

I do not agree that the South African Courts have declined to extend the doctrine to cover the substantive protection of legitimate expectation. In the decided cases of ***Meyer v Iscor Pension Fund* 2003 2 SA 715 (SCA)** and ***Duncan v Minister of Environmental Affairs and Tourism and Another* 2010 6 SA 374 (SCA)** the doctrine arose, was discussed and left open. Of interest the court in the ***Duncan*** case went on to say:

> "*South African Courts will eventually have to decide whether they can compel such substantive compliance.*"

See also ***TEK Corporation Provident Fund and Others v Lorentz* 1999 4 SA 884 (SCA) 903 par [47]**.

[34] The Pension Funds Act 24 of 1956 provides for specific substantive rights on members of a Pension Fund referred to as "reasonable benefit

expectations". Without deliberating on any of such provisions, reference can be made to sections 14, 15I, 15K (6c) 28 and 29(6A).

I am mindful of the fact that the funds in issue in these proceedings are governed by their own specific statute. I leave it as an open question whether the Pension Fund Act, 1956 is applicable in that regard.

[35] The defence raised by the funds regarding the concept "reasonable pension benefit expectation" would better be argued or deliberated upon more fully at the trial of the action contemplated by the applicants. It should not be a bar to an order for certification of the action when the interests of justice call for the granting of an order for certification.

[36] Consequently I make a finding that there is a triable issue between the applicants and the first and second respondents (the Funds).

**Claims against fourth respondent (Transnet)**

[37] The applicants' proposed action against Transnet and the claims that they foreshadow would be bought against Transnet are particularised in the draft particulars of claim attached to their founding affidavit.

[38] The claims are as follows:

38.1 The first and the second claims are based on a failure by Transnet to make payment of a legacy debt due to TPF founded upon a legal obligation arising from section 16 of the Legal Succession to the South African Transport Services Act, 1989. The applicants accordingly seek orders that Transnet's failure to comply with its obligations in terms of section 16 of the Act to pay the debt is reviewable and seek as declaratory orders that the amounts of R34.211 billion and R45.752 billion are payable to the TPF and TSDBF respectively.

38.2 The third claim is a claim in terms of which the applicants seek an order declaring the cancellation of T011 stock which had been issued by Transnet in favour of the TSDBF and the swapping thereof with 75 million M-Cell shares (the share swap transaction) to be unlawful and to be set aside.

A further order declaring that Transnet is liable to the TSDBF for the losses occasioned by the cancellation and consequences of the share swap

transaction is also sought, together with an order that Transnet pay an as yet unascertained amount in respect of such loss to the TSDBF.

[39] Transnet opposes the application for certification on the grounds that:

39.1 the applicants have not identified any triable issue in respect of their proposed action against Transnet;

39.2 the applicants do not have *locus standi* to launch such an application for certification;

39.3 the application for certification is inappropriate and the interests of justice dictate that leave should not be granted to the applicants to pursue such a class action against Transnet.

[40] I choose to deal first with the issue relating to the *locus standi* of the applicants. In approaching the issue of *locus standi* the court should bear in mind the provisions of section 38 of the Constitution. This section is new and introduces far-reaching changes to our common law of standing.

[41] Section 38 of the Constitution determines which persons are entitled to apply to a competent court of law for appropriate relief. It provides as follows:

> "*Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the Court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –*
>
> *(a) anyone acting in their own interest;*
>
> *(b) anyone acting on behalf of another person who cannot act in their own name;*
>
> *(c) anyone acting as a member of or in the interest of a group or class of persons;*
>
> *(d) anyone acting in the public interest; and*
>
> *(e) an association acting in the interest of its members.*"

[42] In my view the provisions of section 38 are wide enough to accord *locus standi* to the applicants in the present case. In the case of ***Tek Corporation Provident Fund and Others v Lorentz*** **1999 4 SA 884 (SCA)** a member of that fund instituted proceedings in his own name in a very similar case to the one that the applicants in this case intent to institute against the present respondents. No question of *locus standi* was raised in this case. In subsequent cases members of funds also instituted proceedings against the funds and other relevant parties without any issues raised on their *locus standi*.

See ***Associated Institutions Pension Fund and Another v Le Roux and Others*** **2001 4 SA 262 (SCA)**;

***Meyer v Iscor Pension Fund*** **2003 2 SA 715 (SCA)**.

[43] I accordingly make a finding that the applicants have *locus standi* to bring this application against the respondents.

[44] On the question whether the applicants have identified a triable issue in respect of the proposed action, it is apposite to refer to the SCA decision

in ***Children's Resource Centre Trust and Others v Pioneer Foods (Pty) Ltd,*** *supra*, where WALLIS JA said the following at paragraph [39]:

> "*... Unless it is plain that the claim is not legally tenable, certification should not be refused. The Court considering certification must always bear in mind that once certification is granted the representative will have to deliver a summons and particulars of claim and that it will be open to the defendant to take an exception to those particulars of claim. The grant of certification does not in any way foreclose that or answer the question of the claim's legal merit in the affirmative.*"

[45] In the present proceedings I had the opportunity to peruse and consider the evidence contained in the founding affidavit and the allegations contained in the draft particulars of claim. In my view the papers filed of record identified a triable issue between the parties. Should it happen to the defendant that the summons and particulars of claim in the proposed action do not disclose a cause of action, the defendant is at liberty to file an exception at the appropriate time.

[46] In the circumstances the application for certification is appropriate and the interests of justice dictate that leave should be granted to the applicants to pursue a class action against Transnet.

**Claims against the State parties (fifth and sixth respondents)**

[47] The applicants' founding affidavit foreshadows claims against the State parties as follows:

47.1 As against the fifth respondent

The applicants seek an order whereby the actuary appointed by the fifth respondent and the actuary appointed by the second applicant, in the event that the amount as calculated by the actuary in respect of paragraph 11.1.2 of the revised particulars of claim is disputed, shall bring out a joint report concerning their findings in respect to the indebtedness of the fourth respondent towards the first respondent in respect of debt as at the date of this order.

47.2 As against the sixth respondent

The applicants' claim is a claim based on the provisions of section 16 of the Legal Succession to the South African Transport Services Act, 1989 read together with section 12 of the Transnet Pension

Fund Act, 1990 against Transnet, alternatively the State for the repayment of the legacy debt in respect of both the Funds of R79.963 billion.

[48] While the founding affidavit foreshadows the abovementioned claims against the State parties, the draft particulars of claim do not disclose any claim against the State parties.

In the draft particulars of claim five claims have been formulated. Claims 1, 2 and 3 are all against Transnet and claims 4 and 5 are against the Funds (first and second respondents). It does not appear anywhere in the draft particulars of claim that the applicants intend to institute any claim against the state parties.

[49] It is trite that in an application for certification of a class action the applicant must annex draft particulars of claim setting out the cause of action. This, the applicants failed to do as against the state parties.

There is accordingly no triable issue identified by the applicants against the fifth and sixth respondents.

[50] The state parties have nothing to defend in this application. They have been joined or cited as interested parties as Minister of Public Enterprises and Minister of Finance. The award of legal costs is in the discretion of the court. The applicants achieved a major success against the other respondents save for the state parties. The applicants should not be mulcted with a costs order for having joined or cited the state parties merely as interested parties.

I shall therefore not grant a costs order in favour of the state parties. It is only fair that each party should pay its own costs and this shall be my order.

[51] The applicants succeed with their application against the first, second and fourth respondents. In the result I grant the following order:

1. That, subject to paragraph 2 and 3, leave be and is hereby granted to the first and second applicants to institute a class action under section 38(c) of the Constitution of the Republic of South Africa as representatives of the members of the first and second respondents respectively against one or more or all of the first respondent, second respondent and fourth respondent;

2. That, save for those members of the first respondent who elect to opt out, the second applicant is hereby permitted to act as representative of all the members of the first respondent and to institute the class action certified in paragraph 1;

3. That, save for those members of the second respondent who elect to opt out, the first applicant is hereby permitted to act as representative of all the members of the second respondent and to institute the class action certified in paragraph 1;

4. That the first respondent and second respondent are hereby required to furnish the applicants' legal representative within 30 days of certification of the class action as set out in paragraph 1 with the details of the members of the first and second respondents kept on computer or physical file;

5. That the details to be provided by the first and second respondents in terms of paragraph 4 shall be furnished by the first and second respondents in electronic format and shall be limited to the name and surname of the member or beneficiary, pension number and

last known address of such members of the first and second respondent;

6. That the first and second applicant be and are hereby ordered to give notice to members of the first and second respondents of the class action to be instituted by the applicants by one publication in the following newspapers with a national spread in the language indicated therewith:

(i) Sunday Times in English;

(ii) Rapport in Afrikaans;

(iii) City Press in Xhosa and Zulu;

(iv) Sowetan in Setwana/Sesotho and Zulu; and

by one publication in the following newspaper with a regional spread in the languages indicated therewith:

(i) Beeld in Afrikaans and English;

(ii) Die Burger in Afrikaans and English;

(iii) Volksblad in Afrikaans; and

(iv) Natal Mercury in English;

7. That the third respondent, insofar as it may be necessary and practicable, be directed to assist the applicants in order to give notice to the members of the first and second respondents by way of notices at pension pay points of the envisaged class action to be instituted by the first and second applicants;

8. That the publication of the class action in the newspapers and notices at pension pay points shall include:

(i) a summary of the relief sought against the respective respondents by the applicants;

(ii) full details of the attorneys of record acting on behalf of the applicants;

(iii) an advisory notice that:

(a) any member of the first or second respondent has the option to opt out of the proceedings envisaged on their behalf within 60 days from date of the publication of the notice in the printed media set out above; and

(b) that such members electing to opt out of the proceedings should file such election within 60 days with the first and second applicants' attorneys of record of such publication failing which such member shall be bound by the decision of the court;

9. That the applicants be and are hereby ordered to file an affidavit with the court within 60 days after the period envisaged in prayer 7(iii)(a) confirming compliance with the publication requirements contained in prayer 5, 6 and 7 and confirming the results of the members electing to opt out of the proceedings;

10. That the applicants be and are hereby ordered to institute the class action within 60 days from the date of filing the affidavit as required in prayer 9 above;

11. The first, second and fourth respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved and such costs shall include the costs consequent upon the employment of three counsel.

E M MAKGOBA
JUDGE OF THE GAUTENG DIVISION, PRETORIA

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|---|---|
| Heard on: | 21-22 July 2014 |
| For the Applicants: | Adv J G Cellier SC, L Kellerman and SJ Coetzee |
| Instructed by: | Geyser & Coetzee Attorneys |
| For the 1st & 2nd Respondents: | Adv M Antonie SC |
| Instructed by: | Werksmans Attorneys c/o Maritz Smith Van Eden Inc |
| For the 4th Respondent: | Adv CDA Loxton SC, MA Chohan and BL Makola |
| Instructed by: | Bowman Gilfillan |
| For the 5th Respondent: | Adv AT Ncongwane SC and IP Ngobese |
| Instructed by: | State Attorney |
| For the 6th Respondent: | Adv P M Mtshaulana SC and S Khumalo |
| Instructed by: | State Attorney |