



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

CASE NO: 93895/2019

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 4 JULY 2022

SIGNATURE

In the matter between:

ESKOM PENSION AND PROVIDENT FUND

Applicant

and

BRIAN MOLEFE

First Respondent

ESKOM HOLDINGS SOC LIMITED

Second Respondent

**THE COMMISSIONER FOR SOUTH AFRICAN
REVENUE SERVICE**

Third Respondent

Summary: Court order – compliance with – repayment of benefits received as a result of unlawful membership of pension scheme – quantification.

ORDER

In the premises, the following order is made:

1. The Eskom Pension and Provident Fund (the Fund) is directed to repay to Eskom Holdings Soc Ltd (Eskom) the following amounts:
 - 1.1 The amount of R 30 103 915, 62 being the amount found by the full court on 25 January 2018 to have been unlawfully paid to the Fund, together with interest at the prescribed mora rate from date of the unlawful payment to date of repayment thereof.
 - 1.2 The amount of R 1 345 461, 79, constituting Eskom's employer contributions on behalf of Mr Molefe (inclusive of Fund interest less applicable administration fees) together with further mora interest from 31 October 2019 to date of repayment thereof.
 - 1.3 The amount of R 727 547, 64, constituting the total of Mr Molefe's own monthly pension contributions (inclusive of Fund interest less administration fees) together with further mora interest from 31 October 2019 to date of payment thereof.
 - 1.4 The amount of R 123 332,98, constituting Mr Molefe's performance bonus pension contributions (inclusive of Fund interest less administration costs) together with further mora interest from 31 October 2019 to date of payment thereof.
2. Eskom is directed to pay Mr Molefe the post-tax value of the amounts referred to in paragraphs 1.3 and 1.4 above.

3. Mr Molefe is ordered to repay the Fund the amounts of R 7 981 727, 94 and R 2 003 812, 70 together with mora interest thereon from 31 October 2019 to date of repayment.
4. The Fund is entitled to set-off against the above amount due by Mr Molefe, the nett balance of the Transnet Retirement Fund lumpsum received from or on behalf of Mr Molefe, upon receipt of a tax directive from the South African Revenue Service in respect of the Tax payable on such amount, inclusive of accruals thereto subsequent to 31 October 2019.
5. The payment referred to in paragraph 3 above shall be made within 10 days after the set-off contemplated in paragraph 4 has occurred.
6. Mr Molefe is ordered to pay the costs of the Fund and of SARS, such costs to include the costs of two counsel where employed.

J U D G M E N T

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1] Introduction

On 25 January 2018 a full court of this Division declared that “*any payment or sum of money*” received by Mr Brain Molefe under “*any purported pension agreement*” between him and Eskom Holdings Soc Limited

(Eskom) is invalid. Mr Molefe was ordered to repay “*such amounts*” within ten days from date of that order. Four years later, repayment still hasn’t been done and Mr Molefe claims that there is a factual dispute about the exact amount to be repaid.

[2] The 2018 order of this court

- 2.1 The full court of this Division dealt with three separate but consolidated applications. These applications followed upon the release of a report by the then Public Protector containing damaging allegations against Mr Molefe of abusing his position at Eskom to benefit “the Gupta family” and businesses under their control.
- 2.2 The release of the report prompted Mr Molefe to resign and seek early retirement and to become a member of Parliament shortly thereafter, representing the African National Congress. As part of his early retirement, Mr Molefe elected to receive one-third of his pension benefits as a lumpsum. These benefits were created as a result of a payment of some R30,1 million made by Eskom to the Eskom Pension and Provident Fund (the Fund).
- 2.3 The full court found that, at the time of Mr Molefe’s resignation, he was employed on a fixed term contract and therefore disqualified from participating in the Fund. The full court further found that “*the decision by Eskom to waive penalties and buy Mr Molefe extra 13 years of service totalling R30,1 million after only 15 months service at the age of 50 stretches incredulity and is unlawful for want of compliance with the rules of the fund. What is most disturbing is the total lack of dignity and shame by people in leadership positions who abuse public funds with naked greed for their own benefit without a moment’s consideration of the*

circumstances of fellow citizens who live in absolute squalor throughout the country with no basic services”.

2.4 Having thereafter found that *“the reinstatement of Mr Molefe as Group Chief Executive Officer at Eskom is at variance with the principle of legality”* the full court made the following order:

- “a The decision taken by the Board of Eskom in November 2016 to accept Mr Molefe’s “early retirement” proposal is reviewed and set aside.*
- b. The decision made by the Minister to appoint and reinstate Mr Molefe to the position of Group Chief Executive Officer at Eskom is reviewed and set aside.*
- c. It is declared that any payment or sum of money received by Mr Molefe under any purported pension agreement by him and Eskom is invalid and Mr Molefe is ordered to repay such amounts within ten days from date of this order.*
- d. Mr Molefe is ordered to pay the costs, including the costs of two counsel where employed”.*

2.5 Mr Molefe unsuccessfully applied for leave to appeal to both the Supreme Court of Appeal and the Constitutional Court. The application for leave to appeal to the Constitutional Court was refused on 8 August 2019.

2.6 On his calculations, Mr Molefe contends that the nett amount that he has to repay is R 1 490 920, 88. To date, even this amount has not been paid. The order of the full court has therefore not yet been satisfied or complied with.

[3] The Fund's calculation of the amount due and the evaluation thereof:

- 3.1 Prior to joining Eskom, Mr Molefe was the Chief Executive Officer of Transnet Soc Ltd (Transnet) and he contributed to the Transnet Retirement Fund (the TRF). On the incorrect assumption that he was eligible to be a member of the Fund, Mr Molefe transferred the lumpsum he received from the TRF upon leaving Transnet, to the Fund who thereafter held and invested it on Mr Molefe's behalf.
- 3.2 The TRF lumpsum transferred to the Fund in October 2015 was R 4 281 699, 87. On the date of Mr Molefe's resignation from Eskom an amount of R 778 949, 15 had accrued on this amount, totaling R 5 060 649, 02. At Mr Molefe's election, he chose to receive one-third of this, being R 1 686 883, 01. The taxable portion thereof, being R337 720, 86 has been paid by the Fund to SARS. The balance of the TRF lumpsum still held by the Fund, has until 31 October 2019, being the operative date used by the parties in the papers for purposes of calculation, accrued further growth in the amount of R 769 127, 11, leaving a total amount then held in favour of Mr Molefe of R 4 169 893, 12.
- 3.3 The Fund has no objection to the set-off of this amount against Mr Molefe's indebtedness to the Fund and, based on the agreements reached regarding the calculations made by the actuary employed by Mr Molefe and subsequently contained in joint minutes of the actuaries employed, neither has Mr Molefe.
- 3.4 However, once set-off occurs and the TRF balance is to be released for purposes thereof, further tax thereon will be due to SARS, for which purposes it will be obliged to issue a tax directive as contemplated in the Tax Administration Act 28 of 2011 (the TAA).

- 3.5 In addition to the TRF lumpsum and the R30,1 million subsequently received from Eskom as found in the full court judgment, the Fund also received “pension contributions” from Eskom. These comprised of both employer and employee contributions.
- 3.6 The employer pension contributions amount to R 993 795. 86 which has accrued interest in the amount of R351 665, 93 as at 31 October 2019, totaling R 1 345 461, 79. This is an amount which is to be repaid by the Fund to Eskom.
- 3.7 Eskom also paid R 537 387, 13 on behalf of Mr Molefe as his “contribution” to his purported pension benefits. This amount, together with interest thereon in the amount of R 190 160, 51 as at 31 October 2019, totaling R 727 547, 64 must be repaid to Eskom, who will then be obliged to withhold (and pay over to SARS) a tax portion calculated on this amount as part of Mr Molefe’s gross remuneration. The balance must be paid by Eskom to Mr Molefe.
- 3.8 I interject to point out that Eskom, being a party to this litigation, has delivered a notice to abide this court’s decision.
- 3.9 Excluding the TRF payments, pursuant to the pension arrangement which the full court has found to be unlawful, Mr Molefe received an amount of R 7 989 819, 73 in February 2017. Of this amount, R 1 619 480, 13 was paid to SARS, resulting in Mr Molefe being paid R 6 370 339, 60 which should not have been paid to him. Together with interest of R 1 426 227, 24 calculated up to 31 October 2019, this amounts to R 7 796 566, 84.
- 3.10 In addition, Mr Molefe received a 3% enhancement on his pension from the Fund in an amount of R 51 784, 20. Together with interest of R 11 593,

74, this totalled R 63 377, 94 as at 31 October 2019. This amount, as will be shown later, did not attract additional tax.

3.11 In addition to the amounts mentioned in paragraphs 3.6 and 3.7 above, Eskom also paid performance bonus pension contributions of R 113 019, 57 to the Fund. These will have to be repaid to Eskom. However, as at the date of Mr Molefe's purported retirement, growth on this amount was R 4 751, 26. Mr Molefe received a third thereof in the gross amount of R 39 256, 94 of which R 21 482, 16 was paid to him and R 17 774, 78 was paid to SARS. Together with interest on the amount of R 21 482,16 as at 31 October 2019, the amount to be repaid by Mr Molefe is R 26 291, 71.

3.12 Prior to the findings of the full court, the Fund has also paid Mr Molefe an amount of R 95 491,45 by way of monthly pension payments. The actuaries have in their joint minutes agreed that repayment of this money is also due by Mr Molefe.

3.13 To sum up then, in respect of the amounts paid to Mr Molefe by the Fund, they amount, together with interest as at 31 October 2019, to the following:

- R 7 796 566, 84 (par 3.9 above)
 - R 63 377, 94 (par 3.10 above)
 - R 26 291, 71 (par 3.11 above)
 - R 95 491, 45 (par 3.12 above)
- R 7 981 727, 94

3.14 The summary of the tax paid by the Fund to SARS is reflected in the following table, which also indicate the interest calculated thereon up to 31 October 2019:

| Component | Lumpsum | Proportionate tax | Fund interest on tax | Tax and fund interest |
|----------------------|----------------|------------------------------|-------------------------------------|----------------------------------|
| TRF/lumpsum | R1 686 883.01 | R337 720.86 | R75 610.83 | R413 331.69 |
| Performance bonus | R39 256.94 | R17 774.78 | R3 979.52 | R21 754.30 |
| Enhancement | R51 784.20 | Nil | Nil | nil |
| Statutory lumpsum | R7 989 819.73 | R1 619 480.13 | R362 578.27 | R1 982 058.40 |
| Total | R9 767 743.88 | R1 974 975.77 | R442 168.62 | R2 417 144.39 |

3.15 In respect of the R 413 331, 69, being the tax plus interest component in respect of the TRF lumpsum, the Fund argued that SARS “may retain” this amount, subject to further directives being issued once the position is “regularised”. This will occur once the set-off referred to in paragraphs 3.3 and 3.4 above is affected.

3.16 In respect of the balance of the amount being R 2 003 812, 70, the Fund claims that SARS be directed to repay this amount to the Fund. I shall deal with this contention together with SARS’ response hereunder.

[4] SARS’ position

4.1 SARS has no quibble with the Fund’s attempts at implementing the order of the full court. Its argument was simply that the taxes paid to it were paid on behalf of the taxpayer, Mr Molefe. Any dispute regarding the

assessment of tax or allocation of funds received were matters between itself and the taxpayer.

- 4.2 The relationship between SARS and the taxpayer, Mr Molefe is governed by the Income Tax Act 58 of 1962 (the ITA) and the TAA. SARS has no relationship with nor any duty of repayment to the Fund. The Fund is merely seen as the statutorily obliged implementing agent in respect of the taxpayer's payment of taxes.
- 4.3 As far as the subsequent "adjustment" or "corrections" of taxation is concerned, section 190 of the TAA caters for situations where income received by a taxpayer is refundable to that person. In this fashion, the TAA has been described by SARS as a "self-correcting system".
- 4.4 Any refund summarily made to the Fund (or Mr Molefe) by SARS would be contrary to the provisions of the ITA and the TAA. SARS is only empowered to repay any amount of tax to a taxpayer in the narrowly described circumstances set on in section 190 of the TAA. These are limited to "*(a) an amount properly refundable under a tax Act and, if so, reflected in an assessment or (b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment*". Until these circumstances arise, SARS has no authority to repay the taxes claimed by the Fund.
- 4.5 The illegality or unlawfulness of the underlying basis upon which Eskom paid the Fund and the Fund subsequently paid Mr Molefe, does not automatically result in any obligation by SARS to repay taxes paid to it, calculated on those payments. See *Janse van Rensburg NO v Botha* 2011 JDR 0513 (SCA) and *Commissioner for Inland Revenue v Deagoa Bay Cigarette Co Ltd* 1918 TPD 391.

4.6 In terms of section 105 of the TAA, should any dispute arise between Mr Molefe and SARS as to whether, after repayment of the monies received from the Fund, he has a tax credit or not, that can only be dealt with in terms of Chapter 9 of the TAA, but this falls outside the ambit of the present application. See inter alia *MP Finance Group CC (in liquidation) v CSARS* 2007 (5) SA 521 (SCA).

4.7 In these premises, I find that the Fund is not entitled to claim repayment from SARS of the taxes paid to it. These payments were made on behalf of Mr Molefe and is therefore repayable by him to the Fund.

[5] Mr Molefe's arguments

In heads of argument delivered on behalf of Mr Molefe, four issues have been raised. They are (1) that the matter was capable of resolution via mediation, (2) that there are material disputes of fact; (3) that the issues raised have already been determined and (4) that there is a “need for judicial deference in matters that fall outside the Court’s area of proficiency”. I shall deal with each of these issues hereunder.

5.1 Mediation

5.1.1 Where the process of mediation, introduced into this Court by Rule 41A of the Uniform Rules, contemplates a negotiated settlement which involves some give-and-take and concessions of both parties, such as a mediation for example conducted by the South African Human Rights Commission in *Ellaurie v Madrasah Taleemuddin Islamic Institute and Another* 2021 (2) SA 163 (KZD), this is not what the Heads of Argument on behalf of Mr Molefe contemplates. The point is also not raised as a jurisdictional one

as the Fund has responded to Mr Molefe's notice in terms of Rule 41A, a response to which I shall refer hereinlater.

5.1.2 The "mediation" referred to on behalf of Mr Molefe simply contemplates a determination of the "correct" calculation of the amounts in question. Some discrepancies between the amount mentioned in the full court's judgment and the subsequently delivered affidavits are also raised as grounds for "mediation".

5.1.3 In support of Mr Molefe's purported *bona fides*, he tendered "*to repay to the Eskom Fund the difference (if any) between the cumulative total*" of "*the exact amount of contributions*" received by the Fund from Eskom and any growth that he (Mr Molefe had earned thereon "*on the one hand and the amount actually received by him as early retirement benefit from the Eskom Fund, on the other, to which the courts have now held Mr Molefe is not entitled*". I used the words "purported *bona fides*" for if real *bona fides* had existed, one would have expected Mr Molefe to at least have paid the amount of R 1 490 920, 88 which his actuary had calculated as owing, by now. As stated before, the full court has ordered repayment and the 10 days contemplated in that order have, at the latest, expired after the last appeal attempt was unsuccessful on 8 August 2019.

5.1.4 The presence or absence of *bona fides* are however, irrelevant for purposes of calculation based on facts and on legal principles and that is where the parties (and their actuaries part ways). The joint minutes of the actuaries indicate two principal differences. The first is the claim by Mr Molefe to "off-set" the "employment contributions" made by his employer Eskom to the Fund in the amount of R 2 218 571, 33 from the amount owed by him to the Fund. The second is to "off-set" the tax portion directed by SARS

and paid by the Fund to it in the amounts of R 446 738, 60 from the one-third pay-out of the TRF lumpsum.

5.1.5 In respect of the employment contributions, Mr Molefe and his actuary argues that his employment contract with Eskom required him to be a member of a pension fund and that there is therefore “no basis to return the funds to Eskom”. In view of the confirmed full court judgment and the findings made therein, there is no scope for Mr Molefe to mediate him out of those findings.

5.1.6 Mr Molefe’s argument is further that these “off-sets” should be treated the same as “*using his contribution from the Transnet Retirement Fund*”. This argument is also without foundation as there is a material difference between the nature of the two sources of funds. Mr Molefe was entitled to the TRF funds whereas he was not entitled to the payment of any pension contributions from Eskom to the Fund. Those contributions should be returned to Eskom and insofar as it formed part of his agreed gross remuneration, Eskom should pay tax on behalf of Mr Molefe thereon and pay him the balance.

5.1.7 In respect of the “offset” of the tax paid to SARS in respect of the one-third of the TRF funds paid as a lumpsum to Mr Molefe, his actuary’s contention in the joint minutes is that “*not taking this into account will leave Mr Molefe out of pocket as it is doubtful that he will be successful claiming this money back from SARS*”. The consequence of this argument is absurd to say the least. Mr Molefe contends that, in respect of the amount that he owes the Fund, not only should the balance of the TRF funds which the Fund had received and still holds for Mr Molefe’s credit be set-off, but also the amount which the Fund no longer holds and which it had paid over (on behalf of Mr Molefe) to SARS. He therefore seeks to claim a credit against

the Fund in respect of funds which are not in the hands of the Fund but in the hands of SARS.

- 5.1.8 The only aspects which could legally have been mediated, have been done. These are the appointment of actuaries and the production of joint minutes, the agreement in respect of set-off referred to in paragraph 3.3 above and the calculation of the amount referred to in paragraph 3.12 above. These were also the fund's responses in respect of the invitation to mediate the disputes.

5.2 Factual disputes

- 5.2.1 As can be expected from issues involving mathematical calculations, the actuaries in their joint minutes confirmed that, save for the issues mentioned in paragraphs 5.1.4 to 5.1.6 above (and the impact these differences have on the final calculation), they "are agreed on all other aspects". As pointed out in the discussion in paragraph 5.1 above, these differences are legal and not factual in nature. I find that the remainder of arguments raised on behalf of Mr Molefe under this topic are not the kind of disputes which cannot be resolved "on the papers". Mr Molefe has not put forward any evidence which contradicts the amounts set out above in paragraphs 3.1 to 3.13 and the total computed there.

- 5.2.2 Once the two deductions (the pension contributions and the TRF tax payment) are refused, as discussed in paragraphs 5.1.5 and 5.1.6 above, then one is back at the starting point of the Fund's demands. No "real" or "genuine factual dispute" has therefore been established as contemplated in *Ripoll-Dausa v Middleton NO and Others* 2005 (3) SA 141 (C) a 151A – 153C and as discussed in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at [12] and [13].

5.3 Judicial deference

5.3.1 As justification for this defence, the Heads of Argument delivered on behalf of Mr Molefe contend as follows: *“On the Eskom Fund’s calculation, Mr Molefe must repay R 4 060 739, 37 or R 4 156 230, 82. On Mr Molefe’s calculations, he need repay no more than R 1 490 920, 88. The explanation is clear from Mr Molefe’s actuary’s report. This is hardly an issue for a Court which is not proficient in actuarial calculations. This Division, and the Constitutional Court, has pronounced on the need for courts to defer to others where it is less proficient”.*

5.3.2 This argument can succinctly be dispatched with. The R 1 490 920, 88 which Mr Molefe (and his actuary) alleges is the only amount due, has been calculated by them as follows (with one cent difference):

| | |
|------------------------------------|----------------------|
| Initial amount claimed by the Fund | R 4 060 739, 37 |
| Plus: Additional monthly payments | <u>R 95 491, 45</u> |
| | R 4 156 230, 82 |
| Less: employment contributions* | R 2 218 571, 33 |
| Less: tax claimed on TRF* | <u>R 446 738, 60</u> |
| Nett amount allegedly owed | R 1 490 920, 89 |

5.3.3 As set out above, once the two deductions indicated with an asterisk have been disallowed, the calculations are simple and no further actuarial calculations have to be “deferred” to. These calculations have also only been made by Mr Molefe with reference to the amount “initially” claimed by the Fund and not with due consideration of the amounts referred to in paragraphs 3 and 4 above.

5.4 Res iudicata

Mr Molefe further argues that the disputes between the parties have already been decided by the full court and that the present application was unnecessary. I agree but for the one proviso: if there was already legal certainty that Mr Molefe should pay back all the benefits received as a result of the unlawful participation in the benefits of the pension scheme administered by the Fund, why has that not yet taken place? The fact that the order of the full court has not yet been implemented and that Mr Molefe resisted complying with a demand issued in pursuance thereof after his last attempt at appealing that judgment had failed, justified, in my view, the current application. The issue of *res iudicata* therefore, rather than constituting a defence, confirms Mr Molefe's obligation to proverbially "pay back the money". The *res iudicata* argument therefore only extends to the extent that the initial and amended notices of motion of the Fund include prayers in respect of declaratory relief already granted by the full court. For the remainder, that which the full court has adjudicated on, needs to be implemented. The present application is for such implementation relief.

[6] Appropriate relief

- 6.1 In the premises as set out above, I find that Mr Molefe is obliged, as ordered by the full court, to pay back the amounts set out in paragraph 3.13 above (which include interest up to 31 October 2019).
- 6.2 Insofar as Mr Molefe is entitled to a set-off of the balance of the amount of his TRF lumpsum still held by the Fund, I deem it appropriate to defer to SARS' determination of the taxation payable upon set-off as being the event whereby the balance accrues to Mr Molefe as a taxpayer, rather than attempting to calculate that amount and run the risk of falling foul of Mr

Molefe's "deference" argument. He cannot be prejudiced by this approach and I shall reflect it in the order.


- 6.3 The Fund formulated the relief claimed in its amended notice of motion on the basis that it is only obliged to refund Eskom upon the receipt of funds from Mr Molefe. I find this to be opportunistic. Once the full court has found that the payment of funds by Eskom to the Fund in pursuance of the early retirement scheme pertaining to Mr Molefe have been unlawful, the obligation to repay those amounts arose in law, irrespective of a successful recovery from Mr Molefe or not. Such amount should, additional to the interest already calculated, include mora interest at the rate prescribed by the Prescribed Rate of Interest Act 55 of 1975.
- 6.4 In addition to the amounts referred to in paragraph 6.1 above, the Fund is entitled to recover the tax amounts paid on Mr Molefe's behalf from him (and not SARS) which, including interest up to 31 October 2019, amounts to the amount mentioned in paragraph 3.16 above, being R 2 003 812, 70.
- 6.5 In similar fashion as in the full court, I find that costs should follow the event. This means that Mr Molefe should be liable for the Fund's costs. SARS has, in addition, been dragged into the fray, principally by Mr Molefe, who sought to have taxes already paid to SARS, representing the fiscus, to be reversed. In this regard Mr Molefe had been substantially unsuccessful and he should therefore also pay SARS' costs.
- 6.6 The timing of the repayment should, as initially ordered by the full court, be within 10 days, but, due to the tax implications regarding the balance of the TRF funds held by the Fund, that should be 10 days after set-off has taken place, whereby the final balance will be determined.

[7] Order

In the premises, the following order is made:

1. The Eskom Pension and Provident Fund (the Fund) is directed to repay to Eskom Holdings Soc Ltd (Eskom) the following amounts:
 - 1.1 The amount of R 30 103 915, 62 being the amount found by the full court on 25 January 2018 to have been unlawfully paid to the Fund, together with interest at the prescribed mora rate from date of the unlawful payment to date of repayment thereof.
 - 1.2 The amount of R 1 345 461, 79, constituting Eskom's employer contributions on behalf of Mr Molefe (inclusive of Fund interest less applicable administration fees) together with further mora interest from 31 October 2019 to date of repayment thereof.
 - 1.3 The amount of R 727 547, 64, constituting the total of Mr Molefe's own monthly pension contributions (inclusive of Fund interest less administration fees) together with further mora interest from 31 October 2019 to date of payment thereof.
 - 1.4 The amount of R 123 332,98, constituting Mr Molefe's performance bonus pension contributions (inclusive of Fund interest less administration costs) together with further mora interest from 31 October 2019 to date of payment thereof.
2. Eskom is directed to pay Mr Molefe the post-tax value of the amounts referred to in paragraphs 1.3 and 1.4 above.

3. Mr Molefe is ordered to repay the Fund the amounts of R 7 981 727, 94 and R 2 003 812, 70 together with mora interest thereon from 31 October 2019 to date of repayment.
4. The Fund is entitled to set-off against the above amount due by Mr Molefe, the nett balance of the Transnet Retirement Fund lumpsum received from or on behalf of Mr Molefe upon receipt of a tax directive from the South African Revenue Service in respect of the Tax payable on such amount, inclusive of accruals thereto subsequent to 31 October 2019.
5. The payment referred to in paragraph 3 above shall be made within 10 days after the set-off contemplated in paragraph 4 has occurred.
6. Mr Molefe is ordered to pay the costs of the Fund and of SARS, such costs to include the costs of two counsel where employed.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 17 March 2022

Judgment delivered: 4 July 2022

APPEARANCES:

For Appellant:

Adv T Motau SC together with

Adv R Tshetlo

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