

Business Day

Highest court to rule on FSB vs Hunter dispute

14 February 2018

The Constitutional Court hearing on former deputy pension-funds registrar Rosemary Hunter's battle for a review of the Financial Services Board's (FSB's) dormant retirement-fund cancellations project concluded on Tuesday.

Hunter asked the court for leave to appeal against an earlier judgment of the High Court in Pretoria, which dismissed her application to obtain a wider investigation into the cancellations project, with the investigator reporting to the court.

"It is very hard to tell at this stage [how the Constitutional Court will rule]," Hunter said on Tuesday.

Hunter had also sought to compel the Minister of Finance to look into two notices of noncompliance against FSB head Dube Tshidi. Counsel for Hunter, Tshidi, Hunter's predecessor Jurgen Boyd and the minister each had a short time to plead over one day before the Constitutional Court decides to grant Hunter leave to appeal.

"We will be in a position to comment only once the court has taken a decision on the matter," said FSB spokesman Tembisa Marele.

The FSB had earlier argued that it had appointed retired Constitutional Court judge Kate O'Regan to examine Hunter's concern about the cancellations project, which resulted in the deregistration of more than 4,500 retirement funds – worth about R20bn – which appeared to have been either dormant or having no assets. But on digging deeper, Hunter found that some funds did have assets, making their cancellations unlawful. O'Regan recommended the appointment of an audit firm to examine if there was material financial prejudice to any of the beneficiaries of the funds.

While KPMG, the firm that was eventually appointed by the FSB, found prejudice, the FSB was not happy with the manner in which it came to its conclusions – and appointed pension fund lawyer Jonathan Mort to look into KPMG's findings.

In two reports to the FSB, Mort said he found prejudice in some funds – the registrations of which he recommended should be reinstated – and none in others. Mort is said to have delivered a third report to the FSB, but it has not yet been made public.

Business Day understands that this report contains a number of recommendations which affect third parties that should be afforded a chance to comment before the report is made public.

But Hunter's contract with the FSB expired during the high court litigation, which the court ruled gave her no legal standing to seek the court orders.

The high court also criticised both the FSB and Hunter for essentially bringing "employment issues" to court. Reasonable litigants would have terminated the litigation, the judge said.

Hunter had accused Tshidi of "unlawful conduct" for trying to sabotage her investigation into the cancellations project.

Boyd, who oversaw the project during his stint as deputy pension-funds registrar, also defended the actions he and his team took.