

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: PFA16/2020

In the matter between

SANLAM UMBRELLA PROVIDENT FUND

Applicant

and

THE PENSION FUNDS ADJUDICATOR

1st respondent

ADELE WOLMARANS

2nd respondent

SANLAM EMPLOYEE BENEFITS

3rd respondent

Summary: Pension Funds Act – meaning of “dependant” – sec 37C – rights of heirs

Decision

1. The applicant, Sanlam Umbrella Provident Fund, applies for the reconsideration of the decision by the Pension Funds Adjudicator (the PFA) in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 against the FPA’s decision contained in the determination dated 18 November 2019.
2. The determination followed on a complaint lodged by the second respondent, Ms Adele Wolmarans, and concerned the allocation of death benefits following

the death of Mr FJ Nagel.

3. The parties agreed that the application may be decided on the papers.
4. The issue relates to the correct interpretation of sec 37C of the Pension Funds Act 24 of 1956 which provides as follows:

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit . . . payable by such a fund upon the death of a member, shall, . . . not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some of or all such dependants.

(b) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee

(bA)

(c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the

member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member . . .

5. The term “dependant” is defined in section 1 and provides as follows:

“**dependant**”, in relation to a member, means -

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person -
 - (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
 - (ii) is the spouse of the member;
 - (iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock.
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died.

6. The facts are uncomplicated. The deceased had, at the time of his death, two daughters from whom he was estranged. They were not dependent on him. His wife predeceased him and he was cared for by his sister-in-law’s children, one being Ms Wolmarans.

7. He did not designate a nominee but left his estate to the latter two in his will.

8. It is not alleged that the heirs were dependants (as defined) of the deceased and

they were not designated nominees of the deceased. They are accordingly not beneficiaries in relation to the death benefits. The estate may be a beneficiary under para (c), but only under that paragraph in view of the express wording of the introductory wording of ss (1), namely that the death benefit does “not form part of the assets in the estate of such a member”.

9. That possibility can only arise if the preconditions stated in para (c) are met which means that the death benefit could only have accrued to the estate under para (c), if, inter alia, “the fund does not become aware of or cannot trace any dependant of the member.”
10. Once the estate becomes the beneficiary the death benefit becomes part of the estate which means that it must be used to pay taxes, costs of administration, the master’s fees, secured creditors, other creditors, legatees and then heirs.
11. The Fund says that the two daughters of the deceased fall within the terms of the definition of “dependant” in spite of the fact the deceased was “not legally liable for [their] maintenance”: see para (b)(iii).
12. This explicit qualification is something overlooked in the determination. The PFA accordingly erred in holding that the daughters were not his legal dependants.
13. The PFA defined the issue as to whether Fund allocated the death benefit fairly and equitably between the deceased's beneficiaries. As mentioned, the heirs are not beneficiaries and the estate is a conditional beneficiaries.
14. The PFA misconstrued the situation. The question of fair distribution would have arisen if the 50:50 allocation between the two daughters would have been unfair or inequitable. That is not the situation. There is no question of any other possible distribution because para (c), as mentioned, can only come into play

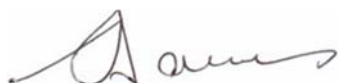
once the pre-conditions have been met – which they have not.

15. It follows that the determination must be set aside.

16. Last, the statement by the PFA that the Fund made a terrible error of judgment or intentionally aimed to erode the protection of section 37C and that the situation does not bode well for its members was uncalled for.

17. It is ordered that the determination be set aside and the matter is referred back to the PFA for reconsideration.

Dated at Pretoria on this 24th day of April 2020

A handwritten signature in black ink, appearing to read 'LTC Harms', with a stylized, cursive script.

LTC HARMS

Deputy Chairperson

Financial Services Tribunal