

## SUMMARY OF IMPORTANT DETERMINATIONS continued

### **PFA rules that death benefits were paid fairly**

The Pension Funds Adjudicator has ruled that a death benefit was distributed fairly although one of the beneficiaries was not financially dependent on the deceased.

Muvhango Lukhaimane said a nominee was not entitled to be considered as a beneficiary because he or she was financially dependent on the deceased.

“The entitlement stems from the fact that the person concerned was nominated by the deceased and nothing more is required,” said Ms Lukhaimane in her ruling.

I Dekker and her two brothers, L Dekker and R Dekker, complained about the distribution of a death benefit by the Lifestyle Retirement Annuity Fund (first respondent) following the death of their father, A Dekker.

They were unhappy that M de Kock who was the former wife of the deceased had been allocated a portion of the death benefit.

The death benefit from three policies amounted to R1 293 367.87. The first respondent allocated and distributed the death benefit to the deceased’s beneficiaries as follows:

Policy number 0011733218 and 0011733183: I Dekker, L Dekker, R Dekker and M de Kock 25% each; and Policy number 0025959744: I Dekker, L Dekker and R Dekker 33.33% each.

The complainants submitted that M de Kock was not financially dependent on the deceased. They requested that the first respondent be ordered to allocate the death benefit equally to them.

The first respondent submitted that the deceased was survived by three dependants (I Dekker, L Dekker and R Dekker) and one nominated beneficiary (M de Kock).

M de Kock was the ex-wife of the deceased. She was divorced from the deceased in 2007 and not financially dependent on the deceased.

### **Case Management Team**



**From left to right (back):** Nomlindo Mpongo, Tshepo Dooka-Rampedi, Mandy Dikotla, Thomas Maponya, Yolande van Tonder, Khutso Mafokwane, Tsumbedzo Mboweni, Lerato Mokoena, Khuliso Gavhi  
**From left to right (front):** Mashudu Matovheke, Jerry Buthane, Fortunate Ratlhagane

M de Kock was the sole beneficiary on policies 0011733183 and 0011733218 and the board allocated her an equal share along with the complainants. It stated that the deceased's estate was named as a beneficiary under policy 0025959744. It submitted that there was no proof of financial dependency from any of the dependants mentioned above. It stated that the board in its discretion allocated the benefit under policy 0025959744 equally to the complainants.

In her determination, Ms Lukhaimane said the law recognised three categories of dependants based on the deceased member's liability to maintain such a person, namely, legal dependants, non-legal dependants and future dependants.

In principle, a member is legally liable for the maintenance of a spouse and children as they rely on the member for the necessities of life. In the case of non-legal dependants, where there is no duty of support, a person might still be a dependant if the deceased in some way contributed to the maintenance of that person.

She said investigations by the first respondent revealed that the deceased nominated M de Kock as a nominee to his death benefit under policies 0011733183 and 0011733218.

"Where the deceased member is survived by a dependant and the deceased has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable.

"This Tribunal would also like to highlight that a nominee is not entitled to be considered as a beneficiary because she was financially dependent on the deceased.

"The entitlement stems from the fact that the person concerned was nominated by the deceased and nothing more is required. A nominee does not have to prove that she was financially dependent on the deceased at the time of death," said Ms Lukhaimane.

She added that the board relied on the latest nomination form signed by the deceased as guidance in distributing the death benefit.

"The deceased failed to strengthen his wish by changing the nomination form. Had the deceased wished M de Kock not to benefit from his death benefit, he could have signed another nomination form excluding her from benefiting which seems not to be case in this complaint.

"It is also important to note that any decision which favours dependants over nominees in the distribution of the death benefit would be unreasonable and unjustifiable.

"This Tribunal is satisfied that the death benefit was allocated properly to the dependants of the deceased and there is no reason to set aside the board's decision," Ms Lukhaimane ruled and dismissed the complaint.

### **Pension fund members must complete their own beneficiary forms**

Members of pension funds who have legal dependants must complete a beneficiary nomination form themselves, said the Pension Funds Adjudicator.

Muvhango Lukhaimane said members cannot entrust the welfare of their legal dependants to the whims of their siblings and other family members who are often "less than honourable where money is concerned".

Ms Lukhaimane's comments came in the wake of a determination involving a complaint by LR Roems against Metal Industries Provident Fund (first respondent) and Metal Industries Benefit Funds Administrators (second respondent) concerning the delay in the payment of a death benefit following the death of her brother C Roems.

She found that the complainant had been dishonourable and had deliberately failed to disclose important information.

The deceased was survived by the complainant and a son, Christopher Pietersen.

Following the deceased's death, a total death benefit of R892 829.16 became payable to the deceased's beneficiaries. The board of the first respondent resolved to allocate 40% (R357 131.66) of the death benefit to the complainant based on her nomination as a nominee and retained the remaining 60% (R536 697.49) for Christopher.

## SUMMARY OF IMPORTANT DETERMINATIONS continued

The complainant stated that she was nominated by the deceased as his sole beneficiary of his estate and provident fund benefits.

The second respondent said the first respondent received death benefit application documentation from the complainant on 8 December 2016. The complainant provided two beneficiary nomination forms with her application.

The first nomination form was completed by the deceased on 31 October 2007 in terms of which he nominated the complainant and his other sister, Regina Roems, who predeceased the deceased on 21 November 2013. The second nomination form was completed on 1 May 2016 with the complainant as the sole nominee.

On 12 January 2017, the first respondent contacted the complainant to obtain information regarding the deceased's dependants and the child mentioned on her affidavit. However, the complainant stated that she had no idea of the whereabouts of the child, did not know his name and had never met him.

The second respondent indicated that the complainant confirmed that she was not dependent on the deceased and was employed. On 17 January 2017, the first respondent requested the employer to provide any information that may assist in locating the child. The employer stated that it had no further information regarding the deceased.

The second respondent submitted that further investigations revealed that a warrant of execution was issued on 10 March 1998 for arrear maintenance against the deceased. A garnishee order was also issued against him on 27 March 1998 for payment of maintenance in a matter between one Ms Sarah Pietersen and the deceased.

The deceased's nephew Gerald Roems subsequently confirmed that the deceased had a son named Christopher and the complainant was aware of him. He confirmed that Christopher would visit the deceased and after the deceased's death, he enquired about the deceased's benefits and belongings, which the complainant was aware of.

The nephew indicated that the deceased occasionally gave Christopher money to assist him as he was unemployed and resided with a family that was known to the deceased's family.

A visit to the home where Christopher resided revealed that he lived in an environment that was not stable. Christopher's mother, Sarah, passed away approximately 10 years ago, which was subsequently confirmed to be on 1 April 2004. On 4 April 2018, Christopher was assisted with an application for an identity document as he had only a birth certificate.

The second respondent indicated that it would assist Christopher with his application process and will pay his share of the death benefit upon receipt of his documentation.

In her determination, Ms Lukhaimane said it was the board's responsibility when dealing with the payment of death benefits to conduct a thorough investigation to determine the beneficiaries, to thereafter decide on an equitable distribution and finally to decide on the most appropriate mode of payment of the benefit payable.

The facts indicated that the complainant was dissatisfied with the allocation of a portion of the death benefit to Christopher as she stated that she was the sole beneficiary of the deceased in terms of his last nomination form.

However, the complainant should note that the board was not bound by a nomination form and it only served as a guide in the distribution of a death benefit.

Thus, the board was not bound to allocate the entire amount of the death benefit to the complainant based on her nomination as the sole beneficiary. The board had to take into account the existence of other beneficiaries and the extent of their dependency on the deceased in order to make an equitable allocation of the death benefit.

The deceased was survived by a son, Christopher, who qualified to be a legal dependant of the deceased.

"It follows that the board exercised its discretion equitably in allocating 60% of the death benefit to him.

"The complainant has been extremely dishonest in terms of providing information to the first respondent regarding the existence of Christopher as the deceased's son.

"There is an uncontested submission that the complainant denied ever knowing Christopher, which is contrary to the information gathered during the investigation by the board.

“It is dishonourable for the complainant to hide information from the board for her own benefit.

“Members must know that where they have legal dependants, they must complete a beneficiary nomination form as they cannot entrust the welfare of their legal dependants to the whims of their siblings and other family members who are often less than honourable where money is concerned.”

Ms Lukhaimane ordered the first respondent to pay Christopher Pietersen the remaining 60% of the death benefit that was allocated to him.

## **Withdrawal benefit**

### **Pension fund rapped for ignoring treating customers fairly rules**

Members of pension funds must be kept appropriately informed before, during and after entering into contracts, the Pension Funds Adjudicator has warned.

Muvhango Lukhaimane said the National Treasury had introduced principles of Treating Customers Fairly (“TCF”) to guide the relationship between the financial industry and consumers.

“TCF requires entities to measure themselves as to whether or not in doing their business they are dealing fairly with the consumer by, inter alia, providing them with sufficient and clear information that will enable them to make informed choices when acquiring financial products,” she said in a recent determination.

Ms Lukhaimane said the Municipal Employees Pension Fund (first respondent) had not acted in keeping with the spirit of the TCF in a matter that came before her for adjudication.

The complainant, CJ Modiba, was unhappy with the quantum of the withdrawal benefit paid to him following his exit from service at the Greater Sekhukhune District Municipality (second respondent).

The complainant was employed with the second respondent from 1 October 2007 to 29 February 2016. Following his exit from service, the complainant was paid a net withdrawal benefit of R276 150.64.

The complainant stated that he initially contributed to the Government Employees Pension Fund (“GEPF”) for 26 years and 9 months before his fund value of

R800 000 was transferred to the first respondent. He averred that he contributed to the first respondent for nine years before he resigned from the second respondent. He indicated that his gross resignation benefit amounted to R478 000 and a net amount of R276 000 was paid to him.

The first respondent said the complainant had a transfer value from GEPF in the amount of R860 527.64 which was received by the fund on 31 August 2013. The transfer value bought 17 years and 3 months of service for the complainant and at the time of his resignation, the complainant had 20 years and 3 months total service in the fund.

The first respondent further submitted that the complainant had a total gross resignation benefit of R468 259.57. An amount of R106 319.63 was deducted in respect of a loan and income tax in the amount of R79 786.72 was also deducted and paid to the South African Revenue Services. A further amount of R5 902.58 was deducted in respect of arrear tax and a net benefit of R276 150.64 was paid to the complainant.

The first respondent provided an actuarial computation for the purchase of the complainant’s past service and a computation of the withdrawal benefit paid which reflects the complainant’s pensionable service and final pensionable salary.

Ms Lukhaimane agreed with the first respondent’s explanation for the reduced amount that was paid to the complainant.

However, she was critical that the first respondent had failed to inform the complainant that the transfer value was used to purchase the additional pensionable service from the GEPF.

This issue should have been disclosed to the complainant when he joined the first respondent so that he understands that at the point of exit it won’t simply be added to his withdrawal benefit.

This result has been ruinous to say the least, in the complainant’s case. The first respondent has a duty to provide the complainant with relevant information relating to his benefits.

Further, the first respondent contravened the principles of Treating Customers Fairly by failing to disclose relevant information that affect a member’s fund value.