

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

**CASE NO:
PFA/WE/1656/02/SM**

In the complaint between:

LULAMA MAJI

Complainant

and

CAPE JOINT PENSION FUND

Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS
ACT OF 1956**

[1] This complaint concerns the vexed question of the allocation of death benefits by trustees in the exercise of their discretion under section 37C of the Pension Funds Act, 24 of 1956 (“the Act”) in circumstances where the deceased had indicated how the benefit should be allocated. This question usually arises where the deceased had submitted a beneficiary nomination form to the fund in which the proportions of allocation to the various nominated beneficiaries are indicated. Where the trustees make allocation as indicated in the nomination form, the complaint is usually that they failed to exercise their discretion but simply followed the wishes of the deceased as if the form were a will. Where they depart materially from the nomination form, the complaint is often that they disregarded the wishes of the deceased who was in the best position to weigh up his or her dependants’ needs. It is this latter position that concerns this tribunal in this case.

[2] The complainant, Mrs L Maji who is the daughter of the deceased, charges that the death benefit was not equitably distributed and thus that the decision of the trustees in allocating the benefit as they did was an improper exercise of their powers.

[3] No formal hearing was held in the determination of this matter as I considered it unnecessary to do so. Thus, for purposes of this finding I have relied on the parties' respective written submissions and documentary evidence.

The facts

[4] Mr Maneli, the deceased, passed away on 22 January 2002. At the time of his death he was a member of the respondent fund, the defined benefit Cape Joint Pension Fund ("the fund"). Upon his death, a death benefit of R102 752.00 became payable.

[5] On 16 November 1994 he had completed a beneficiary nomination form in which he nominated the following beneficiaries with the stated allocations of the benefit:

Pumla L Maneli (daughter)	25%
B Velile Maneli (son – predeceased)	25%
P Lulama Maji (daughter)	25%
E Nomfundo Sakati (daughter)	25%

[6] After investigation, the fund identified a dependant, the deceased's partner Ms Mabel Wowose Sakati, who is the mother of the deceased's daughter, E N Sakati. They then decided to allocate the lump sum death benefit as follows:

E N Sakati	R41 100.80 (40%)
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M W Sakati	R61 651.20 (60%)
P L Maji	Nil
PL Maneli	Nil

[7] The complainant was aggrieved by this decision. She says she had taken care of her father since his divorce from her mother in 1987, even after she herself got married in 1997, and that she had been responsible for all the administrative tasks and costly ritual ceremonies after his death. She maintains that her father's wishes, as evidenced by the beneficiary nominations, were not respected when the fund decided to make payment only to the two beneficiaries. It appears that she seeks relief in the form of an order that the fund pay out the death benefit in terms of the beneficiary nominations.

[8] The fund's response on the merits outlines the information collected and considered by the trustees, on the basis of which they made the decision regarding the allocation. The following factors were taken into account:

- The deceased member had at the time of his death been divorced since 1987 and had been in a relationship of mutual dependency with Mabel Wowose Sakati since 1975;
- The deceased and Ms Sakati had a minor child, Eve Nomfundo Sakati, born on 24 September 1982, and the deceased had been responsible for payment of her Technikon fees at the time of his death;
- The deceased's other two daughters, Pumla Maneli and Lulama Maji, were both major children in their thirties, neither of whom were being supported by their father at the time of his death. Both were employed, Pumla Maneli earning R5 500.00 per month and Lulama Maji earning R5 070.00 per month at the time of the investigation.

- A group life scheme allocation at the deceased's death had been made to the three daughters as follows:

P L Maji	R101 460.00
P L Maneli	R101 460.00
E N Sakati	R 93 650.00

[9] A copy of the response was forwarded to the complainant and she has not disputed the information outlined above.

The issue

[10] The complainant's challenge here is to the equitability of the distribution of the death benefit. Her view is that the benefit should have been allocated in accordance with the beneficiary nomination form. The question for determination is thus whether the respondent's decision to allocate the benefit in the manner it did was an improper exercise of its powers.

[11] In reviewing the exercise of the trustees' discretion I must assess whether the trustees considered all relevant factors, ignored irrelevant factors and did not fetter their discretion. Unless the trustees can be seen to have taken an improper decision in this way, it is not for me to interfere with their decision even if I disagree with it. Put differently, it is not for this tribunal to substitute its own decision for that of the trustees. Even if I were to find that the trustees have exercised their power improperly, the correct thing to do would be to remit the matter to them for reconsideration unless I am satisfied that such a course would be futile. For reasons to which I come later, I am satisfied that no case has been made out that

would persuade this tribunal to interfere with the trustees' decision in any way.

Points in limine

[12] The fund has raised two preliminary points. The first is that this tribunal has no jurisdiction as the complaint was not first lodged in writing with the fund as required by section 30A of the Act, giving the respondent 30 days to reply thereto. The second is that the complaint does not disclose any of the allegations required to constitute a complaint.

[13] On the first point I am satisfied that the complainant submitted her complaint in writing to the fund, albeit at the same time as she lodged it with this office. Upon receipt of the complaint, this tribunal afforded the fund 30 days to respond, and the complainant remained unsatisfied with the response. There has therefore been substantial compliance with section 30A.

[14] On the second point I am satisfied that the complaint relates to the administration of the fund and constitutes an allegation that the trustees improperly exercised their powers in making the decision relating to the distribution of the death benefit in question. The complaint therefore falls within the requirements of the definition of a complaint in section 1 of the Act. It must be appreciated that many complainants are not legally represented and that, not being legally trained, it cannot reasonably be expected of them to craft their complaints with surgical precision to fit neatly in the definitions of the Act. If it is clear *ex facie* the written document filed by a complainant what the issue is, this tribunal should not be overly technical on issues of compliance with the procedural aspects, otherwise it would not be acting in the furtherance of its mandate of

disposing of disputes in a procedurally fair, economical and expeditious manner.

The merits

[15] The fund's first task in distributing a death benefit in terms of section 37C is to identify all the potential beneficiaries, being any nominees and/or dependants. According to the definition of "dependant" in the Act,

"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, including a party to a customary union according to Black law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion;
 - (iii) is a child of the member, including a posthumous child, an adopted child and an illegitimate child;
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died."

[16] The fact that Ms M W Sakati, the mother of the deceased's daughter Eve Nomfundo Sakati, had been involved in a relationship of mutual dependency with the deceased, makes her a factual dependant in terms

of paragraph (b)(i) of the definition. The deceased's three daughters were also dependants by virtue of being his children. They were also nominees, although since they qualified as dependants the nominations are superfluous (even if they were considered purely as nominees, the fund has to make an equitable determination as to whether or how much to pay them, in accordance with section 37C(1)(bA)).

[17] Having identified the circle of beneficiaries and the fact that all of them are dependants, the fund is obliged in terms of section 37C(1)(a) to pay the benefit

“to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all of such dependants.”

[18] It is clear that the discretion as regards the proportions in which to distribute the benefit among beneficiaries lies with the trustees. They are free to pay to one or some or all of the dependants in accordance with what they consider to be equitable. A nil apportionment, as in respect of the complainant, does not necessarily mean that the complainant has been disregarded. What it means is perhaps that the trustees considered that allocation equitable in light of everything they took into account.

[19] It is apparent that the trustees conducted an investigation and considered a range of relevant factors in making the decision regarding the equitable distribution of the available benefit among the beneficiaries. I am satisfied that no irrelevant factors have been considered.

[20] The key factors appear to have been that the complainant and her sister, Pumla Maneli, were in their thirties, were both employed and had not actually been dependent on the deceased for maintenance while he was alive. They had also both benefited from the payout of the group life scheme, as had the deceased's minor daughter, Eve Nomfundo Sakati

(who received slightly less than the two major sisters). The complainant does not explain why she cannot meet the expenses of the ritual ceremonies that need to be performed following her father's death from her share of the group life scheme payout of over R100 000.00. What is more, she does not explain why her sister, Pumla, cannot assist in meeting those expenses from her share of the group life payout as she also received more than R100 000.00. Ms Mabel Wowose Sakati, on the other hand, received no payment from the proceeds of this scheme. It was therefore equitable in the circumstances that she receive the lion's share of 60% of the death benefit, with 40% being allocated to the minor daughter who was not employed and who was still a student, her father having been paying her tuition fees while he was alive.

[21] In my view there is no sufficient cause for interference with the trustees' decision. In the result, the complaint cannot succeed.

[22] The fund's representative asked for costs in the event of the complaint not being successful. I am not inclined to grant costs for at least two reasons. The one is that this tribunal does not want to make a habit of punishing people for daring to complain as that would defeat the very purpose for which it was created. The other is that no argument is advanced to show why a costs order should be made against the complainant. In this tribunal the costs do not necessarily follow the cause. The question of costs may in the future be determined on the facts of each case.

DATED at CAPE TOWN on 15 APRIL 2004

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VUYANI NGALWANA

PENSION FUNDS ADJUDICATOR