



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House  
Sandton Close 2, Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town

2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

---

**Our ref: PFA/KZN/6656/05/VIA**

**Your ref: AK/K60/jem**

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – DUDU KUNENE (“the complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“the first respondent”) & THOKO GLORIA KHUMALO (“the second respondent”)**

1. Introduction

- 1.1 This matter concerns the distribution of a death benefit in terms of section 37C of the Act.
- 1.2 The complaint was received by this office on 5 December 2005. On 8 December 2005 letters were dispatched to the respondents giving them until 29 December 2005 to file their respective responses to the complaint. A response was received from the first respondent on 23 December 2005. A response was not received from the second respondent. On 18 January 2006 a copy of the response was sent to the complainant for a reply by 1 February 2006. A reply was not received from the complainant.
- 1.3 After considering the written submissions, it is considered unnecessary to hold a hearing in this matter.

---

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

## 2. The facts

- 2.1 The complainant was married to the late Nkosho Mndlalose (“the deceased”) on 27 April 1976, which marriage was still in existence when he passed away on 19 February 2001.
- 2.2 At the time of his death, the deceased was a member of the first respondent. As result of his death a death benefit of R98 143.13 became payable by the first respondent.
- 2.3 After the death of the complainant’s late husband Ms Khumalo (“the second respondent”) submitted a claim to Sanlam Life Insurance Limited (“Sanlam”). The second respondent claimed that she was married to the deceased by traditional rites and two children, Nokhutula Mndlalose and Siyabonga Mndlalose, were born from the marriage.
- 2.4 On 31 January 2005, in order to reach a compromise, a settlement agreement (“the agreement”) was concluded between the complainant and the second respondent. In terms thereof it was agreed that the full death benefit would be deposited into the complainant’s attorney’s trust account whereafter he would pay R20 000.00 thereof to the second respondent in full and final settlement of her claim. The balance of the benefit would be paid to the complainant. The agreement was made an order of the Paulpietersburg Magistrates Court on 3 February 2005.
- 2.5 A copy of the agreement was presented to Sanlam in order to effect payment of the benefit as specified therein.
- 2.6 However on 4 October 2005 the complainant was advised by Sanlam that the board of management (“trustees”) had resolved to pay the proceeds of the benefit in equal portions to the complainant and the second respondent.

## 3. The complaint

- 3.1 The complaint is that the trustees acted contrary to the agreement, in particular, they failed to pay the benefit to the complainant’s attorney to allow him to deal with it in terms of the agreement.
- 3.2 The complainant requested that tribunal make an order directing the trustees to comply with the agreement.

## 4. The response

- 4.1 Ms May of Sanlam states that the proceeds that became available for distribution on the death of the deceased do not form part of the assets in

his estate. The distribution of the benefit is governed by the rules of the first respondent and section 37C of the Act. As such the trustees are not bound by the agreement. Furthermore the agreement only created obligations *inter partes* and not for a third party such as the trustees.

- 4.2 Ms May states further that the trustees resolved to distribute the benefit in equal shares to the complainant and the second respondent because they were both dependent on the deceased.

5. Determination and reasons therefor

- 5.1 Section 37C of the Act makes provision for the disposition of pension benefits upon the death of a member. In terms of the section any such benefit shall not form part of the assets in the estate of the deceased, but shall be dealt with in terms thereof. Put differently the benefit cannot be dealt with in terms of the law of succession or in any other manner other than in terms of section 37C. The section also gives the trustees a discretion insofar as the distribution of death benefits are concerned.

- 5.2 This means that the agreement concluded between the complainant and the second respondent does not bind the trustees. They were under a legal duty to dispose of the death benefit in terms of section 37C.

- 5.3 The settlement agreement is only enforceable against the parties to the agreement. Once the complainant and the second respondent have received your 50% share from the first respondent, the complainant may enforce her rights in terms of the agreement.

6. Relief

- 6.1 In the result the complaint cannot succeed.

DATED AT CAPE TOWN ON THIS THE                      DAY OF                      2007

Yours faithfully,

**Mamodupi Mohlala**  
**Pension Funds Adjudicator**