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Please quote our reference: PFA/GA/4143/2005/SM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“the Act”): S W KHUMALO AND S P MBELE (“the complainant’s”)v ISCOR EMPLOYEES PROVIDENT FUND (“the first respondent”) AND ISCOR (“the second respondent”)

1. Introduction

- 1.1 The complaint concerns the delay in the distribution of a death benefit by the first respondent following the death of Mr L L Dlamini (“the deceased”).
- 1.2 The complaint was received by this office on 24 June 2005. A letter acknowledging receipt thereof was sent to the complainant on 19 July 2005. On the same date a letter was dispatched to the first respondent giving it until 10 August 2005 to submit its response to the complaint. Responses were received from the first respondent on 8 November 2005, 30 November 2005 and 14 February 2007. On 8 November 2005 this office received the complainant’s reply.
- 1.3 After considering the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainant lodged this complaint on behalf of Siphwe Khumalo and Sibongile Mbele (née Khumalo) who are the major children of the deceased. The deceased was employed by Iscor (“the second respondent”) and was a member of the first respondent by virtue of his

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)

Office Manager: L Manuel

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employment until he passed away on 23 August 2002. Upon his death, a lump sum death benefit of R162 850.14 became available for distribution. The complainant lodged a claim for the payment of a portion of the death benefit to the complainants.

3. Complaint

3.1 The crux of this complaint is that the first respondent failed to distribute a portion of the death benefit to the complainants. Therefore, the complainant requests this Tribunal to order the first respondent to distribute the death benefit to all identified beneficiaries, including the complainants.

3.2 The complainant submitted that the complainants are the deceased's children and thus entitled to a portion of the death benefit in terms of the Act.

4. Response

4.1 Mr D Y Dlamini, a client service and compliance officer of the first respondent, filed responses on behalf of the first respondent. He submits that the first respondent initially received five different lists of dependants of the deceased who were unmarried according to the information at its disposal. He states that the lists were subsequently reduced after the first respondent received copies of unabridged birth certificates from all the children who claimed to be born of the deceased and after it received information from the Madadeni Magistrate's Office which indicated the dependants of the deceased.

4.2 It was submitted that the first respondent identified the deceased's girlfriend, Ms T G Zikalala and their child, Siyethemba Ntombenhle Dlamini, as dependants of the deceased. The first respondent, however, decided to put the whole death benefit in the sum of R162 850.14 in the first respondent's trust account until the dispute had been resolved with regard to the claims of Sipiwe Khumalo and Sibongile Mbele (née Khumalo).

4.3 It was stated that the first respondent wished to exclude the complainants from receiving a portion of the death benefit on the basis that they did not submit unabridged birth certificates which supported their contention that they were the children of the deceased. The first respondent submitted that Sipiwe Khumalo's unabridged birth certificate did not reflect the identity numbers and the name of his father. It also stated that the unabridged birth certificate that was submitted by Sibongile Mbele indicate that her father is a certain Mr N P Mbele and not the deceased. However, it was submitted that the first respondent subsequently received

information from the Madadeni Magistrate's Office in which it indicated that the complainants, Sipiwe Khumalo and Sibongile Mbele (née Khumalo) were receiving maintenance from the deceased at the time that he passed away. The first respondent stated this information would have served as proof that the complainants were dependent on the deceased and that they were possibly his biological children.

5. Determination and reasons therefor

- 5.1 The payment of death benefits is regulated by section 37C of the Act, read in conjunction with the definition of a "dependant" in section 1. Section 37C imposes two duties on the board of management. Firstly, it needs to conduct an investigation to locate and determine the dependants and nominees of the deceased. Hereafter, it is required to effect an equitable distribution amongst the dependants and nominees or where the deceased is survived by no dependants nor nominees, then payment needs to be made to the estate.
- 5.2 Further, the section requires the trustees to locate the deceased's dependants or nominees within a time-frame of 12 months. However, the 12-month period in respect of payment of the benefit is not entirely decisive and in each instance regard must be had to the investigation conducted by the board to determine the circle of beneficiaries of the deceased and thereafter effect an equitable distribution amongst them.
- 5.3 *In casu*, the deceased passed away on 23 August 2002, approximately 36 months have passed and yet the first respondent has still not made a final decision regarding the distribution of the death benefit in respect of the complainants. The first respondent has not provided an adequate explanation as to the delay in the investigation and distribution of the death benefit. Moreover, it failed to distribute the death benefit after receiving information from the Madadeni Magistrate's Office which indicated that the complainants were dependants of the deceased at the time that he passed away. As a result of the first respondent's dilatory conduct, the complainants have suffered prejudice in that they have potentially been denied access to benefits which may become available to them had the investigation been completed. Thus, I am of the view that the first respondent should be directed to exercise its discretion in terms of section 37C of the Act and effect payment thereof, within six weeks of the date of this determination.
- 5.4 In the result, the order of this Tribunal is as follows:
- 5.4.1 The first respondent is directed to complete its investigation in terms of section 37C of the Act and effect payment of the benefits in terms of the relevant subsection within six weeks of the date of

this determination.

Dated at Johannesburg on this the day of 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR