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Our reference: PFA/WE/3618/2005/SG

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – N Buso (late W Soqaga) v Van Leer SA Pension Scheme / Van Leer SA (Pty) Ltd**

Introduction

[1] This matter relates to the non-payment of the children’s pension by the fund. The complaint was received by this office on 20 May 2005 and a letter acknowledging receipt thereof was sent to you on 6 June 2005. The response to the complaint was received on 14 July 2005. After considering written submission before me, I consider it unnecessary to hold a hearing in this matter.

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V Ngalwana (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), N van Coller (Assistant Adjudicator), L Mbalu (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator)

Office Manager: L Manuel

### Factual Background

[2] You are the son-in-law of the late Mr W Soqaga who passed away on 3 April 1984. At the time of his death, Mr Soqaga was a pensioner of the Van Leer SA Pension Scheme (“the fund”). The deceased received his monthly pension from the fund since September 1979 until the time of his death, 3 April 1984. His wife, Nopasile Soqaga, predeceased him on 3 July 1981.

### Complaint

[3] Your complaint is that as a result of Mr Soqaga’s death, his children are entitled to a children’s pension from the fund. You further contend that the deceased children are entitled to a death benefit by virtue of being the heirs of the deceased.

### Fund’s response

#### Point in limine

[4] The fund contends that your complaint is time-barred for the reason that it was lodged outside the time period of lodging a complaint in terms of section 30I(1) of the Act, and thus I lack jurisdiction to investigate and adjudicate upon your complaint.

#### Merits

[5] The fund contends that the rules of the fund do not provide for the children’s pension and thus your contention that the children’s pension is payable from the fund is not well-founded in law. The rules of the fund only provide for a spouse’s pension. The deceased spouse had predeceased him and thus no spouse’s pension is payable by the fund.

[6] As regards your contention that the deceased children are entitled to the deceased’s pension by virtue of being heirs, the fund contends that this contention is erroneous for the reason that the distribution of the pension benefit is governed by section 37C of the Act, which excludes pension benefits from being paid to the deceased estate, except in circumstances which bear no relevance to the present case.

### Determination and reasons therefor

[7] I am precluded by section 30(I)(1) of the Act to investigate a complaint lodged with this office more than three years after the occurrence of the event which the complaint relates to. However, I have discretion to extend the three year time period or to condone non-compliance therewith, provided there is good cause shown.

- [8] There is good reason for a limit to be imposed on the time during which litigation may be launched and the Constitutional Court has pronounced on this. In *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) the Court said (at paragraph [11]):

“Rules that limit the time within which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigation damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can be obtained have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They serve a purpose to which no exception in principle can cogently be taken.”

- [9] The complaint relates to the non-payment of the children’s pension by the fund to the deceased’s children. The deceased died on April 1984 and the complaint was lodged with this office on 20 May 2005. This is more than three years after the occurrence of the event which the complaint relates to. Thus, the complaint is time-barred. However, that does not spell the end of the matter as I have to determine whether good cause exists for condoning its late lodging.

- [10] The Supreme Court of Appeal (or Appellate Division as it was then known) has pronounced upon the standard that must be met for condonation to be granted in circumstances like these. In *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 532C-F the court said:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant is the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective *conspectus* of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent’s interest in finality must not be overlooked.”

- [11] A period of 20 years has elapsed after the occurrence of the event which the complaint relates to. No explanation has been provided for lodging the complaint after such a long period of time. In any event, even if I were to condone the late lodgement of the complaint, the prospects of success on merits are not good. The payment of a benefit from a pension fund

organisation is governed by the rules of a fund and the provisions of the Act. There is no rule of the fund that provides for the payment of children's pension. Thus, your contention that the deceased children are entitled to a children's pension is not well-founded in law. Section 37C of the Act regulates the payment of a death benefit, and such benefit does not form part of the member's deceased estate. Thus, your contention that the deceased children are entitled to the death benefit by virtue of being heirs of the deceased estate is misconceived. In the circumstances, I find that no good cause exists for me to condone the late lodgement of this complaint.

Relief

[12] In the result, your complaint is dismissed.

DATED AT CAPE TOWN THIS THE                      DAY OF                      2006.

Yours faithfully

Vuyani Ngalwana  
**Pension Funds Adjudicator**