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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – C SCHOEMAN (né VAN ROOYEN) (“the complainant”) v SOUTH AFRICAN BROADCASTING CORPORATION LIMITED (“the first respondent”) & SABC PENSION FUND (“the second respondent”)**

1. Introduction

- 1.1 This matter concerns the computation and payment of a spouse’s pension by the second respondent.
- 1.2 The complaint was received by this office on 4 November 2005. On 14 November 2005 letters were dispatched to the respondents giving them until 5 December 2005 to submit their respective responses to the complaint. A combined response was received from the respondents’ on 16 January 2006. A reply to the response was received from the complainant on 24 January 2006.
- 1.3 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor follow.

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

## 2. The background facts

2.1 The complainant is the surviving spouse of Mr. J Schoeman (“the deceased”). The deceased was employed by the first respondent from 1 February 1983 until 31 May 1988 when he left its service due to ill health. By virtue of his employment the deceased became a member of the SABC Provident Fund. At the time of the deceased’s employment the fund was known as the “Voorsorgfonds vir Kontrakpersoneel van die Suid Afrikaanse Uitsaaikorporasie” (“the provident fund”).

2.2 The deceased passed away on 9 June 1989.

## 3. The complaint

3.1 It was difficult discerning the complainant’s actual complaint. However, it appears that she is dissatisfied with the second respondent’s failure to pay her a spouse’s pension after the deceased passed away in June 1989.

3.2 The complainant essentially requests that this tribunal make an order directing the second respondent to pay her arrear monthly spouse’s pension calculated from June 1989 as a lump sum, together with all pension increases granted, bonuses and interest. Furthermore, that this tribunal direct the second respondent to calculate and commence paying her a spouse’s pension which she became entitled to when the deceased passed away from the date of this determination onwards..

## 4. The response

4.1 According to the respondents the deceased was employed on a contract basis by the first respondent because of an unsatisfactory medical condition. As a result of the rules of the second respondent he did not become a member of the second respondent, but rather of the provident fund. The deceased was informed of his employment and provident fund status in a letter dated 28 June 1984. The first respondent declared the deceased medically unfit as a result of his deteriorating heart condition and terminated his employment on 13 June 1988. Subsequently, the provident fund paid him a benefit of R12 849.88. Thus, it is submitted that the complainant is not entitled to receive a spouse’s pension from the second respondent.

## 5. Determination and reasons therefor

### *Point in limine*

5.1 In terms of section 30I(1) of the Act this office may not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received.

5.2 The complainant's complaint relates to the payment of a spouse's pension which she allegedly became entitled to after the deceased passed away in June 1989. The complaint was only received by this office on 4 November 2005, some 16 years later. Therefore, in terms of section 30l(1) the complainant's complaint is time barred and this tribunal may not investigate and adjudicate it.

5.3 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 during which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigating 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.”

5.4 However, that the complaint has become time-barred in terms of section 30l(1) of the Act is not the end of the matter as this tribunal still has a discretion in terms of section 30l(3) of the Act to extend the three year time period, or to condone non-compliance with the three year period. In order for this tribunal to condone the non-compliance there must be good cause shown by the complainant to do so.

5.5 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) the court said (at 532B-E):

“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."

- 5.6 In light of the factors mentioned above, this tribunal must proceed to determine whether good cause exists to condone the complainant's non-compliance with the time limits.
- 5.7 A delay of 16 years, for which no satisfactory explanation is given, is unreasonably long. The complainant's attempts to resolve the matter or bring it to the respondents' attention are also non-existent. While it is true that this tribunal was only established in 1996 and that the first Adjudicator only assumed office on 1 January 1998, the complainant could have approached the ordinary civil courts or the Registrar of Pension Funds ("the Registrar") for assistance. The complainant failed to do this.
- 5.8 It appears further that the complainant does not have good prospects of being successful on the merits in this matter. It is evident that the deceased was at no stage, while in the employ of the first respondent, a member of the second respondent. When the deceased commenced with his employment, he was employed on a contractual basis ("Kontrakpersoneel") and was consequently registered as a member of the provident fund. The deceased was informed of this by letter on 28 June 1984. The letter provided further that an application for his membership of the second respondent will be considered if he submits a satisfactory medical report to the first respondent.
- 5.9 Furthermore, when the deceased left the service of the first respondent, in May 1988, he received a benefit from the provident fund and not from the second respondent. The contents of the letter of 15 June 1988, informing the deceased that the Secretary of the Pension Fund ("the secretary") will contact him as regards the group life scheme and his continued membership of the medical assistance scheme, did not in any way alter the fact that the deceased was a member of the provident fund.
- 5.10. In the circumstances, it is evident from the papers that the deceased was not a member of the second respondent when he commenced working at the first respondent and neither was he registered as one during the course of his employment. Thus, the complainant's complaint is directed against the wrong pension fund organisation, whereas it should have been directed against the provident fund. However, according to Ms Anita Pullen from the Registrar's office, the registration of the provident fund was cancelled on 14 August 1996. Put differently, the provident fund is no longer in existence and it would be impossible even if its rules permitted it then, for it to pay a spouse's pension now.

