



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR  
(HELD IN JOHANNESBURG)**

**CASE NO: PFA/GA/14345/2007/CMS**

In the complaint between:

**M. LOBEKO**

**Complainant**

and

**CENTRAL RETIREMENT ANNUITY FUND**

**First Respondent**

**SANLAM LIFE INSURANCE LIMITED**

**Second Respondent**

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION  
FUNDS ACT, 24 OF 1956 (“the Act”)**

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1. Introduction

This complaint relates to the administration of the complainant by the respondents. The complainant in this matter is a registered pension fund organisation as described in terms of section 1 of the Act as:

(a) “ any association of persons established with the object providing annuities or lump sum payments for members or former members of such association upon their reaching their retirement dates , or for the dependants of such members or former members upon the such members or former members,” .....

(b).....

A complaint dated 28 May 2007 was received by this office on 12 June 2007, a letter acknowledging receipt thereof was dispatched to the complainant on the 29 June 2007 on the same day a letter was dispatched to the respondents giving them until 27 July 2007 to file their responses to the complaint. Second respondent's response was received by this office on 26 July 2007.

After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons thereof appear below.

2. Factual Background

The deceased became a member of the first respondent on 1 May 1990, where the first respondent agreed with the second respondent to issue a policy with reference number 11285890x7 on the life of the deceased.

The deceased died on the 3<sup>rd</sup> October 2005 and the value of his policy is R16 646.00.

No beneficiary was nominated to receive the death benefit and the deceased died intestate.

3. Complaint

3.1 The complainant (30 years old) is a son of the deceased born out of wedlock, the complainant is dissatisfied with the decision of the trustees of the first respondent to award the whole death benefit in the amount of R16 646.00 to Mrs M S Lecholo ( “the surviving spouse “ )

- 3.2 The complainant further states that he is not financially independent, that he was hoping that the money would enable him to get some form of training that would enable him to be employable.
- 3.3 The complainant further states that his condition has not changed, he is still unemployed and he is in need of financial assistance.

4. Second respondent's Response

The second respondent states that when the documentation relating to the claim was received and processed, the trustees of the first respondent followed the process as described in Part 8, in particular paragraph 7.3 of the rules of the first respondent, read in conjunction with the provisions of section 37C of the Pension Funds Act 24 of 1956.

The second respondent further states that the trustees, after investigations, identified the following persons as candidates for consideration in respect of the division and distribution of the death benefits in an appropriate ratio:

Matlakala Sanah Lecholo: ID 5810230310085 (wife of deceased)  
Mothusi Lobeko: dated of birth 15/11/1976 (illegitimate son of deceased / complainant)  
Elizabeth Lobeko: date of birth unknown (mother of complainant)  
Lydia Fourie: date of birth 29/06/1929 (mother of deceased)

The second respondent further states that the trustees also discovered that the deceased had an Old Mutual Orion Plan Fund Code 78759 which paid out death benefits in the following:

Matlakala Sanah Lecholo (wife of deceased) received R32 284.80  
Mothusi Lobeko (complainant / illegitimate son of deceased) received R24 213.60  
Lydia Fourie (mother of deceased) received R24 213.60

The second respondent further states that at no point maintenance was paid by the deceased to Elizabeth Lobeko (mother of complainant) and they were not living together as husband and wife.

The second respondent further states that the trustees of the first respondent found that the deceased used to give the complainant pocket money from time to time and that at the time of the deceased's death, the complainant was employed as a reception / order clerk earning a salary of R2 056.71 per month.

The second respondent further states that it was also discovered that the

deceased used to give Lydia Fourie (deceased's mother) R200 every month, she is a pensioner earning R760.00 per month.

The second respondent further states that the trustees, after considering all the relevant factors, decided to distribute the death benefits of R16 646.00 under reference 11285890x7, to the surviving spouse Mrs Matlakala Sanah Lecholo.

5. Determination and reasons therefor

- 5.1 Rule 7.3.1 of the first respondent's rules provides that "if a member has a dependant or dependants and did not appoint a nominee to receive the benefit, the benefit is paid to the member's dependant or to one of such dependants or in ratio, to some or all such dependants in the ratio upon which the management committee decides".
- 5.2 Section 37C(1)(a) of the Act provides that "if the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of a member, the benefit shall be paid 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 such dependants".
- 5.3 The rule 7.3.1 of the first respondent and section 37(c)(a) of the Act mentioned gives the board of trustees a discretionary power on the propositions and manner of distributing the proceeds of a death benefit, but, the board of trustees may not fetter its discretion, the discretion has to be exercised reasonably, the board has to consider relevant factors and disregard irrelevant ones.
- 5.4 In *Sithole v ICS Provident Fund and Another* [2000] 4 BPLR 430 (PFA) paragraph 24, it was held that:
- "when making an equitable distribution amongst dependants the board of has to consider the following factors
- the age of the dependants
  - the relationship with the deceased
  - the extent of dependency
  - the wishes of the deceased placed either in the nomination and/or his last will; and
  - financial affairs of the dependants including their future earning capacity potential "
- 5.5 Section 1(b)(i) of the Act provides that " a dependant , in relation to a member, means a person in respect of whom the member is not legally liable for maintenance, if such person , was in the opinion of the board , upon the death of



Yours faithfully

**MAMODUPI MOHLALA**  
**PENSION FUNDS ADJUDICATOR**