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Please quote our ref: PFA/FS/15629/07/KM

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): A R ROOS (“the first complainant”) and CJW ROOS (“the second complainant”) and CJS ROOS (“the third complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“the first respondent”) and WC ROOS (“the second respondent”)

1. Introduction

- 1.1 This matter concerns the allocation of a benefit payable by the respondent pension fund on the death of Mr CJW Roos (“the deceased”).
- 1.2 The complaint was received by this office on 10 July 2007 and a letter acknowledging receipt thereof was sent to the complainant on 20 July 2007. On the same date a letter was dispatched to the first respondent giving it until 20 August 2007 to file a response to the complaint. A response dated 17 August 2007 was received on the same date, a copy of which was forwarded to the complainant. The second respondent was joined to the proceedings in terms of 30G(d) of the Act and given an opportunity to make submissions in response to the complaint. Her response was received by this office on 2 October 2007. No reply was received from the complainants.
- 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.

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 Mthupi (Assistant Adjudicator)

Office Manager: L Manuel

2. The complaint

- 2.1 The first to third complainants are the biological children of the deceased from his first marriage. The second respondent is the surviving spouse of the deceased's second marriage and the stepmother of the complainants.
- 2.2 The deceased was a member of the respondent at the time of his death on 20 October 2006, and as a consequence a benefit of R152 586 became payable to the beneficiaries of the deceased. The board of trustees of the fund allocated the entire proceeds to the second respondent.
- 2.3 The complainants are all majors and were not financially dependent on their father at the time of his death. Their dissatisfaction stems from the fact that they have not been included in a distribution of the benefit. They allege that their father commenced contributing to the respondent when their mother (the deceased's former spouse) was still alive in 1991, and that the monies should therefore be paid to them. They also state that the second respondent will not pass on any remaining benefit to them on her death, but will leave the proceeds of her estate, including these funds to her own children, who were not related to the deceased.
- 2.4 In a letter to the first respondent annexed to the complaint it is stated that the second complainant has been unemployed for a few months and had to borrow R18 000 to fund the opportunity to work overseas. Apart from that, the financial position of the complainants is not set out.
- 2.5 The complainants ask that this tribunal investigate the decision of the board of trustees in order to ascertain whether or not it is justifiable.

3. Response from the first respondent

- 3.1 The first respondent claims that the decision to allocate the benefit was made in accordance with the provision of its rules and the requirements of section 37C of the Act.
- 3.2 It states that the deceased did not nominate any beneficiaries. The board of trustees of the first respondent identified the second respondent and the complainants as dependants of the deceased in terms of the definition of "dependant" in the Act. Based on the information at its disposal, it considered the following factors:
 - The second respondent and the deceased had been living together

as husband and wife since 1991 and had been married since 1995;

- None of the complainants were financially dependent on the deceased at the time of his death;
- The deceased had not expressed a wish to benefit them in a nomination form, although he had provided for them to a limited extent in his will;
- The second respondent was married to the deceased at the time of his death.

3.3 It has emerged through other correspondence annexed to the papers that the respondent also considered the age of the second respondent (58 years) as an important factor compared with the ages of the complainants, presumably because her earning capacity would be far less than theirs. It also states that it was aware of the benefits accruing to the second respondent from other sources.

3.4 It submits that, in view of the above circumstances, it cannot entertain the complainants' request to reverse the decision.

4. Response from the second respondent

4.1 The second respondent states that she was married in community of property to the deceased. She confirms that none of the complainants were nominated as beneficiaries in respect of the benefit payable from the first respondent.

4.2 She alleges that the complainants, as well as the grand-children of the deceased, benefited from his will in the amounts shown on the provisional liquidation and distribution account annexed to her response. This shows an amount of approximately R4 600 in respect of each complainant and an amount of approximately R3 700 in respect of each grand-child, amounting to R25 658. (I have assumed in reading this distribution account that all references to the de Sousa family members are to the step-children or grandchildren of the deceased referred to in the complaint.)

4.3 The second respondent also states that the complainants received an amount of R97 127 from the Sappi Pension Fund on their father's death. No details are given as to how this amount was distributed between them. She places on record that she was already married to the deceased when he started contributing to that pension fund. It is also evident from the annexed statement from the Sappi Pension Fund that the second respondent received an amount of R550 389 from that fund.

- 4.4 Finally, she submits that all three complainants are of an age where they are able to earn future income and to be self-sufficient. She, on the other hand, is 58 years of age and has not been employed for at least 20 years. She claims that any capital she currently has will have to be invested in order to provide income for the remainder of her years.

5. Determination and reasons therefor

- 5.1 Section 37C(1) confers a discretion on the board of trustees to distribute the proceeds of a death benefit among the dependants and/or nominated beneficiaries of a deceased member in such proportions as the board may deem equitable. The section does not specify the criteria to be used other than to require the board to act equitably. Equity requires that the needs of all the dependants be considered with reference to the relevant considerations that have to be taken into account.
- 5.2 Factors that ought to be considered include the respective ages of the dependants, the extent of their dependency, their relationship with the deceased, the financial circumstances of the dependants, their future earning capacity or potential, the wishes of the deceased, and the amount available for distribution.
- 5.3 However, it is not essential for each dependant or nominated beneficiary to share in the distribution. One or two dependants may benefit to the exclusion of all other dependants and nominees (see *Van der Merwe and Others v Southern Life Association Ltd and Another*[2000] 3 BPLR 321 (PFA)).
- 5.4 In *Segal and Others v Lifestyle Retirement Annuity Fund* [2001]1 BPLR 1519(PFA), which also involved a challenge by the three biological children of the deceased to an allocation made by the trustees of the fund to his widow, the following was stated:
- “There is evidence that the fund investigated the circumstances of all the potential beneficiaries and, giving due consideration to its findings, came to the conclusion that only the widow was factually dependent on the deceased for maintenance and support, and that all the other dependants are younger and more able to secure their own future..... It is clear, therefore, that the fund applied what it considered to be a fair and equitable allocation of benefits, after giving due consideration to all the dependants, and I must support its actions accordingly.”
- 5.5 Likewise, in the present case, the board of trustees has arrived at a similar conclusion on similar facts. There is nothing to suggest that it considered irrelevant factors or disregarded relevant ones, and it cannot be said that the decision arrived at was an unreasonable one in the circumstances. There is therefore no basis for interference with the decision, and the

complaint cannot succeed.

6. Relief

6.1 The complaint is dismissed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR