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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): TN JELE (LATE MR MD JELE) (“the complainant”) v MINE WORKERS PROVIDENT FUND (“the respondent”)**

**Introduction**

- [1] The complaint concerns the non-payment of the late husband’s benefit on his withdrawal from the fund in 1993.
- [2] The complaint was received by this office on 13 February 2006, and a letter acknowledging receipt thereof was dispatched to the complainant on 15 February 2006. On the same day a letter was sent to the respondent giving it until 8 March 2006 to submit a response to the complaint. The response was received on 10 April 2006, and copied to the complainant on 21 April 2006. A reply was received from the complainant on 22 August 2006.
- [3] It is considered unnecessary to hold a hearing in this matter. The determination, together with reasons therefor, is set out below.

**Complaint**

- [4] The complainant is the surviving spouse of Muzi Daniel Jele (“the deceased”) who died on 7 August 2001. The complainant is aggrieved by the non-payment of the deceased’s benefit by the Mines 1970 Provident Fund when he was retrenched from employment in 1993.

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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

## **Response**

- [5] The respondent states that the benefit which was previously held in the Mines 1970 Provident Fund was transferred to the Mineworkers Provident Fund during the deceased's period of membership. It states further that the amount representing the aforesaid benefit formed part of the benefit that was paid out to the deceased when he was retrenched from service in 1993.
- [6] The respondent points out that it is clear from the retrenchment letter dated 31 March 1993, attached to the complaint, that the deceased had received his benefit from the respondent when he left employment in 1993, and the complaint appears to be based on a misunderstanding of the contents of the aforesaid letter which was issued by the employer to the retrenched employees.
- [7] The respondent confirms that the deceased was paid his full benefit for the period of membership and no further benefits are due to the deceased or his dependants.

## **Determination and reasons therefor**

- [8] Section 30I of the Pension Funds Act imposes certain time limits with regard to lodging of complaints before the Adjudicator and states as follows:
- “(1) The Adjudicator shall 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 by him or her in writing.
  - (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
  - (3) The Adjudicator may on good cause shown or of his or her own motion -
    - (a) either before or after expiry of any period prescribed by this Chapter, extend such period;
    - (b) condone non compliance with any time limit prescribed by this Chapter.”
- [9] The date of accrual of the complainant's husband's benefit was in April 1993. The complaint was lodged on 13 February 2006. It ought to have been lodged in April 1996. The complaint was therefore received almost 10 years out of time.

- [10] 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.”

- [11] However, that the complaint has become time-barred in terms of section 30I of the Act is not the end of the matter as this tribunal still has a discretion to extend the “three-year” time period or to condone non-compliance therewith. But the complainant needs to show cause to enable this tribunal to do that.

- [12] 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 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.”

- [13] It is clear that more than 12 years elapsed before the complainant lodged her complaint with this office. In the view of this tribunal, this is an extraordinarily long delay. Nor has she provided reasons for the delay to support the condonation of her non-compliance with the time limits set out in the Act.

[14] Regarding the complainant's prospects of success on the merits, the respondent states that the deceased's benefit which was previously held by the Mines 1970 Provident Fund was transferred to the respondent during the deceased's period of membership and this amount formed part of the benefit that was paid out to the deceased when he was retrenched in 1993. This explains why the deceased did not pursue this matter during his lifetime. The probabilities are that the deceased was aware that there was no further benefit payable to him. It appears therefore that the complainant's prospects of obtaining the relief she seeks are poor.

[15] Taking the above factors into account, this tribunal finds that no good cause exists for it to condone the non-compliance with the time limit as prescribed in the section. The complaint therefore remains time-barred and this tribunal may not investigate it.

### **Relief**

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

Dated at Cape Town on this the                      day of                      2008.

Yours faithfully

**Mamodupi Mohlala**  
**Pension Funds Adjudicator**