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Our reference: PFA/KZN/3999/2005/SG

## **DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – S E Mazibuko v Longefurn Provident Fund**

### Introduction

[1] The complaint relates to the distribution of a death benefit as a result of the member’s death. The complaint was received by this office on 22 June 2005, and the information contained therein was not sufficient to enable this office to proceed with the investigation. A letter acknowledging receipt was sent to you on 27 June 2005. The reformulated complaint was received by this office on 14 July 2005. The response to the complaint was received on 31 October 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

### Factual background

[2] You allege that you are the beneficiary of Ms K H Shadu, who passed away on 2 January 2004. Ms Shadu was a member of Longefurn Provident Fund (“the fund”) during the time of her death, and thus a death benefit became payable as a result of her death.

### The complaint

[3] The complaint is that since the passing away of Ms Shadu, her death benefit remains undistributed by the fund.

### Fund response

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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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

[4] The response is submitted the by the administrator of the fund, Robson Savage, on behalf of the fund. The administrator submits that the board of the fund has not made an allocation of the death benefit. It further states it is awaiting the resolution of the board for it to make payment of the benefit. It states that it has requested outstanding information from the board, for example, the signed resolution setting out the payment in detail and certified copies of identity documents for the beneficiaries, but to no avail.

#### Determination and reasons therefor

- [5] The distribution of the death benefit is governed by section 37C of the Pension Funds Act (“the Act”). Section 37C gives the board an unfettered discretion to distribute a death benefit amongst the dependants of the deceased in a manner and proportion that it is just and equitable. In exercising its discretion, the board must take into account a number of relevant factors, such as but not limited to: the ages of the parties, the relationship with the deceased, extent of dependence; financial affairs of the beneficiaries, and the wishes of the deceased. (See *Moir v Reef Group Pension Plan & Others* [2000] 6 BPLR 629 (PFA) at 629F – H).
- [6] Further, section 37C affords the board a period of one year to conduct its investigation and locate the dependants of the deceased. It is almost three years since the deceased’s death and the distribution of the death benefit is not finalised. The fund did not provide reasons for the delay in the finalisation of the distribution of the death benefit. A period of three years is inordinately long as a result of which the beneficiaries have suffered prejudice.

#### Relief

- [7] In the result, the order of this Tribunal is as follows:

The Board of Management is ordered to conclude its investigation and allocate the death benefit in terms of section 37C of the Act together with fund growth thereon over the period 3 January 2005 until the date of payment, within 6 weeks of the date of this determination.

DATED AT CAPE TOWN ON THIS THE                      DAY OF                      2006.

Yours faithfully,

Vuyani Ngalwana  
**Pensions Funds Adjudicator**