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Please quote our ref: PFA/NC/3907/05/LS

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – I MAROPONG v MUNICIPAL COUNCILLORS PENSION FUND**

Introduction

[1] This complaint concerns the distribution of the benefit payable on the death of the late MA Maropong. The complaint was received by this office on 11 August 2005 and a letter acknowledging receipt thereof sent to you on 12 August 2005. On 12 August 2005 a letter was dispatched to the respondent giving it until 2 September 2005 to file a response to the complaint. The response dated 22 September 2005 was received on 30 September 2005. On 30 September 2005 the response was sent to you for a reply by 20 October 2005. A reply was received from you on 19 October 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Facts and complaint

- [2] The late MA Maropong (“the deceased”) died on 26 March 2004 whereupon a death benefit of R486 426.05 became payable by the fund.
- [3] The trustees decided to retain 50% of the benefit for a period of 12 months. This was done in case other applications were received or other dependants were traced.
- [4] In their discretion the trustees resolved on 22 September 2004 to distribute the balance of the benefit as follows: R170 249.12 to yourself, R12 160.65 to Monica Marapong (the deceased’s daughter), R12 160.65

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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

- to Aria Maropong (the deceased's daughter), R24 312.30 to Ambrose Maropong (the deceased's son) and R24 321.30 to Tumelo Maropong (the deceased's daughter).
- [5] The fund states that one Ms Veronica Sopati ("Ms Sopati") thereafter applied for benefits from the fund. In an undated affidavit she stated that she had had a child, namely Onalenna Sopati ("Onalenna"), with the deceased and that he had been maintaining the child prior to his death. Based on all the evidence, the trustees state that they were satisfied that Onalenna was indeed a dependant. However it appears that no decision was taken at that stage as to what portion of the death benefit to allocate to her.
- [6] However in your complaint dated 11 August 2005 you assumed that a portion had been awarded to Onalenna. You also assumed that Ambrose Maropong ("Ambrose") had been excluded from the distribution. Your complaint was that Ambrose ought to have shared in the distribution as he is mentally disabled. You also contended that Onalenna was not the deceased's child and therefore should not have shared in the distribution.
- [7] In response to this complaint, the fund addressed a letter dated 22 September 2005 to you requesting you to submit full details regarding Ambrose's condition.
- [8] You provided the fund with medical reports concerning Ambrose accordingly. On the basis of this evidence the fund revisited their previous decision and decided to distribute the benefit as follows: R170 249.12 to yourself, R12 160.65 to Monica Marapong, R12 160.65 to Aria Maropong, R133 767.16 to Ambrose Maropong (being an additional R109 445.88) and R24 321.30 to Tumelo Maropong (the deceased's daughter).
- [9] Your complaint against the trustees' revised decision is that no DNA test has, to date, been performed to prove that Onalenna is the deceased's child. Therefore, according to you, Onalenna has no right to share in the benefit.

### Response

- [10] The trustees' response to your complaint concerning Onalenna is that they relied on the undated affidavit by Ms Sopati (see paragraph 5). They also relied on a copy of a diary page (attached to your complaint) which purported to be an agreement by the deceased to pay maintenance in respect of Onalenna. Further also the trustees relied on bank statements furnished by Ms Sopati which reflected credit transfers from the deceased.
- [11] The trustees have also submitted an undated letter from the Department

of Justice addressed to the Frances Baard Municipality wherein it states that the deceased was maintaining Onelenna and that she should be considered in the distribution accordingly. In addition the trustees have submitted a letter dated 2 December 2004 from the Public Protector's office wherein it states that documentation from Magistrate Kudumane confirms that the deceased was indeed maintaining Onalenna at the time of his death.

#### Determination and reasons therefor

- [12] The distribution of death benefits is governed by section 37C of the Act. In terms thereof the trustees have a discretion to distribute the benefit as *they deem equitable*. A proper exercise of discretion in turn requires that the trustees consider all relevant factors, exclude irrelevant factors and do not fetter their discretion. Provided the trustees pass this test, there is no basis on which I can interfere with their decision. Therefore even if I disagree with their decision, unless it is shown that the trustees exercised their discretion improperly, I have no power to intervene.
- [13] You state in your letter dated 14 October 2005 that, after his death, you volunteered to continue paying the maintenance which the deceased had been paying in respect of Onalenna just before he died. Therefore it appears to be common cause that the deceased was indeed contributing towards Onalenna maintenance at the time of his death.
- [14] The Act defines a dependant to include a person who was, in the opinion of the board, in fact dependent on the deceased member for maintenance at the time of his death. Therefore even if DNA tests proved that Onalenna was not the deceased's biological child, the fact that the deceased paid towards her maintenance qualifies her as a dependant in terms of the Act. The trustees therefore correctly considered her in the distribution.
- [15] You have not provided any evidence that the trustees failed to take into account all relevant considerations and/or to exclude irrelevant considerations. On the contrary, I am satisfied that the evidence shows that the trustees conducted a thorough and proper investigation before distributing the benefit. There is accordingly no basis on which I can interfere with their decision.

#### Relief

- [16] In the result, your complaint cannot succeed.

