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Please quote our ref: PFA/GA/13863/2007/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, (“the act”): BO GUMBI (“the complainant”) v CITY OF JOHANNESBURG PENSION FUND (“the first respondent”)/ Lekana Employee Benefit Solutions (“the second respondent”)

1. Introduction

1.1 This complaint relates to the value of the complainant’s retirement benefit.

1.2 The complaint dated 3 May 2007 was received by this office on the same date. A letter acknowledging receipt of the complaint was sent to the complainant on 19 June 2007. On the same date a letter was dispatched to the second respondent giving it until 19 July 2007 to file a response to the complaint. A response dated 14 November was received from the second respondent on 15 November 2007. On 4 January 2008 a letter was sent to the complainant requesting him to file a reply on or before 15 January 2008. No reply was filed by the complainant.

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

2 Factual background

2.1 The complainant was an employee of the Johannesburg Metropolitan Council and by virtue of his employment became a member of the first respondent until he went on retirement on 30 December 2006.

3. Complaint

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (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), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Financial Manager: F Mantsho

The complainant is aggrieved by the amount of the retirement he received upon his exit from the first respondent. It is contended by the complainant that the value of his retirement benefit is different from the quotes he received.

4. Response

- 4.1 The second respondent has filed a response on behalf of the first respondent in its capacity as the administrator of the first respondent and states that the complainant was paid a retirement benefit which composed in the following:

Lump Sum	R210 150.46
Less Tax	R 0.00
Less Home Loan	<u>R34 622.42</u>
Nett Benefit	R175 528.04

- 4.2 The second respondent has further stated that a monthly pension of R2 640.19 is payable on the 27th of each month to the complainant commencing on 1 February 2007.

5. Determination and reasons therefor

- 5.1 The crisp issue for determination is whether the first respondent has paid the complainant the correct withdrawal benefit in terms of its rules when she went on retirement..

- 5.2 The rules of a pension fund are binding on it in terms of section 13 of the Act which reads:

“Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers, and on any person who claims under the rules or whose claim is derived from a person so claiming”

In addition to the above, it was held in the matter of *Mbokazi v Textile & Allied Workers Provident Fund and Another [2002] 3 BPLR 3200 (PFA)* at paragraph 23 that:

“The rules of a fund are binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming..The complainant, as a member of the fund, is also bound by its rules. He is thus not entitled to payment of his benefit contrary to the provisions of the rules of the fund.”

The binding nature of the rules was further confirmed in the matter of *Tek*

Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA) at page 235 paragraph A-B that:

“The pension fund, the powers and duties of its trustees, and the rights and obligations of its members and the employer are governed by the rules of the fund, relevant legislation and the common law.”

5.3 Rule 16 of the first respondent dealing with retirement benefit reads:

“(a) a lump-sum equal to 7 per cent of his final average emoluments per year of pensionable service; and

(b) a pension equal to the percentage specified below and opposite the age at retirement of his final average emoluments per year of pensionable:

EXACT AGE AT RETIREMENT (YEARS)	PERCENTAGE The complainant was
60 or under	1.7516
61	1.8296
62	1.9160
63	2.0108
64	2.1140
65	2.2256.”

5.4 It is evident from the benefit breakdown that the complainant has received her full retirement benefit in terms of the rules of the first respondent. It follows therefore that the first respondent correctly calculated the complainant’s benefit. This tribunal is satisfied that the amounts reflected in the benefit statement are the correct amount which the complainant should have received upon her retirement. There is no evidence to suggest that any unauthorised ‘penalties’ were deducted from the complainant’s benefit when she exited the first respondent. In the premises this tribunal finds that the complainant’s retirement benefit has been correctly computed.

6. This complaint cannot succeed and is therefore dismissed.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR