



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): C v IMPALA PLATINUM PROVIDENT FUND (“the fund”) and LEKANA EMPLOYEE BENEFIT SOLUTIONS (“Lekana” or “the administrator”)

Introduction

[1] Your complaint concerns the non-payment of a disability benefit to your husband. The complaint was received by this office on 5 September 2005, and the information contained therein was not sufficient to enable this office to proceed with the investigation. The reformulated complaint was received by this office on 16 November 2005. A letter acknowledging receipt was dispatched to you on 9 February 2005. On the same day a letter was sent to Sanlam Life Insurance Limited (“Sanlam”), which appears to be the current administrator of the fund, giving it until 2 March 2006 to submit a response to the complaint. The response was received from Sanlam on 2 March 2006. A further response was received from Lekana (which appears to be the previous administrator of the fund) on 3 August 2006. The response was sent to you on 1 September 2006. No reply was received from you. I consider it unnecessary to hold a hearing in this matter. My determination, together with reasons therefor, is set out below.

Complaint

[2] You are aggrieved by the non-payment of a disability benefit to your husband. You state that your husband commenced employment with Impala Platinum Limited on 11 August 1983. He became a member of the

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

fund by virtue of his employment. He resigned from his service due to ill-health on 6 November 2000. Upon termination of his service, he received a withdrawal benefit from the fund. You state that you tried to claim a disability benefit on behalf of your husband without success. You state further that your husband is currently receiving treatment from a traditional healer for reasons that cannot be disclosed.

Response

- [3] Sanlam states that it took over the administration of the fund on 1 March 2003 and all the files of the fund were transferred to it on 18 December 2003 by Lekana.
- [4] Lekana confirms that it is not the current administrator of the fund, and for this reason it had to rely on the information which is available on its system. It confirms that the fund's files were transferred to Sanlam in 2003.
- [5] Lekana states that Impala Platinum Limited, your husband's employer, submitted a withdrawal claim to the fund when your husband resigned from employment in 2000. It states that there was no reason for the fund to consider the claim as anything other than a normal resignation, and as such no disability claim was ever considered.
- [6] Lekana confirms that your husband was paid his full withdrawal benefit of R13 558.16 in terms of the rules of the fund. It states that no further benefits are paid to your husband by the fund.

Determination and reasons therefor

- [7] 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.”

[8] The date of accrual of your husband’s benefit was in November 2000. Your complaint was lodged on 16 November 2005. It ought to have been lodged in November 2003. The complaint was therefore received almost two years out of time.

[9] 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.”

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

[11] 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.”

- [12] More than 5 years elapsed before you lodged your complaint with this office, which, in my view, is an extraordinarily long delay. Nor have you provided cogent reasons for the delay to support the condonation of your non-compliance with the time limits set out in the Act.
- [13] Regarding your prospects of success on the merits, you have furnished no proof that a disability claim was indeed lodged with the fund. Lekana states that according to the information which is available on its system a withdrawal form was submitted by the employer when your husband resigned from his employment. It states further that a full withdrawal benefit of R13 558.16 was paid out to your husband. It denies that a disability claim was lodged by your husband. It is clear from the evidence before me that the reason for termination of service by your husband was indicated as resignation on the withdrawal form, and there is nothing to suggest that your husband's disability was brought to the fund's attention at the time. It appears therefore that your prospects of obtaining the relief you seek are poor.
- [14] Taking the above factors into account, I find that no good cause exists for me to condone the non-compliance with the time limit as prescribed in the section. Your complaint therefore remains time-barred and I may not investigate it.

Relief

- [15] In the result, your complaint is dismissed.

Dated at Cape Town on this the day of 2007.

Yours faithfully

Vuyani Ngalwana

Pension Funds Adjudicator