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Please quote reference: PFA/KZN/3403/2005/SG

## **DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – W A Marais v Mine Employees Pension Fund (“the fund”)**

### Introduction

[1] This matter relates to the amount of the retirement benefit you received when you exited the fund. Your complaint was received by this office on 12 July 2005 and a letter acknowledging receipt thereof was sent to you on 10 August 2005. The response to the complaint, which was copied to you, was received on 5 September 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

### Factual Background

[2] You were a member of the Mine Employees Pension Fund (“the fund”). You exited the fund on 16 March 1995, when you went on early retirement due to ill-health. You received your benefit of which you commuted one-third in cash and the remainder is payable as a monthly pension.

### Complaint

[3] You allege that prior to your decision to go on early retirement, you made enquiries (to a person whose identity you did not reveal) regarding the amount of the benefit you would receive. You further allege that you were provided a quote by a person (whose identity you did not reveal) in the offices of the fund. However, the benefit you received is less than the amount

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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

reflected in the quote.

- [4] You are aggrieved that the fund paid a lesser benefit than the one promised. You contend that had you been made aware that you would receive an amount of the benefit lesser than the one you were promised, you would not have decided to go on early retirement. You want the fund to pay you the difference between the amount of the benefit you received and the amount of the benefit you were allegedly promised.

#### Fund response

- [5] The fund contends that it is unable to conduct an investigation as regards your complaint due to insufficient information you provided. According to the fund, it invited you to provide information which will enable it to investigate your complaint and requested the following information: the date you made inquiries, the name of the person you spoke to and the amount of the benefit you were promised.
- [6] On 14 January 2006, you informed my Assistant Adjudicator, Mr Solomzi Gcelu telephonically that you are unable to provide the information requested by the fund as this happened too long ago.

#### Determination and reasons therefor

- [7] I am precluded by Section 30I(1) of the Act to investigate a complaint lodged with this office more than three years after the occurrence of the event which the complaint relates to. However, I have discretion to extend the three year time period or to condone non-compliance therewith, provided there is good cause shown.
- [8] 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.”

- [9] The complaint relates to the amount of the benefit you received when you

exited the fund on 16 March 1995. The complaint was lodged with this office on 4 July 2005. This is more than three years after the occurrence of the event which the complaint relates to. Thus, the complaint is time-barred. However, that does not spell the end of the matter as I have to determine whether good cause exists for condoning its late lodging.

[10] 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) at 532C-F the court said:

In deciding whether sufficient cause has been shown, the basic principle is that the Court has a 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."

[11] A period of 10 years has elapsed since the occurrence of the event which the complaint relates to. The reason you advanced for lodging the complaint outside the prescribed period is that you learnt about the existence of this tribunal from recent media reports. In any event, even if I were to condone the late lodgement of the complaint, the prospects of success on merits are not hopeful. The fund does not have in its possession information pertaining to your complaint. The fund cannot be faulted for this as I consider the period that has lapsed between the occurrence of the event and the lodging of the complaint inordinately long. The fund will be prejudiced if it were now required to respond to your complaint. In the circumstances, I find that no good cause exists for me to condone the late lodging of this complaint.

### Relief

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

DATED AT CAPE TOWN THIS THE                      DAY OF                      2006.

Yours faithfully

Vuyani Ngalwana  
**Pension Funds Adjudicator**