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Please quote our reference: PFA/GA/6056/2005/PM

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): N N MGWENYA (“the complainant”) v MINE WORKERS PROVIDENT FUND (“first respondent”) / CONSOLIDATED MURCHISON MINE (“second respondent”)**

1. Introduction

- 1.1 This complaint concerns the distribution of death benefits by the first respondent upon the death of its member Mr J G Nxumalo (“the deceased”).
- 1.2 An initial complaint was received by this office from the complainant acting through her legal advisers on 17 October 2005. A letter was then sent to the complainant acknowledging receipt thereof and dated 28 October 2005. On the same day a letter was sent to the second respondent informing them of the complaint and giving them until 18 November 2005 to respond to the complaint. A response was received from the second respondent on 04 November 2005.

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M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shroobree (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), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

Office Manager: L Manuel

## 2. Factual Background

- 2.1 The deceased passed away on 17 October 2003. The deceased was a member of the first respondent by virtue of his employment with the second respondent. The complainant is the deceased's spouse. At the time of his death, the deceased was married to the complainant as well as another woman, one Miss M L Nkuna.
- 2.2 Upon the deceased's death, a death benefit became payable to both the spouses of the deceased as well as the relevant dependants.

## 3. Complaint

- 3.1 The complainant maintains that she has not received any death benefits due to her from the first respondent

## 4. Response

- 4.1 The second respondent confirms that the deceased had two spouses at the time of his death. A family benefit claim form was completed in respect of both women and only M L Nkuna went to the office of the second respondent to have the forms signed. One of the second respondent's employees phoned the complainant's legal representatives to inform them that the complainant needed to sign the claim form, to which he was told that the complainant was busy writing her exams.
- 4.2 On 16 March 2004, a letter was sent to the complainant's legal representatives requesting the complainant to go to the offices of the second respondent with her identity document, marriage certificate and identity documents of her children. To date the complainant has not complied with the request. The second respondent states that the dependants of the deceased have to visit the second respondent's offices with all the relevant information and sign the documentation before submission to the first respondent for pay out.
- 4.3 After considering all the relevant submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons thereof appear below.

## 5. Determination and reasons thereof

- 5.1 Section 1 of the Act defines a complaint as follows:

**"Complaint"** means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation or application of its rules, and

alleging –

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund.

- 5.2 The complainant through her legal representatives maintains that she has not received any death benefits due to her. The Adjudicator in the case of *Crone v Southern Life Association Ltd and Others* [1999] 9 BPLR 1 (PFA) held that one of the duties of the employer was to furnish updated member information to the fund administrator.
- 5.3 The second respondent in this case has on numerous occasions tried to get the complainant to sign the necessary documentation that will entitle her to the payment of the death benefit. In a letter dated 25 October 2005 from the second respondent to the complainant, the second respondent clearly stated that claim forms were submitted to the first respondent on behalf of the complainant, but because they had not been signed, they were not accepted by the first respondent. Several other letters were written to the complainant's legal representatives requesting the complainant to go to the office of the second respondent and sign the necessary documentation.
- 5.4 The second respondent ("the employer") has taken several steps to furnish the first respondent with all the information that is needed in order to process the claim, the second respondent has exercised its duty but with the complainant not cooperating, there is only so much that the second respondent can do. In order for the second respondent to finalize documentation in respect of death claims the dependants of the deceased have to furnish the second respondent with all the relevant information, and sign the relevant documentation before submission to the first respondent.
- 5.5 In this instance the complaint cannot succeed and it is hereby dismissed.

DATED at JOHANNESBURG on this                      day of                      2007.

Yours faithfully

**MAMODUPI MOHLALA**  
**PENSION FUNDS ADJUDICATOR**