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Please quote our reference: PFA/KZN/1200/2003/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): B Mkonde v Verref Provident Fund (“the fund”)

Introduction

[1] The matter concerns the non-payment of your withdrawal benefit. The complaint was first received by this office on 21 August 2003. This office required more information from you and when you did not respond to our letter dated 1 October 2003 by 14 November 2003, your file was closed on 18 November 2003. We subsequently received several letters from you over a period of time during which we contacted Lekana Employee Benefits (“Lekana”), the fund administrators, in order to respond to your complaint. We advised you of Lekana’s response on 1 August 2005. You again submitted a complaint received by this office on 19 August 2005. We re-opened the file on 6 December 2005. This office contacted Lekana again, the last time being telephonically on 20 April 2006, when Lekana confirmed the previous information provided to this office. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. As the facts are known to the parties, I shall not burden this determination by repeating them here. My determination and reasons therefor appear below.

Complaint

[2] You are unhappy about the failure of the fund to make payment to you of the full benefit due to you after you were dismissed from Coverland-Durban on 1 August 1994.

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

Response by Lekana

- [3] Lekana says that its records show that you were paid an amount of R5 657.56 by cheque on 23 May 1995. It would have to search its records in the archives in order to obtain supporting or further information in regard to the payment. Lekana also states that it had requested your former employer to also search for any records that it may have in regard to your withdrawal benefit but no response had been received. Lekana adds that in view of the amount of effort that it has put into this matter, it would not be unreasonable to shift the onus of proof of non-payment to you.

Determination and reasons therefor

- [4] It is of grave concern to me that you have taken almost 10 years to recover the withdrawal benefit that you claim you never received.

- [5] Section 30I of the Act reads:

“(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; [or]
 (b) condone non compliance with any time limit prescribed by this Chapter.”

- [6] It is clear from the complaint that the events to which it relates occurred substantially more than three years before this complaint was lodged or received by this office for the first time on 21 August 2003 and again on 19 August 2005.

- [7] 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

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator