



HEAD OFFICE  
Johannesburg  
1<sup>st</sup> Floor, Norfolk House  
Cnr 5<sup>th</sup> 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](mailto: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](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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**Please quote our ref: PFA/KZN/4436/05/LS**

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – LB HLONGWA v UNILEVER SA PENSION FUND (“the fund”) AND SANLAM LIFE INSURANCE LIMITED (“Sanlam”)**

Introduction

[1] This matter concerns the manner of payment of a death benefit. The complaint was received by this office on 21 July 2005 and a letter acknowledging receipt thereof sent to the complainant on 7 October 2005. On 8 October 2005 a letter was dispatched to the fund giving it until 28 October 2005 to file a response to the complaint. Another letter was sent to Sanlam Life Insurance Limited on 13 October giving it until 3 November 2005 to file a response to the complaint. The response from the fund dated 8 March 2006 was received on 10 March 2006 and the response from Sanlam was received on 3 November 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Facts

[2] Your late husband, Zacharia Mbhekeni Hlongwa (“the deceased”) was a member of the Unilever SA Pension Fund (“the fund”). He was due to retire on 30 June 2001. However he died suddenly on 22 June 2001 whereupon a death benefit of R297 838.25 became payable by the fund. The deceased was survived by you (his wife), your three minor children: Malindi Hlongwa, age 19, Tholakele Hlongwa, age 10, and Nonhlanhla Hlongwa, age 6.

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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), N van Coller (Assistant Adjudicator), L Mbalu (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator)

Office Manager: L Manuel

- [3] The trustees in their discretion distributed the death benefit to you and your children in equal shares of R74 459.56 which shares were applied to purchase Sanlam annuities. You are currently receiving monthly incomes from the annuities.

### Complaint

- [4] Your complaint is that you did not receive any portion of the death benefit in cash. You state that you were 'forced' to invest the money in Sanlam because, prior to his death, the deceased with the assistance of one Mr Thembinkosi Mkhize of Sanlam had signed an option form to commute one-third of his retirement benefit and to purchase an annuity with the remaining two thirds from Sanlam.
- [5] According to you, from the time your husband died, you had explained to Mr Mkhize that you wanted your benefit to be paid in a cash lump sum. Mr Mkhize however advised you that you were only permitted to receive a monthly income from the fund because this was your husband's wish. You submit that Mr Mkhize did not explain to you as an uneducated person what the implications of purchasing an annuity entailed.
- [6] You state further that you and Mr Mkhize went to your husband's employer requesting that your benefit be paid to you in a cash lump sum. However the employer also advised you that you were not entitled to any portion in cash.
- [7] You would like one third of the death benefit to be paid to you in cash in order to purchase a house.

### Fund's response

- [8] The fund refers to Mr Mkhize as your 'financial advisor' and states that he presented the fund with contract documents signed by both you and your children authorizing the purchase of Sanlam annuities. The contracts stipulated that you would receive the proceeds of the annuities on behalf of the minor children.
- [9] Pursuant to the contracts and Mr Mkhize's instructions, the fund states that the monies were transferred to Sanlam.
- [10] The fund states that although you did have the option to commute the pensions for cash in terms of the rules, you did not exercise this option.

### Mr Mkhize's letter

- [11] Attached to your complaint is a letter dated 3 March 2004 from Mr Mkhize



**VUYANI NGALWANA**  
**PENSION FUNDS ADJUDICATOR**