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Please quote our reference: PFA/KZN/11244/2006/AM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): D Mthembu (“the complainant”) v Mine Workers Provident Fund (“the respondent”)

1. Introduction

- 1.1 The complaint concerns failure by the respondent to pay the complainant the death benefit allegedly due to him as a result of the death of his late son, Mr J Mthembu (“the deceased”) who was at the time of his death a member of the respondent.
- 1.2 An initial complaint was received on 27 October 2006, but due to insufficient information contained in it on 8 November 2006 this office sent the complainant a letter acknowledging receipt of the complaint and requested her to reformulate her complaint. A reformulated complaint was received on 14 February 2007 and a letter acknowledging receipt thereof was sent to the complainant on 5 April 2007. On the same date a letter was dispatched to the respondent giving it until 7 May 2007 to file its response to the complaint. On 7 May 2007 a response was received from the respondent. This response was forwarded to the complainant on 26 November 2007. The complainant, however, omitted to reply.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 1.3 After considering all the written submissions presented, it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefore appear below.

2. Factual Background

- 2.1 The complainant is allegedly the father of the late Mr J Mthembu (“the deceased”).
- 2.2 During the deceased lifetime, the late Mr J Mthembu was a member of the respondent until he died on 25 February 2005.
- 2.3 To date, no payment of the benefit was received by the complainant from the respondent.

3. Complaint

- 3.1 The complainant is aggrieved by the respondent’s failure to pay the death benefit due to him as a result of his son’s death. The complainant states that since the death of his son on 25 February 2005 no benefit was paid to him by the respondent.

4. Responses

- 4.1 This office received a response from the respondent.

The respondent states that the complainant is not entitled to receive the benefit for the following reasons:

- the deceased is not the biological son of the complainant; the deceased was from Mozambique and his surname was Janbra. When he came to South Africa he was accommodated by the complainant and then changed his surname to that of the complainant;
- the late member subsequently got married and had two children. The beneficiaries therefore are the deceased’s spouse and two children.

- 4.2 The respondent concludes that the information aforementioned was verified by the deceased’s wife and the complainant’s wife as well.

5. Determination and reasons therefor

- 5.1 The payment of the death benefit is regulated by section 37C of the Act, read in conjunction with the definition of a “dependant” in section 1. The

primary purpose of this section is to protect those who were financially dependent on the deceased during his lifetime. It is the trustee's responsibility when dealing with the payment of death benefits to conduct a thorough investigation to determine the dependants, to thereafter decide on an equitable distribution and finally decide on the most appropriate mode of payment of the benefits.

- 5.2 In the present matter, the complainant did not produce any evidence proving that the deceased is his biological son and/or that he was dependent on him for maintenance and support except the allegation that the deceased was his son and was entitled to receive a death benefit from the respondent.
- 5.3 The respondent states that the deceased is not the complainant's biological son and this information was confirmed by the complainant's wife as well as the deceased's wife.
- 5.4 Furthermore, the complainant was provided with an opportunity to respond to the respondent's allegations that the deceased is not the biological son of the complainant. The complainant did not dispute the allegations made by the respondent to that effect.
- 5.5 Based on the undisputed allegations as made by the respondent, this Tribunal agrees with the respondent's contention that due to the fact that the deceased is not the biological son of the complainant, was married with two children, the complainant is not entitled to receive the benefit resulting from his death.

6. **Relief**

- 6.1 The complaint is dismissed.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR