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Please quote our reference: PFA/EC/6366/2005/NVC

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): M C Dumezweni v Sasol Pension Fund (“the fund”)**

### Introduction

[1] Your complaint concerns the computation of your withdrawal benefit. The complaint was received on 14 November 2005 and a letter acknowledging receipt thereof was sent to you on 21 November 2005. On the same date a letter was dispatched to the fund requesting it to submit a response to your complaint by 12 December 2005. After requesting an extension the fund’s response was received on 2 February 2006. The fund copied you with its response. On 15 February 2006 the response was sent to you for a reply by 15 March 2006. No reply has been received from you. 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.

### Complaint

[2] You are dissatisfied with the amount of R3 424.65 that you received from the fund when you exited from it in 1992, after 15 years of service. You request this tribunal to assist you in this matter.

### The response

[4] The fund states that your complaint is time-barred in terms of section 30I of the Act, as the act or omission that gave rise to it occurred more than three years ago, and that no good cause exists for me to condone its late submission. It states that your prospects of success in succeeding in this

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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

matter are slim, as you were paid your full benefit in terms of the rules of the fund, at the time of your withdrawal, in 1992. It states that your membership of the fund commenced in 1988, and you did not have 15 years service as alleged by you.

- [5] The fund further states that the entity that submitted your complaint does not have the *locus standi* to submit a complaint as it does not fall within the definition of “complainant” in the Act.
- [6] The fund alleges that you have not submitted a “complaint” as defined in the Act. It states your submissions do not establish a cause of action, do not contain any wrongdoing by the respondent, and do not relate to the administration of a fund, the investment of its funds, or the interpretation and application of the rules of the fund, as required by the definition of “complaint” in the Act. Furthermore the fund contends that you have not shown that you have suffered loss or prejudice.
- [7] The fund concludes that the complaint should be dismissed.

#### Determination and reasons therefor

- [8] It is of grave concern to me that you have taken more than 13 years from the time that you left the fund to the date you submitted a complaint to this tribunal on 14 November 2005, to dispute the amount of the withdrawal benefit that you received from the fund in 1992.
- [9] 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.”
- [10] It is clear from the complaint that the events to which it relates occurred substantially more than three years before your complaint was received by this office.
- [11] 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.”

[12] However, that the complaint was lodged outside the three year time period in terms of section 30I of the Act is not the end of the matter as I still have discretion to extend the three year time period or to condone non-compliance therewith.

[13] 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) the court said (at 532B-E):

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

[14] Your prospects of succeeding in this matter are poor as the merits do not favour you. According to the fund you received your due entitlement in terms of the rules of the fund. Since leaving the fund in 1992 you should reasonably have become aware much sooner that the amount received may not have been correct, and that you wished to investigate its calculation. You have not offered any explanation why you have waited this considerable period of time to submit your complaint, nor have you submitted proof of any steps that you may have taken in the interim to rectify this grievance. Although the fund has submitted some documentary

evidence in support of its submissions, it is self evident that it would work to the extreme detriment of the fund to require it to unearth evidence or witnesses from 14 years ago. I am therefore not persuaded, in the absence of compelling reasons, which are not present in this case, that good cause exists to condone the late submission of this complaint.

[15] The complaint is time-barred and the file is hereby closed.

Dated at Cape Town on this the                      day of                      2007.

Yours faithfully

**Vuyani Ngalwana**  
**Pension Funds Adjudicator**