Dear Sir/ Madam,


1. **Introduction**

1.1 This complaint concerns the manner in which a death benefit was distributed upon the death of the complainant's late husband, Mr Sikhumbuzo Richman Ndlovu (“the deceased”).

1.2 The complaint was received by this office on 18 May 2009. A letter acknowledging receipt thereof was sent to the complainant on 3 June 2009. On the same date, the complaint was sent to the respondent for it to file its response on or before 3 July 2009. A response was received by this office from the respondent on 19 June 2009. A response was received by this office from the respondent on 19 June 2009. On 23 November 2009, a copy of the response was forwarded to the
complainant for her to file her reply to the response. No reply was received from the complainant.

1.3 Having considered the written submissions before me, I find it unnecessary to hold a hearing. My determination and reasons therefor appear below.

2. **Factual Background**

2.1 The deceased was employed by Tongaat-Hulett Sugar Ltd (“the employer”). The deceased was also a member of the respondent until he passed away on 18 February 2006.

2.2 The deceased had eleven children, of which four children were born from his marriage to his first wife (also deceased), five children were born from the marriage to the complainant and two children were born illegitimately.

2.3 On 13 July 2006, the death benefit totalling R246 109.27, was distributed amongst the deceased’s beneficiaries in the following manner:

2.3.1 The four children from the deceased’s first marriage, as well as the eldest major child from the marriage between the deceased and the complainant.

- Each were awarded R6 651.60 = 2.7% of the benefit due.

2.3.2 The other four children from the marriage between the deceased and the complainant, including the deceased’s two illegitimate children, were all scholars at the time of the deceased’s death.

- Each were awarded R26 606.41 = 10.81% of the benefit due.

2.3.3 Lastly, the complainant was awarded R53 212.80 = 21.62% of the benefit.

2.4 The benefits of the deceased’s two illegitimate children were placed in Fairheads Trust Fund. The monthly interest thereof would be channelled through the minor children’s grandmother and aunt respectively, until they reached the age of majority.

3. **Complaint**

3.1 The complainant is dissatisfied with the Trustees’ decision to award R6 651.60 of the death benefit, to each of the deceased’s two eldest children from his first marriage, on the basis that they were both employed and were no longer dependant on the deceased at the time of his death.
3.2 The complainant requests this tribunal to investigate the validity of the trustees’ decision to include the deceased’s two eldest children in the distribution of the death benefit.

4. Response

4.1 The response confirms that the deceased was a member of the Tongaat-Hulett Pension Fund from 1 December 1975 and later joined the first respondent on 28 October 1985, until the time of his death.

4.2 The response states the details of a meeting held by the respondent with the family members and potential beneficiaries of the deceased, dated 10 July 2006. In the above meeting, the Sub-Committee of the respondent made recommendations to the Board of Trustees of the respondent, regarding the distribution of the death benefit. The investigation and recommendation report from the Sub-Committee, comprised of pages 1 to 5, were attached to the response and marked as “Annexure 1”.

4.3 The respondent confirms that the recommendations of the Sub-Committee were accepted by the Board of Trustees of the respondent and the death benefit was distributed amongst the deceased’s beneficiaries as explained above (see 2.3 - 2.4 of this determination).

4.4 The respondent then makes the following submissions with regard to the complainant’s objection to the manner in which the deceased’s death benefit was distributed:

4.4.1 The complainant as well as the two beneficiaries whose benefit allocations were being challenged, were all present at the relevant Sub-Committee meeting.

4.4.2 At the Sub-Committee meeting, the following information was placed before it:

- Three of the four children from the deceased’s first marriage (including one of the two beneficiaries against whom the complaint was directed), were unemployed.

- The other beneficiary against whom the complaint is directed was employed by the Department of Health on a temporary basis only.

- All of the four major children (including the two beneficiaries against whom the complaint is directed), lived with the deceased at the time of his death.
4.5 The respondent makes a further submission that the complainant waived her rights to challenge the distribution of the death benefit, when she signed the letter (attached as “Annexure 2”), which specifies the respective beneficiaries and the fact that the acceptance of the payment to her was in full and final settlement. The respondent, in closing, submits that the Board of Trustees discharged its duties accordingly and taking all the above factors into account, it requests that the Trustees’ decision should not be overturned, but that the complaint should be dismissed.

5. **Determination and reasons therefore**

5.1 The issue that falls for determination is whether or not the deceased’s two beneficiaries, against whom the complaint was directed, qualified as “dependants” of the deceased.

**Beneficiaries as dependants**

5.2 Section 1 of the Act sets out the following definition of a dependant:

“Dependent, in relation to a member, means –

(a) a person in respect of whom the member is legally liable for maintenance;

(b) a person in respect of whom the member is not legally liable for maintenance, if such person –

(i) was in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member;

(iii) is a child of the member......

(c) a person in respect of whom the member would have become legally”

5.3 Section 1 of the Act above, must be read in conjunction with Rule 24.2 of the Rules of the respondent, which reads as follows:

“24.2 Subject to the provisions of the Act, the Trustees shall, in their absolute discretion, decide whether the deceased Member left a Dependant or Dependents and/or nominees and to which Dependant or Dependants and/or nominees, and in what proportions the benefit shall be paid.”

5.4 The respondent submitted correctly that a “dependant” does not cease to be a child upon reaching the age of maturity. In addition, the response states that evidence was submitted at the Sub-Committee meeting (at which the complainant was present), which the complainant did not dispute, proving that the four children (including the two beneficiaries against whom the complaint is directed), were also factually dependant on the deceased. The respondent therefore considered the two eldest children of the deceased as “factual beneficiaries” in terms of section 1 (b)(i) and (iii) of the Act and without any objection (from the complainant) and on the
authority conferred by Rule 24.2, paid that portion of the death benefit, as decided to each of the deceased’s two eldest children.

5.5 The complainant submitted in her complaint to this office, that one of the beneficiaries (born in 1975), was employed as a clerk and insists that the other beneficiary (born in 1976), was employed as a male nurse at the time of deceased’s death. The complainant’s submissions are inconsistent with the information that was placed before the Sub-committee meeting (held five months after the deceased’s death). The complainant’s allegations were never presented to the Sub-Committee meeting, despite her presence at the same.

5.6 The respondent also submitted that because the complainant omitted to raise an objection to the two eldest children of the deceased being able to stand as factual beneficiaries, at the Sub-Committee meeting, she should then be estopped from relying on such an allegation after the payment of the death benefit. The complaint was lodged in May 2009, almost three years after the death benefit was paid out to the deceased’s beneficiaries. The complainant was obliged to raise any objection she may have had against the Sub-Committee’s Report, within reasonable time after attending the meeting and preferably before the payment of the death benefit. This tribunal finds that an extensive period of time had lapsed without the complainant raising an objection against the Sub-Committee’s Report and the trustee’s decision to distribute the death benefit in terms thereof.

5.7 The letter which the complainant signed, specifying the respective beneficiaries and the amounts to be distributed to each one of them, is effectively a waiver of her rights to object or challenge the distribution, as it signifies her acceptance of the payment in full and final settlement. As a result, the Trustees’ decision regarding the distribution of the benefit cannot be overturned.

6. **Relief**

6.1 In light of the above, the complaint cannot succeed and is dismissed.

Dated at JOHANNESBURG on this the day of 2010.

Yours faithfully

___________________________

DR E.M DE LA REY
PENSION FUNDS ADJUDICATOR