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REGISTERED POST

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): H MAQUBELA (“complainant”) v MUNICIPAL EMPLOYEES PENSION FUND (“respondent”)

[1] **INTRODUCTION**

- 1.1 The complaint concerns the failure by the respondent to give effect to a divorce order in terms of which it was required to pay the complainant her portion of her former spouse’s pension interest.
- 1.2 The complaint was received by this tribunal on 7 January 2008. A letter acknowledging receipt of the complaint was forwarded to the complainant on 12 March 2008. On 11 March 2008 a copy of the complaint was sent to the respondent giving it until 14 April 2008 to file its response to the complaint. A response, which was also forwarded to the complainant by the respondent, was received from the respondent on 11 April 2008. No further submissions were received.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

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- 1.3 After considering the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well-known to the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant is the former spouse of Mr M S Maqubela (“Mr Maqubela”) who is a member of the respondent. The marriage between the complainant and Mr Maqubela was dissolved in terms of the divorce order that was issued on 6 April 2005 under case number 13198/03 by the Central Divorce Court of South Africa. The settlement agreement that formed part of the divorce order makes provision for, *inter alia*, the division of the joint estate.
- 2.2 The relevant section of the settlement agreement for the purpose of this determination, reads as follows:

“It is ordered that the joint estate be divided.”

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the respondent’s failure to pay her portion of her former spouse’s pension interest.
- 3.2 The complainant is requesting this tribunal to investigate this matter.

[4] RESPONSE

- 4.1 A response was submitted by Akani Fund Administrators, in its capacity as the respondent's administrators.
- 4.2 The respondent submitted that the divorce order makes no mention of any entitlements to the member spouse's pension interest as envisaged by the provisions of section 7(7) of the Divorce Amendment Act.
- 4.3 The respondent further submitted that the divorce order does not oblige the respondent to endorse its records of any entitlement as envisaged by section 7(8) of the Divorce Act, 70 of 1979 ("the Divorce Act).
- 4.4 The respondent submitted that in the absence of the points raised above, the complainant is not entitled to any pension interest from the member spouse's pension benefit that may become due and payable.
- 4.5 The respondent further submitted that for purposes of being entitled to any pension interest from the member-spouse's pension benefit, the divorce order must be in compliance with the provisions of sections 7(7) and 7(8) of the Divorce Act respectively.
- 4.6 The respondent submitted that it has no obligation to effect any award or entitlement to the complainant in terms of the divorce order and that any entitlement that may be due to her, must be challenged directly against the member spouse or his portion of the joint estate.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issue that falls for determination is whether the respondent's refusal to pay the complainant her portion of pension interest is reasonable and

justifiable in terms of the Act, read together with the Divorce Act.

- 5.2 This tribunal needs to satisfy itself that a valid divorce order exists that compels the respondent to endorse its records and pay over pension interest to the complainant when it is due. *In casu*, the settlement agreement incorporated in the divorce order does not mention anything about the pension fund interest or any entitlement thereto.
- 5.3 The name of the respondent is not stated or identifiable in the settlement agreement. In terms of section 37D(4)(a)(i) of the Act as amended, the pension fund concerned must either be named or identifiable from the decree of divorce. The settlement agreement contained insufficient details to enable the identification of the fund concerned.
- 5.4 In *Old Mutual Life Assurance Company (SA) Limited and Another v Swemmer* [2004] 4 BPLR 5581 (SCA) at 5590G-H, the Supreme Court of Appeal indicated the following in relation to divorce orders:
- “This case cogently illustrates the importance of deeds of settlement and divorce orders relating to pension interests being formulated very carefully indeed in order to ensure that they fall within the ambit of subsection 7(7) and (8) of the Divorce Act. If this is done, then all that would be required of the pension fund in question is to perform administrative functions to give effect to the order, without the rights of the fund or the relationship between the fund and the member spouse being affected in any way.”
- 5.5 Therefore, as presently formulated, the relevant clause regulating divorce benefits in the settlement agreement falls outside the ambit of sections 7(7) and (8) of the Divorce Act read together with section 37D(4) of the Act. It follows that the divorce order is not binding on the respondent and this tribunal cannot order the respondent to pay the complainant her portion of her pension interest.

5.6 The complainant may consider approaching the High Court for rectification of the Order. Alternatively, she may bring an action against her former spouse.

[6] ORDER

1. In the result, the complaint cannot succeed and is hereby dismissed.

DATED AT JOHANNESBURG ON THIS 19TH DAY OF AUGUST 2011

DR. E.M. DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M Filing: Magistrate's Court

Parties unrepresented