DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): M TOKWE (obo THE PASIWE FAMILY) (“complainant”) v MURRAY & ROBERTS RETIREMENT FUND (“respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the continuation of a spouse’s pension payment.

1.2 The complaint was received by this office on 14 August 2009. On 26 May 2010 a letter was dispatched to the respondent giving it until 6 July 2010 to file its response. A response was received from the respondent on 23 June 2010. No further submissions were received from the parties.

1.3 After considering the submissions before this tribunal it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties they shall be repeated only to the extent that

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they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 Mr. M. Pasiwe ("the deceased pensioner") was employed by Murray & Roberts Limited ("employer") until he retired and became a pensioner of the respondent. He had acquired membership of the respondent by virtue of his employment.

2.2 After his retirement, he received a monthly pension from the respondent. He was married to Mrs. T.N. Pasiwe ("Mrs. Pasiwe"). Upon his death, Mrs. Pasiwe commenced receiving a spouse’s pension from the respondent as the deceased pensioner’s eligible spouse.

2.3 Mrs. Pasiwe passed away on 24 June 2009 at which point the payment of the spouse’s pension ceased. Mrs. Pasiwe’s children who were financially dependent on her approached the respondent to request that the payment of the spouse’s pension be continued. They also claimed a funeral benefit. The respondent refused to accede to the request for continuation of the spouse’s pension, hence the lodgement of the present complaint. Mr. M. Tokwe of Legal Expenses Insurance Southern Africa Limited ("Legal Wise") acts on the children’s behalf in the matter.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the cessation of the monthly spouse’s pension. He submits that because Mrs. Pasiwe was required to confirm that she was still alive at the end of each financial year, the respondent ought to have given the children the benefit of the doubt
and continued payment of the spouse’s pension until the end of the financial year. The complainant also complains that the deceased pensioner’s family unsuccessfully attempted to claim the funeral benefit from the respondent.

3.2 He seeks an order directing that the spouse’s pension be continued until the end of the financial year in which Mrs. Pasiwe passed away and that the funeral benefit due be paid to the Pasiwe family.

[4] RESPONSE

4.1 The respondent submits that the Rules allow for payment of a R2 000.00 lump sum funeral benefit after receipt of a relevant death certificate of the deceased member or his spouse. The Rules also provide that in the event of death of the spouse, the pension will cease. After investigating it transpired that Mrs. Pasiwe’s death certificate was never received. However a telephonic notification of her death was received and the payment of the spouse’s pension accordingly ceased. The funeral benefit will be paid as soon as Mrs. Pasiwe’s death certificate is received. However the spouse’s pension cannot be continued in light of the provisions of the Rules.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complainant is dissatisfied with the cessation of the spouse’s pension payment and the non-payment of a funeral benefit. This Tribunal is seized with determining whether or not the respondent acted lawfully in ceasing the payment of the spouse’s pension.

5.2 It is noted that the respondent made a concession that a funeral benefit became due to Mrs. Pasiwe’s children upon her death. It offered to pay this as soon as her death certificate was received. Therefore, this part of the complaint is considered resolved between the parties.
5.3 Rule 6.4 of the respondent’s Rules regulates the payment of a spouse’s pension. Rule 6.4.6 thereof provides that:

“Each Pension payable to a Qualifying Spouse or Qualifying Child who becomes entitled to a Pension in terms of Rule 6.3 shall be paid from the Fund, unless the Qualifying Spouse or Qualifying Child requests the Trustees to arrange for such Pension to be purchased from a Registered Insurer. If the Pension is paid from the Fund, the provisions of Rule 5.3.2 and 5.3.3 shall apply mutatis mutandis.”

5.4 Rule 5.3.3 regulates the duration of a spouse’s pension and provides that:

“If Pensions are payable monthly, the first payment shall be due at the end of the calendar month following the month in which:

(a) an Employee Member retires; or
(b) a Pensioner dies, subject to the provisions of 6.3.1; and

the last payment shall be that due at the end of the calendar month in which:

(i) a Pensioner dies, subject to the provisions of Rule 6.3.1 and Rule 6.3.3;
(ii) the Qualifying Spouse dies in the case of a Qualifying Spouse’s Pension;
(iii) a Qualifying Child ceases being a Qualifying Child.

These provisions shall apply, mutatis mutandis, if Pensions are payable quarterly, half-yearly or annually at the request of the retiring Employee Member.” (Own emphasis)

5.5 The respondent is enjoined by section 13 of the Act to do only that which is set forth in the Rules. To the extent that its actions fall short of the provisions thereof, they shall become legally unenforceable. In ceasing the payment of the spouse’s pension, the respondent acted in furtherance of the provisions of Rule 6.4.1 and 5.3.3 outlined above.
These sections read in tandem provide that a spouse’s pension ceases upon the qualifying spouse (Mrs. Pasiwe in this case)’s death. Although this Tribunal sympathises with Mrs. Pasiwe’s children and fully comprehends the financial predicament in which they now find themselves, the provisions of the Rules ought to be upheld even in instances where they cause hardship in individual cases. This Tribunal finds that the cessation of the spouse’s pension complied with the provisions of the Rules and is therefore lawful.

[6] ORDER

6.1 The complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 17TH DAY OF OCTOBER 2011

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

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