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Please quote our ref: **PFA/NW/10185/2012/LPM**  
**PER REGISTERED POST**

Dear Madam,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,  
24 OF 1956 (“the Act”): MH RAMPA (“complainant”) v SENTINEL MINING  
INDUSTRY RETIREMENT FUND (“respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the non-payment of pension interest.
- 1.2 The complaint was received by this Tribunal on 6 February 2012. A letter acknowledging receipt thereof was forwarded to the complainant on 13 February 2012. On the same date, a letter was dispatched to the respondent giving it until 13 March 2012 to file its response. The respondent filed its response on 13 March 2012. The response was forwarded to the complainant on 16 August 2012. Further submissions were received from the complainant on 23 August 2012.
- 1.3 After considering the submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts

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The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

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are known to the parties, they will be repeated only to the extent that they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

## [2] **FACTUAL BACKGROUND**

- 2.1 The complainant was married to Mr. AM Rampa (“member spouse”) in 1979. The member spouse was employed by Western Deep Levels Mine Limited (“employer”) and acquired membership of the respondent by virtue of his employment. The complainant’s marriage to the member spouse was dissolved by the Central Divorce Court held at Potchefstroom (“Court”) on 28 May 2010.
- 2.2 The decree of divorce dissolving their marriage provided *inter alia*, that:

“ **IT IS ORDERED**

...

THE JOINT ESTATE SHALL BE DIVIDED, INCLUDING A 50% PENSION INTEREST, PENSION/PROVIDENT FUND HELD AT SENTINEL PENSION FUND.”

- 2.3 The complainant approached the respondent with a copy of the decree requesting payment of her share of pension interest. However, the respondent refused to pay, citing that the order was unenforceable for the purposes of section 7(7) and (8) of the Divorce Act, 70 of 1979 (“Divorce Act”). The member spouse has in the meantime left employment with effect from 19 April 2011 but has not yet claimed payment of his benefit.

## [3] **COMPLAINT**

- 3.1 The complainant is dissatisfied with the non-payment of her share of pension interest by the respondent. She submits that she has provided the respondent with all information required to process payment of her share of pension interest but such payment has not been made.
- 3.2 She seeks an order directing that the respondent forthwith pay her share of pension interest.

**[4] RESPONSE**

- 4.1 The respondent submits that the member spouse left employment on 19 April 2011 but has not yet claimed payment of his benefit. The respondent further submits that if the complainant has launched legal proceedings in this regard in another court as implied in the complaint, this Tribunal has no jurisdiction to hear the complaint as provided in section 30H(2) of the Act.
- 4.2 In order for a divorce order to be enforceable for the purposes of section 7(7) and (8), it must meet the requirements of the section. The order provided by the complainant is vague and ambiguous. It fails to comply with the requirements of the Divorce Act and the Act. It does not identify the holder of pension interest and the assignee. It is not clear whether or not 50% of the entire pension interest is assigned to the complainant or that 25% is assigned. The order does not state that the respondent must endorse its records and pay pension interest to the complainant.
- 4.3 While the respondent is identifiable from the decree, it cannot be inferred that it must pay pension interest when it has not been ordered to do so. The complainant was informed that the order is unenforceable. The respondent can only pay pension interest upon receipt of a valid and correctly formulated order issued by a competent court. Furthermore, the complainant has no right to access any

information in relation to the member spouse's benefits until such time as she has an enforceable court order for the purpose of section 7(7) and (8) of the Divorce Act. The member spouse may voluntarily elect to disclose the information to the complainant.

**[5] DETERMINATION AND REASONS THEREFOR**

*Introduction*

5.1 This Tribunal must determine whether or not the complainant must be paid pension interest on the basis of the decree of divorce placed before this Tribunal.

*Preliminary point*

5.2 The respondent objected to this Tribunal's jurisdiction to investigate and determine the complaint on the premises of section 30H(2). In this regard, it contended that the complainant had instituted legal proceedings in another court against the member spouse in respect of a similar issue. Section 30H(2) provides that:

"The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation."

5.3 Therefore, for this Tribunal to be precluded by section 30H(2) from investigating a complaint, legal proceedings must be instituted; the proceedings must be instituted in a civil court; the proceedings must have been instituted before lodgement of the complaint; and the proceedings must be in respect of a matter which would constitute the subject matter of this Tribunal's investigations. In her own words, the complainant stated that:

“Ha jwale re tsamaya Court ka case ya di areas (sic) tsa maintenance le maintenance ha esale ho tloha ka 2010, 2011 le 2012”.

- 5.4 It is clear from her complaint that although she has instituted legal proceedings against the member spouse, such proceedings relate to the member spouse’s failure to pay maintenance. The subject matter of the present complaint is not the non-payment of maintenance but the non-payment of pension interest. Therefore, the matter before the court in this regard does not constitute the subject matter of this Tribunal’s investigation. Thus, this Tribunal is not precluded by the provisions of section 30H(2) from investigating and determining the complaint. The complaint can be determined on its merits.

*Non-payment of pension interest*

- 5.5 Save to the extent permitted by the Act, the Income Tax Act, 58 of 1962 (“ITA”) and the Maintenance Act, 1998 (“Maintenance Act”), no benefit provided for in the rules of a pension fund organisation or a right to such benefit shall be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgement or order of a court of law (see Section 37A(1) of the Act).
- 5.6 Section 37D(1)(d)(i) provides an exception to this general rule and provides that:

“(1) A registered fund may –

...

(d) deduct from a member’s benefit or minimum individual reserve, as the case may be –

(i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a

decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979);

5.7 Therefore, a pension fund organisation is notwithstanding the general provisions of section 37A(1) of the Act, empowered to deduct from a benefit or minimum individual reserve in respect of a member as the case may be, any amount assigned to a non-member spouse in terms of a decree of divorce granted in terms of section 7(8)(a) of the Divorce Act.

5.8 Section 7(8)(a)(i) and (ii) of the Divorce Act provides that:

“Notwithstanding the provisions of any other law or of the rules of any pension fund –

- (a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that –
  - (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member;
  - (ii) the registrar of the court in question forthwith notify the fund concerned that an endorsement be made in the records of that fund that that part of the [pension interest](#) concerned is so payable to that other party and that the administrator of the pension fund furnish proof of such endorsement to the registrar, in writing, within one month of receipt of such notification;”

5.9 Therefore, a court may make an order that the non-member spouse is entitled to a specified share of the member spouse’s pension interest in the fund and that such a share be paid to her by the fund when benefits accrue to the member spouse. For the present purposes,

section 1 of the Divorce Act defines “pension interest” in the following terms:

“**pension interest**’, in relation to a party to a divorce action who – is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of the rules of that fund if his membership of the fund would have terminated on the date of the divorce on account of his resignation from his office;”

- 5.10 Therefore, for the court order made in terms of section 7(8)(a) to be enforceable, it must specify that a defined percentage of the member spouse’s pension interest as at date of divorce is assigned to the non-member spouse; order the fund named in or identifiable from the decree to pay the assigned portion of pension interest to the non-member spouse when pension benefits accrue to the member spouse; order the Registrar of the Court to notify the incumbent fund that an endorsement must be made in its records that the specified portion of pension interest is payable to the non-member spouse and that the administrator of the fund furnish proof that such an endorsement has been made.
- 5.11 Although the respondent is identifiable from the decree as the incumbent fund and it is provided therein that the member spouse’s pension interest is to be divided together with the joint estate, the decree is unenforceable for the purposes of section 7(7) and (8) of the Divorce Act for a number of reasons. Firstly, it does not specifically provide that pension interest is assigned to the non-member spouse. Secondly, it does not state that this is assigned from the member spouse’s pension interest calculated as at the date of divorce held in the respondent (Sentinel Mining Industry Retirement Fund). Thirdly, save to state that pension interest shall be divided, it does not specifically order the respondent to pay the assigned portion of pension interest to the complainant when benefits accrue to the

member spouse. Fourthly, it does not order the Registrar of the Court to notify the respondent that it must make an endorsement in its records that the specified portion of pension interest is payable to the complainant and that proof of such an endorsement be furnished within one month of receipt of the notification. Therefore, the respondent is unable to enforce the decree until such time as the complainant secures the variation of the decree to satisfy these requirements.

**[6] ORDER**

1. In the result, the complaint is dismissed.

**DATED AT JOHANNESBURG ON THIS 7<sup>TH</sup> DAY OF NOVEMBER 2012**

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**MA LUKHAIMANE  
DEPUTY PENSION FUNDS ADJUDICATOR**

**Section 30M filing: High Court**

*Parties Unrepresented*