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REGISTERED POST

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): BC KUBEKA (“complainant”) v SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND (“first respondent”) AND SOUTH AFRICAN POLICE SERVICE (EVATON) (“second respondent”)

[1] INTRODUCTION

- 1.1 This complaint concerns the repudiation of the death benefit claim due to the second respondent’s failure to timeously submit the necessary documentation to the insurer.
- 1.2 The complaint was received by this Tribunal on 12 February 2016. On 15 February 2016, the complainant was requested to file further particulars and same were received on 18 February 2016. A letter acknowledging receipt thereof was sent to the complainant on 15 March 2016. On the same date, the complaint was forwarded to respondents, giving them until 15 April 2016 to file responses to the complaint. On 1 April 2016, a response was received from the first

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respondent's attorneys of record. No response was received from the second respondent. No further submissions were received from the parties.

[2] FACTUAL BACKGROUND

- 2.1 The complainant is the surviving spouse of the late Mr P Kubeka ("the deceased"), who passed away on 1 October 2011. During his lifetime, the deceased was employed by the second respondent. The deceased was a member of the first respondent by virtue of his employment.
- 2.2 Following his demise, a death benefit was paid to the deceased's dependants. However, a life assurance benefit claim was repudiated by the insurer on grounds of late lodging of the requisite claim documents by the second respondent.

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the quantum of the death benefit paid to her. She submits that according to the first respondent, it could not pay her the insured portion of the death benefit due to the second respondent's failure to submit claim documents timeously. She claims to have submitted all the relevant information to the second respondent in time, however, the fact that it then failed to forward the necessary claim documents to the insurer in time shocks her. She avers that she has been thrown from pillar to post since 2012 as a result of which she is struggling to take care of the needs of her family.
- 3.2 As a result of the hardships caused by the non-payment of the full death benefit, she and her children no longer have a medical aid cover as it was terminated and she cannot afford to pay for their school needs as she is unemployed.

- 3.3 She further submits that she submitted claim documentation to the second respondent in the same month of the deceased's demise, i.e., October 2011 and therefore, requests this Tribunal to investigate the matter so that she may be paid a full death benefit.

[4] RESPONSE

First respondent

- 4.1 The first respondent submitted that having investigated the matter, it established that claim documentation was received from the second respondent on 25 September 2013 despite the date of the deceased's death being 1 October 2011, meaning that claim documents were only received after 23 months of the deceased's demise.
- 4.2 It further submitted that the claim for the group life assurance was submitted to Prosperity Management Africa (Pty) Limited ("the insurer"), however, it was repudiated in terms of the policy document which provides as follows:

"3.2 NOTIFICATION OF CLAIM

No benefit is provided in terms of this Schedule, if the Insurer is notified of the claim for the benefit later than 12 months after the life insured's death."

- 4.3 It further submitted that the beneficiaries of the deceased are eligible for group life assurance benefits in the event of death in service. However, it contends that, this benefit is not provided for in terms of its rules but an entirely separate group reinsurance policy which is underwritten by an insurer. It further states that this benefit is provided as a separate arrangement with the insurer in terms of the Long-Term Insurance Act, 52 of 1998 ("LTI Act").

4.4 It referred to rule 9.8 which provides as follows:

“9.8 RISK DEATH BENEFITS CONDITIONS

9.8.1 The FUND shall insure RISK DEATH BENEFITS with a REGISTERED INSURER in terms of the provisions of the POLICY. Such benefits shall be subject to any terms, conditions, restrictions, exclusions and underwriting conditions the REGISTERED INSURER may impose from time to time and set out in the POLICY. A RISK DEATH BENEFIT will only become payable by the FUND once the claim for the RISK DEATH BENEFIT has been approved and paid by the REGISTERED INSURER to the FUND.

9.8.2 No RISK DEATH BENEFIT shall be payable should the relevant RISK DEATH BENEFIT insurance premiums required in terms of the POLICY not be paid in full within 30 days of such premium falling due.”

4.5 It further referred to rule 9.11 of its rules which provides that:

“9.11 SUBMISSION OF CLAIMS

The EMPLOYER must lodge a formal claim in writing with the REGISTERED INSURER in respect of disability and death claim in accordance with the period set out in the policy under provision that all participating MEMBERS were informed and a month notice has passed.”

4.6 It submitted that this Tribunal has no jurisdiction over the payment of risk death benefits as these are governed by the LTI Act. It contends that this Tribunal is empowered to deal with complaints about the administration of pension funds, the investment of its monies, or the interpretation and application of its rules. Thus, it contends, this complaint falls outside the definition of a complaint as envisaged in terms of section 1 of the Act.

4.7 It submits that in terms of the policy of insurance, all group life assurance claims must be submitted within 12 months from the date of death. The deceased passed away on 1 October 2011 and the claim was only submitted by the second respondent on 25 September 2013, which was 23 months after his death, resulting in the repudiation of the claim. It contends that this complaint must be referred to the Ombudsman for Long-Term Insurance.

Second respondent

4.8 The second respondent was afforded an opportunity to comment on the allegations made against it, as required by section 30F of the Act. No response was received from it. In the circumstances, this Tribunal has no other alternative but to dispose of the matter on the basis of available facts.

[5] DETERMINATION AND REASON THEREFOR

Introduction

5.1 The issue that falls to be determined by this Tribunal is whether or not the second respondent failed to timeously provide the first respondent with the information it required pertaining to the deceased's death benefit claim, thereby causing the repudiation of the claim. However, before delving into the merits of the matter, this Tribunal has to deal with the issue of whether or not this Tribunal has the authority to determine this matter.

Jurisdiction

5.2 The first respondent submitted that this complaint relates to a life assurance benefit payable in terms a separate insurance policy with the insurer and is governed by the LTI Act. However, the complaint

relates to the second respondent's failure to adhere to the rules of the first respondent which make provision for timeous submission of claim documentation. In the premise, this Tribunal concludes that it has jurisdiction to determine this matter as the conduct of the second respondent relates to the breach of the first respondent's rules.

Merits

5.3 The entitlement to and payment of a death benefit in terms of the first respondent's rules is governed by rule 6.1. The relevant portion of the rule provides as follows:-

“6.1 Death before Retirement

If a MEMBER dies whilst in the service of the EMPLOYER, the following benefit will become payable:

6.1.1 the amount determined in accordance with RULE 7.1, plus

6.1.2 subject to provisions of RULE 9.8, a life assurance benefit defined in terms of the LIFE ASSURANCE BENEFIT COVER.”

In turn, rule 3.3 provides as follows:

“3.3 INSURABILITY

An ELIGIBLE EMPLOYEE'S participation in respect of any RISK DEATH BENEFIT being provided in terms of this FUND is conditional on his compliance with insurability requirements laid down in terms of Rule 9.8 by the REGISTERED INSURANCE in respect of such benefit from time to time.”

Rule 9.8 provides as follows:

“9.8 RISK DEATH BENEFITS CONDITIONS

9.8.1 The FUND shall insure RISK DEATH BENEFITS with an REGISTERED INSURER in terms of the provisions of the POLICY. Such benefits shall be subject to any terms, conditions, restrictions, exclusions and underwriting conditions the REGISTERED INSURER may impose from time to time and set out in the POLICY. A RISK DEATH BENEFIT will only become payable by the FUND once the claim for the RISK DEATH BENEFIT has been approved and paid by the REGISTERED INSURER to the FUND.”

5.4 Rule 9.11 of the first respondent deals with the submission of claims and provides that:

“9.11 SUBMISSION OF CLAIMS

The EMPLOYER must lodge a formal claim in writing with the REGISTERED INSURER in respect of disability and death claim in accordance with the period set out in the policy under provision that all participating MEMBERS were informed and a month notice has passed.”

In turn, the policy document defines Notification Period as follows:

“...the period within which the Employer, Policyholder and Life Insured must notify the Insurer in writing of a claim or a potential claim in order to be eligible for benefits under this Policy namely –

1.32.1 by the Employer and Policyholder within twelve (12) months from the date of death of the Life Insured in the case of the Group Life Assurance, Family Funeral and Family Support Benefits...”

5.5 In this instance, the death benefit claim has been repudiated by the insurer on the basis that the insurer was informed about the deceased's death after the required time had lapsed. The applicable notification period of the insurer after a member's death is 12 months. Therefore, since the deceased passed away on 1 October 2011, the

second respondent ought to have notified the first respondent and the insurer of deceased's death on or before 1 October 2012. However, according to the available facts, the second respondent only informed the insurer of the deceased's demise on 25 September 2013, approximately 23 months after the former's demise, resulting in the repudiation of the claim.

5.6 The second respondent was presented with an opportunity to shed light in respect of what could have been the reason for submitting the death benefit claim after the notification period of 12 months had elapsed, however, no response was received from it. In the circumstance, the submission that the second respondent failed to submit the death benefit claim documentation timeously remains unchallenged.

5.7 Had the second respondent submitted the death claim documents timeously, the deceased's dependants would have been entitled to a benefit as provided for in rule 6. Thus, the deceased's beneficiaries and dependants ought to be placed in the position they would have been had the second respondent submitted all the required and necessary documents pertaining to the death benefit claim in time.

[6] **ORDER**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is ordered to calculate the amount of the death benefit, that would have been payable to the deceased's beneficiaries in terms of Rule 6.1.2 of its rules had the second respondent timeously submitted the death claim in terms of its rules and the policy of the insurer, together with interest thereto at the rate of 9% *per annum* from 1 November 2012 to date of payment, within three weeks of this determination;

- 6.1.2 The first respondent is ordered to forward the calculation made in terms of paragraph 6.1.1 above to the second respondent, within a week of completion of its calculation;
- 6.1.3 The second respondent is ordered to pay to the first respondent the amount calculated in terms of paragraph 6.1.1. within a week of receipt thereof;
- 6.1.4 The first respondent is ordered to pay the deceased's beneficiaries, within three weeks of receipt of payment from the second respondent in terms of paragraph 6.1.3 *supra*; and
- 6.1.5 The first respondent is ordered to provide the complainant with a breakdown of the benefit paid in terms of paragraph 6.1.4, within two weeks of making such payment.

DATED AT PRETORIA ON THIS 09TH DAY OF JUNE 2016

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M filing: High Court

Parties: Unrepresented