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REGISTERED POST

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): MR MOLOPE (“complainant”) v SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND (“first respondent”) AND SOUTH AFRICAN POLICE SERVICE (ATTRIDGEVILLE) (“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 20 June 2013. A letter acknowledging receipt thereof was sent to the complainant on 1 August 2013. On the same date, the complaint was forwarded to the respondents giving them until 29 August 2013 to file responses to the complaint. On 3 September 2013, follow-up response letters were forwarded to the respondents to submit responses by 17 September

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2013. A response dated 5 September 2013, was received from the first respondent on the same date. No response was received from second respondent. On 9 September 2013, a copy of this response was forwarded to the complainant to file further submissions, in the event that she wished to do so. On 19 September 2013, further submissions were received from the complainant.

- 1.3 After reviewing the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant is the surviving spouse of Mr TF Molohe (“the deceased”) who passed away on 17 April 2009. During his lifetime, the deceased was employed by the second respondent. He was a member of the first respondent from 1981 by virtue of his employment until his demise. The following children were born of the marriage between the complainant and the deceased:

- Winnie Musibudi Molohe, a major daughter born on 30 July 1990;
- Ramadumetja Atetia Molohe, a minor daughter born on 7 February 2002;
and
- Lekgolo Deltor Molohe, a minor son born on 21 May 2007

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 lodgement of the requisite claim documents by the second respondent.

[3] COMPLAINT

3.1 The complainant submits that following the deceased’s death, she applied for payment of the life assurance cover amounting to R500 000.00 and, to her dismay, the first respondent informed her that

her claim had been repudiated on grounds that it was not received within the stipulated timeframe.

- 3.2 She further submits that she is surprised as to why her claim was repudiated as she forwarded all the necessary claim documents within one month of the deceased's demise to the second respondent which, in turn, informed her that her claim would be forwarded to the human resources division of its provincial office, which would then forward it to the first respondent.
- 3.3 She accordingly requests this Tribunal to assist her in investigating the matter so that she and her children can receive a benefit that rightfully belongs to them.

Complainant's reply

- 3.4 The complainant submitted that it was clear that the second respondent was negligent in not forwarding the claim documents within the stipulated timeframe of 12 months from the date of the deceased's death and it should therefore, be ordered to pay the amount due.

[4] RESPONSE

First respondent

- 4.1 The first respondent submitted that the death benefit payment is provided for in terms of rule 6.1 of its rules 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.”

4.2 It submitted that following the deceased’s demise, a death benefit became due and payable and was paid to the deceased’s beneficiaries in terms of rule 7.1 of its rules and in terms of section 37C of the Act.

4.3 It further submitted that the complaint at hand relates to the life assurance benefit payable in terms of rule 6.1.2 of its rules repudiated by the insurer, Prosperity Management Africa (Pty) Limited. It averred that this benefit is provided for in terms of a separate insurance policy document with the insurer and is governed by the Long-Term Insurance Act No. 52 of 1998.

4.4 It stated that the payment of life assurance benefits is conditional on compliance with the insurability requirements. It referred to rule 3.3 which 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.”

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 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.”

- 4.5 It further submitted that death benefits are further provided for in Schedule 2 of the policy document, whose clause 3.2 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.”

- 4.6 It further averred that the insurer was only notified of the deceased’s demise by the second respondent on 15 December 2011 approximately 32 months after the former’s demise, resulting in the repudiation of the claim.

- 4.7 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.”

- 4.8 It submitted that as set out in terms of rule 9.8.1, a risk benefit will only become payable once the claim has been approved by the insurer. Therefore, since the death benefit claim was repudiated by the insurer,

it is not responsible for paying the repudiated claim which, in this instance, amounted to R503 062.00.

- 4.9 It submitted that it has complied with its duties and paid a death benefit in the amount of R569 956.79 in terms of its rules and therefore, the complaint against it must be dismissed.

Second respondent

- 4.10 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 REASONS 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 insurer with the information required pertaining to the deceased's death benefit claim thereby causing the repudiation of the claim. Before delving into the merits of the matter, this Tribunal has to deal with the issue of time barring as this complaint was lodged more than three after the deceased's death and the board's decision. Another technical point to be decided is whether or not this Tribunal has the authority to determine this matter.

Points in limine

Time-barring

5.2 The provisions of section 30I of the Act impose certain time limits within which complaints must be lodged with the Adjudicator and provide as follows:-

“(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) The provisions of the Prescription Act, 1969 (Act No. 68 of 1969), relating to a debt apply in respect of the calculation of the three year period referred to in subsection (1).”

5.3 In terms of this section, this Tribunal is duty bound as the provisions are prescriptive, to apply the section even though no party has raised this *point in limine*.

5.4 However, section 13 of the Prescription Act, 68 of 1969 provides for the interruption of prescription if a creditor is a minor and the apposite portion provides thus:-

“(1) If –

(a) the creditor is a minor or insane or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15(1)...”

5.5 In *casu*, the deceased passed away on 17 April 2009 and has three children, two of whom are and were minors at the time of his demise. Further, it appears from the confirmation of payment attached by the first respondent that payment of the death benefit was made on 4 September 2013. Thus, the cause of action arose in September 2013, when payment of the death benefit was made. Therefore, this Tribunal concludes that this matter is not time-barred.

Jurisdiction

5.6 The first respondent submitted that this complaint relates to a life assurance benefit payable in terms a separate insurance policy document with the insurer and is governed by the Long-Term Insurance Act No. 52 of 1998. Upon reading the rules of the first respondent and the policy document mentioned by the first respondent, it is unequivocal that the death benefit at hand is payable in terms of the first respondent's rules, as they set out how the said benefit must be claimed and paid. In the premise, this Tribunal concludes that it has jurisdiction to determine this matter.

Merits

5.7 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.”

5.8 Clause 3.2 of the policy document sets out the timeframe it must be notified of claims and 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.”

5.9 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 17 April 2009, the second respondent ought to have notified the first respondent and the insurer of deceased’s death on or before 17 April 2010. However, according to the available facts, the second respondent only informed the insurer of the deceased’s demise on 15 December 2011, approximately 32

months after the former's demise, resulting in the repudiation of the claim.

- 5.10 The second respondent was presented with an opportunity on more than one instance 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. An employer at the very least owes a duty of good faith to its employees (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 235C).
- 5.11 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 6.1.2 *supra*. 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 on 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 15.5% *per annum* from 17 April 2010 to date of this determination, 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 board of the first respondent is ordered to conclude its investigations and allocate the benefit in terms of its rules, within eight weeks of this determination.
- 6.1.5 The board of the first respondent must notify the complainant and this Tribunal in writing of its decision in terms of paragraph 6.1.4 above, within one week thereof.
- 6.1.6 The first respondent is ordered to pay the deceased's beneficiaries, as identified in paragraph 6.1.4 above, the death benefit due in terms of paragraph 6.1.1 above, within one week of concluding its investigations in terms of paragraph 6.1.4 above and receipt of payment from the second respondent in terms of paragraph 6.1.3 *supra*.

DATED AT PRETORIA ON THIS 30TH DAY OF JANUARY 2014

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M filing: High Court

Complainant: Represented by Dikeletsong Citizens' Advice Bureau

Respondent: First respondent represented by Thipa Incorporated Attorneys

Second respondent: Unrepresented