

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

CASE NO: PFA/KZN/457/2000/Nj

In the complaint between:

**V Govender**

**Complainant**

and

**Alpha Group Employees Provident Fund**

**First Respondent**

**Aploon Wilson**

**Second Respondent**

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**FINAL DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS  
ACT OF 1956**

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1. On 24 October 2000 I handed down an interim ruling and issued a rule *nisi*, calling upon the parties to show cause why the following order should not be granted:

1.1. It is declared that the payment of R40,873.41 to Melody Wilson made by the first respondent on 31 July 1997 was unlawful and contrary to the provisions of section 37C of the Pension Funds Act of 1956.

1.2. The first respondent is directed to pay R40,873.41 to the complainant together with interest thereon at the rate prescribed in the Prescribed Rate of Interest Act for a judgement debt from 31 July 1997 to date of payment within 6 weeks of the date of this ruling.

In addition, Ms Aploon Wilson in her capacity as guardian and mother of Melody Wilson was joined as a second respondent to the complaint in terms of section 30G(d) of the Act. The complainant was directed to serve a copy of the complaint, its reply, the fund's response and the interim ruling upon Ms Wilson. Mr Khan acting on behalf of the complainant has confirmed that the aforesaid documents were served upon Ms

Wilson.

2. The factual background to this matter has been fully canvassed in the interim ruling and it is unnecessary to repeat them in any detail. Suffice it to say that the issue for determination was whether Melody Wilson fell within the definition of dependant as contained in section 1 of the Act. In the interim ruling, I held that the evidence before the trustees revealed that the deceased made isolated contributions to Melody and therefore she did not fall within the definition of dependant. However, I issued a rule *nisi* calling upon the parties to submit written submissions and adduce further evidence.
3. Ms Leanne van Wyk of Alexander Forbes Financial Services (the former administrators of the fund) submitted a joint response of behalf of the fund and Ms Aploon Wilson. She lodged a further affidavit by Ms Aploon Wilson, the relevant parts of which, read as follows:

...I did have a relationship with the Late L Govender (AKA Nine) for period of nine years prior to his death in 1997.

The relationship started in October 1988 and continued up to the beginning of 1997.

At the start of this relationship my daughter Melody Wilson was five years old and when she started schooling L Govender assisted my daughter with the purchasing of school uniforms and shoes at the cost of R170.00 each year.

L Govender also assisted by paying Melody's school fees that was approximately R225.00 per year during the above period Melody was enrolled at Seaview Primary School.

I worked as a domestic earning R300.00 per month and was also assisted by L Govender who bought groceries costing R300.00 per month.

4. The fund also attached an affidavit by Ms Melody Wilson, which insofar as material,

reads:

...The late L Govender (AKA Nine) was known to my mother Aploon Wilson for a considerable period of time, approximately nine years.

During this time he frequently visited our home.

When I started (sic) school at Seaview Primary he helped by buying my school uniforms and school shoes that was about R170.00.

I was enrolled at Seaview Primary from 1992 and L Govender assisted by paying my school fees every year. He also on occasions gave me pocket money and paid for the costs of my school excursions.

5. Ms van Wyk also submitted a fee statement from Seaview Primary School, in respect of Melody Wilson, in terms of which, the school fees for the calendar years 1996 and 1997 amounted to R660.00 per annum. The statement also reflected that Ms Wilson was unable to pay fees in a single lump sum and paid the fees in monthly installments. From the above evidence, Ms van Wyk concluded that Melody Wilson fell within the definition of a dependant, and therefore was entitled to share in the death benefit distribution.
6. Mr Khan argued that the further evidence did not alter the situation regarding Melody's *de facto* dependency on the deceased. According to Mr Khan, the affidavit by Ms Wilson contradicted an earlier affidavit, in which she indicated that the deceased assisted her in the amount of R225.00 per year, whereas the school fees indicated that R660.00 was due. He concluded that this was in line with my earlier finding that only isolated contributions were made by the deceased rather than regular maintenance payments. He therefore requested that the rule *nisi* be confirmed.
7. As stated, *in casu*, the issue for determination is whether Melody Wilson fell within

paragraph (b)(i) of the definition of a dependant. In terms of paragraph (b)(i), three requirements need to be fulfilled before a beneficiary may qualify as a dependant. Firstly, the beneficiary must be factually dependent on the deceased member for financial support. Secondly, the financial support must constitute maintenance, and finally, the *de facto* dependency must be at the time of the death of the deceased. Our courts have consistently held that a maintenance order is a special type of obligation, in terms of which, one party literally maintains another in respect of food, shelter, medical needs, etc (and other needs depending on the status of the parties). Whilst maintenance payments may be in the form of a lump sum, especially where the parties agreed thereto, they are usually in the form of periodic installment payments. The nub of this dispute is whether the deceased made isolated payments to Melody Wilson or whether he made regular payments, with only the latter constituting maintenance.

8. In the initial affidavit submitted by Ms Aploon Wilson, she indicated that the deceased contributed R200.00 per month in respect of general household supplies for herself and Melody Wilson. She further indicated that the deceased contributed approximately R100.00 per month in respect of Melody Wilson's schooling, which included school fund, books and school clothes. In her subsequent affidavit, she stated that the deceased assisted her by paying Melody's school fees in the amount of approximately R225.00 per annum and in addition also paid for the purchasing of certain school items. Furthermore, she also confirmed that she was only earning R300.00 per month working as a domestic worker and was further assisted by the deceased in respect of household groceries in the amount of R300.00 per month. Melody Wilson has confirmed certain aspects of her mother's affidavit. The school fees receipt/document clearly indicates that R660.00 for the years 1996 and 1997 was paid by Ms Melody Wilson (in installments) to Seaview Primary School.
9. Whilst I am in agreement with Mr Khan's submission that there are certain discrepancies in the affidavit submitted by Ms Melody Wilson in respect of the

amounts contributed by the deceased for Melody's schooling, nevertheless, they do not render the affidavits valueless. On the contrary, the subsequent affidavits by Aploon Wilson and her daughter together with the school fees statement, read together with all the other evidence before the trustees (see paragraph 6 of the interim ruling), reveals that the deceased made regular contributions to Ms Aploon Wilson in respect of the maintenance of Melody. Whether the monies were used for school expenses, clothing or food related items in respect of Melody is irrelevant, as all of the expenses fall within the meaning of maintenance. Whilst there may be a dispute regarding the actual amounts contributed by the deceased, I am satisfied that he made regular payments for the maintenance and general upkeep of Melody Wilson. Therefore, Melody fell within the definition of a dependant and was entitled to be considered in the death benefit distribution. Furthermore, the decision of the fund to award Melody 15% (R40,873.41) of the benefit, in my view, was an equitable distribution as required by the Act.

10. Accordingly, the rule *nisi* issued on 24 October 2000 is hereby discharged.

DATED at Cape Town this 26th day of April 2001.

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**John Murphy**

Pension Funds Adjudicator