

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/KZN/572/2000/CN

In the complaint between:

N.M. Mangxiki

Complainant

and

The Mineworkers Provident Fund

First Respondent

Mercantile Asset Trust Company

Second Respondent

**INTERIM RULING IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF
1956**

1. This is a complaint in terms of section 30A (3) of the Pension Funds Act of 1956("the Act"), which concerns the payment of a death benefit to the wife and children of a deceased member.
2. No hearing has been held herein, and in coming to my decision, I have had regard to the documentary evidence compiled in the course of an investigation conducted by my Assistant Adjudicator, Cikizwa Nkuhlu, as well as to the submissions made by the parties to the complaint.
3. The complainant is Nomatheku Mapakisi Mangxiki, an adult female residing at Mobeni in KwaZulu-Natal. She is represented by Mr. F.M. Matsosa of "You & Your Rights Labour Law Practitioners".

4. The first respondent is the Mineworkers Provident Fund (“the fund”), a pension fund duly established in terms of the Act.
5. The Mercantile Asset Trust Company (“the trust company”), a company which administers trust property as contemplated in the Trust Property Control Act 57 of 1988, was not cited as a party in the complaint. However, as it has a sufficient interest in the matter, I will order that it be joined as the second respondent in terms of section 30G (d) of the Act. The trust company’s principal place of business is at 142 West Street, Sandown.
6. The complainant is the wife of the late Gilbert Mangxiki (“the deceased member”), who was employed as a Pump Operator at the Libanon A Division of the Kloof Gold Mining Company, and was a contributor to the fund. The deceased member died on the 20 May 1999, leaving the complainant and four minor children.
7. It is common cause that the complainant and the four minor children were the deceased member’s sole beneficiaries and dependants.
8. On the deceased member’s death, the fund invested the death benefit payable to his dependants with the Mercantile Asset Trust Company, which, in turn paid to her an amount of R542-00 per month towards her and the children’s maintenance.
9. It is alleged on the complainant’s behalf that the fund should have paid her the full benefit payable in terms of the rules, and left it up to her to decide who to invest the monies with. It is further alleged that the amount of R542-00 per month is inadequate to meet the children’s maintenance requirements as it fall far below what was provided by the deceased member to them during his lifetime.
10. In response to the complaint, the Principal Executive Officer of the fund, Mr. B.E.

Mahlangu, sent the following letter to this Tribunal:

It is the rules of the fund that when a member dies leaving minor dependants and a spouse and or guardian, the guardian or spouse is given defined percentage as a full and final portion but continues to receive a monthly income on behalf of the children or minor dependants, in this case R542-00 as quoted, but the complainant(*sic*). The monthly income is derived from the investment of the portions divided for each child independent, which is based on their ages.

So the issue on dispute here is why rules were applied to Mrs. Mangxiki as is applied to all spouse of the deceased members. If this was done differently it would be inconsistent to all others and the rules. Mrs. Mangxiki was treated the same as all others.

11. The letter is inadequate in that it fails to address the issues raised in the complaint adequately, making it impossible for me to hand down a determination thereon.
12. No indication is given as to which rule of the fund is applicable; what the amount of the lump sum benefit, if any, was; how the amount of R542-00 per month was arrived at; how much of that amount is allocated to each minor child and on what basis. The fund's response also does not address the reasons for its decision to invest the benefit with Mercantile Asset Trust Company.
13. Insofar as the payment of a death benefit is concerned, Rule 27 of the fund's rules provides:

Death

27(1) (a)(i) If a Category A member dies, a benefit equal to the greater of his full benefit at the date of death and thirty-six times his deemed monthly earnings, calculated immediately prior to his death shall, subject to the provisions of this rule, be granted to his dependants and/or nominated beneficiaries.

(ii) In addition, the deceased member's voluntary portion and member's transfer

portion shall be paid to his dependants and/or nominated beneficiaries.

(b) (i) If a Category B member dies, a benefit equal to his full benefit at the date of death shall, subject to this rule, be granted to his dependants and/or nominated beneficiaries.

(ii) In addition, the deceased member's Member's voluntary portion and member's transfer portion shall be paid to his dependants and/or nominated beneficiaries.

14. Due to the lack of important detail in the fund's response, it is not clear what category of member the deceased member was, and thus what benefit is payable to his dependants and beneficiaries.
15. On the issue of the fund's decision to invest the benefit payable, Rule 37(1) and (5) provide as follows:

Variation of method of payment

Notwithstanding a contrary provision contained in the rules, if the trustees, in their absolute discretion, for some good and sufficient reason, deem it not advisable to make payment of a benefit in the manner elsewhere provided for in these rules, they may pay the benefit in one of the following ways:

- (1) To a trustee contemplated in the Trust Property Control Act, 1988 (Act No.57 of 1988), for the benefit of the beneficiary, in the case of death benefits; and/or
- (5) In the case of death benefits, to a major beneficiary in instalments, provided that the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement and that the agreement may be cancelled by either party on written notice not exceeding 90 days, provided further that in the event that the agreement is cancelled, that balance of the benefit shall be paid to the beneficiary in full.

A decision of the trustees in terms of this rule may be varied by them from time to

time in their sole discretion.

16. Once again, the lack of detail in the fund's response makes it impossible to determine which sub-rule of rule 37 is applicable in the present case.
17. The information that has not been furnished is crucial in that it is reasonably required by the complainant to protect her rights. The fund has it in its possession, or within its disposal; and no hardship whatsoever can be suffered by it in securing the information and furnishing it to the complainant and this Tribunal.
18. Accordingly, I make the following interim ruling:
 - 18.1. Mercantile Asset Trust Company is joined as the second respondent to these proceedings.
 - 18.2. The first respondent is ordered to serve a copy of the complaint, its response, and this ruling on the second respondent within ten days of the date hereof.
 - 18.3. The first respondent is further ordered to furnish the following information in writing to the complainant and to this Tribunal, by no later than Friday, 26 October 2001:
 - 18.3.1 An indication of the rule that was applied in calculating the death benefit payable to the deceased member's beneficiaries and dependants;
 - 18.3.2 A detailed breakdown of the calculation of the benefit referred to in 18.3.1;
 - 18.3.3 An indication of the category of member to which the deceased

belonged;

18.3.4 An indication of whether or not the trustees acted in terms of rule 37 in this case; and if so, in terms of which sub-rule did they act;

18.3.5 If the trustees acted in terms of rule 37, the respondent is required to set out in writing the factors that the trustees took into account as constituting good and sufficient reason for deeming it not advisable to pay the benefit in the manner provided for elsewhere in the rules.

DATED AT CAPE TOWN THIS 9TH DAY OF OCTOBER 2001.

JOHN MURPHY
PENSION FUNDS ADJUDICATOR