

# Burden of proof on gay couples

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**THE office of the Pension Funds Adjudicator has ruled that people in same-sex relationships need to be able to prove that they were in a relationship to benefit from their spouse's pension fund when they die.**

The adjudicator said people in same-sex marriages were entitled to their spouse's pension fund if they were nominated in writing by the deceased.

The ruling was made in a case where the surviving partner, Thabo Mlambo\*, took his deceased partner's pension fund administrator to the adjudicator for refusing to pay him his pension.

Mlambo argued that he was entitled to the pension fund benefits because he had been in a relationship with the deceased, for 29 years, and were also living together until he died.

The tribunal received Mlambo's complaint on April 13 2010 when he wanted to get his spouse's pension from the AECI Pension Fund.

The AECI, however, told Mlambo he was not entitled

## SPOUSES URGED TO WRITE WILLS

to the payment

The partner said he qualified as an eligible spouse as defined in the respondent's rules and as such, he is entitled to be paid his spouse's pension.

"Further, the complainant submitted that he was the deceased's life partner since 1984 until his death," read the judgment.

Mlambo argued that the AECI should have known about the relationship as he and the deceased shared the same postal address from which the respondent used for communicating over the years.

The pension fund administrator said it refused to make the payment, because the deceased was registered as single.

"No record of the surviving registration as the deceased's permanent same-sex life partner is available.

"The fund had no option but to treat the deceased as being single, and therefore no spouse's pension accrued to the complainant," said AECI.

The adjudicator said

though the deceased and the complainant had stayed together, he was never named in writing, as the beneficiary.

"The deceased was registered as "single" on the AECI records," it read.

The ruling further said that it was not enough for the AECI to be aware of a relationship between a member and his/her partner.

"This tribunal is satisfied that the complainant does not satisfy the definition of an eligible spouse and cannot receive payment as a spouse," said the ruling.

The president of the Institute of the Retirement Fund, Zamani Letjane said the application failed because the partner failed to prove his relationship with the deceased and not because the couple were in a same-sex relationship.

"This shows that it is important that while you are still alive you should nominate a beneficiary for your retirement fund," said Letjane, adding that people could prove this through bank statements.

\*Not his real name.