

PERSONAL FINANCE

Retirement fund trustees must be diligent

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Retirement fund trustees must diligently check all claims made on the death benefits of members who die before retirement, to ensure that their savings are properly allocated to the members' dependants.

In a recent determination, Pension Funds Adjudicator Muvhango Lukhaimane warned that trustees must not simply accept a claim, even if it is made in the form of an affidavit, at face value.

You are entitled to provide your retirement fund with the details of the people you consider to be the rightful beneficiaries of your retirement savings. However, in terms of the Pension Funds Act, the trustees must investigate who is dependent on you, and it is the trustees who make the final decision about who will receive a share of your benefits.

Lukhaimane says it is the responsibility of your trustees, "when dealing with the payment of death benefits, to conduct a thorough investigation to determine the beneficiaries, to thereafter decide on an equitable distribution and, finally, to decide on the most appropriate mode of payment of the benefit".

Trustees must consider the following factors when making an "equitable distribution" among dependants:

- * The age of the dependants;
- * The relationship of the dependants with the deceased;
- * The extent of their dependency;
- * The deceased's wishes as stated on a beneficiary nomination form and/or in a last will; and
- * The dependants' financial situation, including their potential to earn an income in the future.

In a recent complaint against Old Mutual Superfund Provident Fund and Old Mutual Life Assurance Company, Lukhaimane determined that the trustees did not properly investigate the dependants of MD Hutamo, who was a member of the provident fund by virtue of his employment with TotalGaz Southern Africa.

After Hutamo died on May 1, 2010, his death benefit of R124 822 was distributed to seven dependants identified by the trustees, mainly on the basis of an affidavit signed by one of the claimants, Rosina Motshiane Kgatle, on behalf of herself and three children.

Kgatle claimed in the affidavit that she had been married to Hutamo by customary union, and that she and her children were dependent on him.

She supported her claim with a letter from someone named A Makauli and bearing the stamp of a traditional authority, but no evidence could be provided for his authority.

Hutamo's family disputed Hutamo's paternity of Kgatle's children and the validity of Hutamo and Kgatle's marriage. They said the marriage had not been registered and there was no proof that lobola had been paid.

Lukhaimane says that the trustees, in accepting Kgatle's affidavit at face value, lost sight of the fact that the contents of an affidavit are not necessarily truthful.

"It is a sworn statement, the deponent to which is criminally liable should she be found to be lying. Affidavits submitted by claimants are hardly ever verified, except by collecting similar ones deposed to by purportedly independent parties," she says.

Lukhaimane also rejected the supporting letter provided by Makauli, which contained contradictions.

Lukhaimane set aside the trustees' decision to allocate a share of the death benefit to Kgatle and her three children and ordered the fund to pay the full death benefit to Hutamo's two biological children and his sister, Julia Mmakgogo Hutamo, who is taking care of them.