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Please quote our reference: **PFA/GP/00113430/2024/YVT**

Fund reference: **34647738**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 (“the Act”): KA BENYI (“complainant”) v UNIVERSITY OF VENDA
PROVIDENT FUND (“fund”)**

[1] INTRODUCTION

1.1 This complaint concerns the payment of a retirement benefit in respect of Mr K Benyi.

1.2 The Adjudicator received the complaint on 28 May 2024. On 12 June 2024, a letter was sent to the complainant, notifying him that the complaint would be forwarded to the fund for possible resolution. On the same date, a letter of notification was sent to the fund affording it until 11 July 2024 to resolve the complaint. A letter acknowledging receipt of the complaint was sent to the complainant on 17 July 2024,

following the lapse of the period afforded the respondents to resolve the complaint. On the same date, a letter was sent to the fund, affording it until 06 August 2024 to file its response to the complaint. On 12 August 2024, a follow-up letter was sent to the fund requesting a response by 21 August 2024. A response was received from Sanlam Life Insurance Limited on 07 August 2024 (“Sanlam”). A response was received from the fund on 21

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

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August 2024. On 28 August 2024, the fund response was forwarded to the complainant, requesting a reply by 03 September 2024. The complainant made further submissions on 03 September 2024. Sanlam made further submissions on 10 October 2024. No further submissions were received from the parties.

1.3 Having considered the written submissions before the Adjudicator, 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 lodged this complaint on behalf of his father, Mr K Benyi.

2.2 Mr K Benyi was registered as a member of the fund on 01 September 2011 by virtue of his employment with the University of Venda ("employer").

2.3 Mr K Benyi's gross fund credit was R241 493.52 as at 07 August 2024.

[3] COMPLAINT

3.1 The complainant submitted that Mr K Benyi was employed from 2004 until he retired in 2015. Mr K Benyi subsequently returned to Ghana. The complainant submitted that upon the termination of his employment, Mr K Benyi was not paid his full retirement benefit. He has attempted to resolve the matter with the fund since 2017, to no avail. Further, K Benyi was diagnosed with dementia. Therefore, he lodged the complaint on behalf of K Benyi. He attached various correspondence with the fund in support of his submissions.

3.2 The complainant requests the Adjudicator to investigate the matter and order payment of Mr K Benyi's full retirement benefit.

Further submissions

3.3 On 03 September 2024, the complainant replied to the fund response. He stated that the fund cannot continue to withhold Mr K Benyi's benefit. The fund should release the money.

[4]RESPONSES

Fund

4.1 The fund submitted that it is not clear whether Mr K Benyi is unable to open a bank account in his capacity. Further, whether the complainant was appointed as a *curator bonis* to manage the affairs of Mr K Benyi. The fund requires the said information to consider whether it can process payment to a third party's bank account in terms of section 37A(4)(a) of the Act.

Sanlam

4.2 Sanlam submitted a response in its capacity as the administrator of the fund. Sanlam stated that Mr K Benyi was registered as a member of the fund on 01 September 2011. The fund attached a copy of Mr K Benyi's contribution schedule reflecting a gross fund credit of R241 493.52 as at 07 August 2024.

4.3 Sanlam stated that it required the following documents:

- Foreign Exchange declaration form (National Treasury)
- 01MP336(b) form (ABSA/Reserve document)
- Certified ID or passport of Mr K Benyi
- Copy of bank statement (not older than 3 months)
- Confirmation of foreign bank's physical address.

4.4 Sanlam stated that it sent various follow-ups with the last on 26 June 2024. On 03 July 2024, it received the benefit payment instruction and indemnity, 3 months' bank statement, certified ID documents, and medical report. However, the board of management of the fund ("the board") should consider the merits and reasons provided before proceeding with payment of Mr K Benyi's benefit.

Further submissions

4.5 On 10 October 2024, Sanlam confirmed that it still requires the following information:

- Certified copy of Mr K Benyi's ID

- Certified copy of the complainant's/agent ID
- Complainant/agent bank statement
- Completed payment instruction

[5] DETERMINATION AND REASONS THEREFOR

Time-barring

5.1 Section 30I of the Act imposes a three-year time bar on complaints that may be investigated by the Adjudicator and states 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).”

5.2 Section 30I precludes the Adjudicator from investigating and adjudicating any complaint if the act or omission to which it relates occurred more than three years prior to receipt of a written complaint in that regard. In terms of section 12(1) of the Prescription Act No 68 of 1969, prescription commences to run as soon as the debt is due. Section 12(3) provides that a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

5.3 The Adjudicator received the complaint on 28 May 2024. Mr K Benyi's employment was terminated in 2015. The complainant attempted to resolve the matter with the fund in 2017. Therefore, he ought to have lodged a complaint earlier. However, the fund acknowledged that it is holding a benefit on behalf of Mr K Benyi. Therefore, the Adjudicator may only adjudicate the complaint in respect of the payment of Mr K Benyi's benefit.

Introduction

5.4 Therefore, the issue that falls to be determined is whether or not Mr K Benyi is entitled to a retirement benefit in terms of the rules of the fund and the Act.

5.5 In *Municipal Employees Pension Fund v Mongwaketse* (969/2019) [2020] ZASCA 181 (23 December 2020) at paragraphs [42] to [44], Wallis JA held that the rules of a fund are its constitution, and that the doctrine of *ultra vires* applies. If the rules of a fund do not afford a fund the legal power or capacity to do something, then such purported act by the fund is *ultra vires* and accordingly null and void. The Constitutional Court affirmed the SCA's findings in *Municipal Employees Pension Fund and Another v Mongwaketse* (CCT34/21) [2022] ZACC 9 at paragraph [39] where it stated that the application of the *ultra vires* doctrine to pension funds is consistent with the constitutional principle of legality.

Benefit entitlement

5.6 Rule 5 of the fund provides for the payment of retirement benefits and reads as follows:

“5.1 When payable

retirement benefit becomes payable when a Member retires from the Service of the Employer on his/her Normal Retirement Date.

5.1(2)...

5.2 Benefit at retirement

A member's retirement benefit consists of an annuity policy purchased with the Member Share. By applying to the Fund prior to his /her retirement, the Member may convert the benefit or part of it, into a lumpsum payment.”

The complainant submitted that Mr K Benyi retired in 2015. Upon the termination of his employment, he was not paid his full retirement benefit. The fund acknowledged that it is currently holding a fund credit on behalf of Mr K Benyi. It provided a statement reflecting a gross fund credit of R241 493.52.

Payment to third party

5.7 Section 37A(4)(a) of the Act provides as follows:

“Despite the provisions of this section, a fund may direct that a member’s or beneficiary’s benefit may be paid to a third party if that member or beneficiary provides sufficient proof that he or she is not able to open a bank account.”

The complainant stated that Mr K Benyi was diagnosed with dementia. Therefore, he is claiming Mr K Benyi’s benefit on his behalf. The fund may only pay Mr K Benyi’s benefit to the complainant upon receipt of sufficient proof that the former is unable to open a bank account. Therefore, the complainant should also provide the fund with a mandate authorising him to act on behalf of Mr K Benyi. Further, the fund indicated that it still requires the information as per paragraph 4.5 above. The complainant should provide the fund with the required information. The fund should proceed to pay Mr K Benyi’s outstanding benefit.

Conclusion

5.8 The appropriate relief is that which has the effect of placing Mr K Benyi in the position he would have been had the fund paid his retirement outstanding benefit (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3880 (C) at 3839F-G and *Mabale v Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F).

[6] ORDER

6.1 In the result the order of the Adjudicator is as follows:

6.1.1 The complainant is ordered to provide the fund with the following information:

- Mandate authorising the complainant to act on behalf of Mr K Benyi
- Certified copy of Mr K Benyi’s ID
- Certified copy of the complainant’s ID
- Complainant’s bank statement
- Completed payment instruction

6.1.2 The fund is ordered to pay Mr K Benyi’s outstanding retirement benefit within two weeks from receipt of the information in terms of paragraph 6.1.1 above; and

6.1.3 The fund is ordered to provide Mr K Benyi and the complainant with a detailed breakdown of the payment together with the payment made in terms of paragraph 6.1.2 above, within one week of effecting such payment.

DATED AT PRETORIA ON THIS 31ST DAY OF OCTOBER 2024

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented