



THE FINANCIAL SERVICES TRIBUNAL

Case No. PFA38/2025

In the matter between:

DEAN GARZANCICH

First Applicant

WAYNE GARZANCICH

Second Applicant

and

PENSION FUND ADJUDICATOR

First Respondent

OLD MUTUAL SUPERFUND

Second Respondent

SARA SUSANNA GARZANCICH

Third Respondent

TRIBUNAL PANEL: PJ Veldhuizen and LTC Harms

Appearance for Applicant: n/a

Appearance for Respondent: n/a

Date of hearing: n/a

Date of Decision: 11 November 2025

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.

DECISION

A: INTRODUCTION

1. This is a matter where the Applicants, the two adult sons of the late Derick Garzancich ("the deceased"), seek a reconsideration of the Pension Fund Adjudicator's ("the adjudicator") determination to uphold the allocation of a death benefit by the Old Mutual Superfund ("the Fund") to the Third Respondent only.
2. The application is brought in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") against the aforementioned determination, pursuant to a complaint laid in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
3. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.

B: THE FACTS AND THE COMPLAINT

4. The deceased was a member of the Fund from 4 October 1991 until he passed away on 16 February 2021.
5. On the deceased's passing, a death benefit of R7,694,041.04 became due and payable to his beneficiaries in terms of section 37C of the PFA.
6. As foreshadowed above, this matter concerns the Fund's allocation of the deceased's death benefit to the Third Respondent, his surviving spouse only.
7. The essence of the Applicants' complaints are that the Fund failed:

- 7.1 to investigate correctly;
 - 7.2 to appreciate the deceased's wishes;
 - 7.3 to appreciate the relationship between the Applicants and the deceased;
 - 7.4 to recognise that the death benefit available for distribution is significant and could be shared between the Applicants and the Third Respondent.
 - 7.5 to recognise that the Third Respondent was in a stronger financial position than that of, at least, the First Applicant.
- 8. The Fund rejects the assertion by the Applicants that it failed to consider all relevant factors and ignored relevant ones. In short, the Fund submits that it conducted a dependency investigation and exercised its discretion, which the Adjudicator upheld.
 - 9. As foreshadowed above, the Adjudicator handed down a determination, the essence of which was that the Adjudicator was satisfied that the Fund had exercised its discretion reasonably and accordingly upheld the allocation.
 - 10. The Applicant applied for reconsideration of the Adjudicator's determination on 23 June 2025, on essentially the same grounds as the complaint made to the Adjudicator.

C: THE LEGISLATION

1. **"dependant"**, in relation to a member, means—

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person—
 - (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
 - (ii) is the spouse of the member;
 - (iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock.
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

[Definition of "dependant" inserted by s. 21 (a) of Act No. 101 of 1976, substituted by s. 10 of Act No. 80 of 1978, amended by s. 38 of Act No. 99 of 1980 and by Act No. 22 of 1996 and substituted by s. 20 of Act No. 54 of 1989 and by s. 1 (i) of Act No. 11 of 2007.]

37C. Disposition of pension benefits upon death of member.—

- (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19 (5) (b) (i) and subject to the provisions of sections 37A (3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

- (a) If the Fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the Fund, to one of such dependants or in proportions to some of or all such dependants.

[Para. (a) substituted by s. 5 (a) of Act No. 22 of 1996 and by s. 51 (a) of Act No. 45 of 2013.]

- (bA) If a member has a dependant and the member has also designated in writing to the Fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the Fund, the Fund shall within twelve

months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees.

[Para. (bA) inserted by s. 21 of Act No. 54 of 1989 and substituted by s. 5 (b) of Act No. 22 of 1996.]

D: DISCUSSION

11. The Fund is enjoined to investigate and ensure an equitable allocation of the death benefit to beneficiaries. In these circumstances, the case of Sithole v ICS Provident Fund and Another 2002 (4) BPLR 430 PFA at paragraphs 24-25 is instructive. The Fund is required to consider various factors, and Sithole identified the following:

11.1 Age of the dependants;

11.2 the relationship with the deceased;

11.3 the extent of the dependency;

11.4 the wishes of the deceased;

11.5 the future earning capacity of the beneficiary, and

11.6 the amount available for distribution.

12. The record indicates that the Fund conducted *inter alia*, interviews and a review of documentation submitted. Ultimately, the Fund identified potential dependants, assessed their financial circumstances, and exercised its discretion to allocate the entire death benefit to the Third Respondent. The Fund makes the fundamental point that it is not for the Adjudicator, nor indeed for this Tribunal, to decide whether we agree with

the Fund, but rather to assess whether the Fund applied its discretion fairly and without misdirection. On the record, a finding of misdirection is unsustainable, and it appears from the record that just the opposite is true. In the circumstances, even if the allocation were referred back to the Fund, it is unlikely that the Fund would reach a different allocation.

13. The Third Respondent, in her written submissions, largely echoes the Fund's position and submits that the Fund was correct in its allocation, that the Adjudicator was correct in her determination, and that this application should be dismissed.
14. The Fund comprehensively set out the methodology it adopted in compliance with Section 37C of the PFA, and the factors it considered, in correspondence both to the Applicant's attorneys and to the Adjudicator.
15. The Fund considered its distribution fair, reasonable, and in accordance with Section 37C of the PFA. It is difficult to find fault with the Fund's application and methodology.
16. A further factor raised by the Applicants is that the Adjudicator misunderstood or failed to consider some of their submissions. The Adjudicator conceded, in her further reasons, that although certain of the Applicants' submissions were incorrectly captured, these errors did not impact her decision and that the substantive facts were properly considered and applied.
17. It is clear from the record and, in particular, from the explanations at various stages of the allocation process that, not only did the Fund apply its mind diligently to the facts it was bound to consider, but it also communicated cogent reasons for their decision to all affected parties. It would appear that the Applicants are simply dissatisfied with the allocation, which is not enough to support an application for reconsideration.

E: CONCLUSION

18. In the circumstances, the Fund cannot be faulted for the death benefit allocation arrived at, and the Application for a reconsideration and setting aside of the Adjudicator's determination must be dismissed.

ORDER

- (a) The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 11 November 2025.

___*Sgd PJ Veldhuizen*_____

PJ VELDHUIZEN & LTC HARMS