

## THE FINANCIAL SERVICES TRIBUNAL

CASE NO: PFA28/2024

In the matter between:

MICHIEL GOOSENS COETZEE

Applicant

and

PENSION FUND OF THE UNIVERSITY OF THE

FREE STATE

First Respondent

R HAARHOFF

Second Respondent

T POTGIETER

Third Respondent

PENSION FUNDS ADJUDICATOR

Fourth Respondent

Summary: Section 37C of the Pension Funds Act 24 of 1956 - distribution of benefits upon the death of a member of a pension fund – nomination of dependants - condonation not granted.

## DECISION

- 1 The Applicant, Mr Michiel Goossens Coetzee, was the life partner of Dr AMG, a deceased Member of the University of the Free State Pension Fund (“the Fund”), a pension fund registered in terms of section 4 of the Pension Funds Act, 24 of 1956 (“the PFA”).
- 2 The application is in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 for the reconsideration of a decision taken by the Adjudicator in terms of Section 30M of the PFA. Section 230(1) sets out the basis for the

Applicant to lodge this application for consideration and seek appropriate relief under section 234(1).

- 3 The deceased was a member of the Fund at the time of his death. A death benefit of R 1 303 798.00 as well as a spouse's pension of R 21 729.64 per month became available for distribution in terms of the Fund rules. The board of trustees of the Fund dealt with the allocation and distribution of the death benefit under the provisions of section 37C of the PFA and allocated the death benefit between the Applicant and the Member's two sisters, the second and third respondents. The pension benefit was allocated to the Applicant.
- 4 It may for present purposes be accepted that the Applicant and the Member were in a life partnership since 2003 and that they often resided together. That, at least, was the position at the time of death of the Member.
- 5 The Member had completed a beneficiary nomination form on 12 February 2020 and nominated the Applicant to receive 30% of his death benefits from the Fund. Included in the beneficiary nomination were the two sisters who were nominated to received 35% each.
- 6 The Member's will provided that the Applicant was to receive a monthly spouse's pension from the Fund and that the lump sum death benefit should be divided between the Applicant and the sisters. The deceased's house was bequeathed to his sisters. The will did not deal with other assets and if there were any, they probably devolved intestate. We know that the Applicant filed a maintenance claim against the estate which was dismissed by the Master.
- 7 On 2 January 2022 the Applicant and the deceased entered a Co-Habitation Agreement. The following clause is relevant to this Application:

The [Applicant] is a dependant of the [the Member] as described in section 37C of the Pension Funds Act, Act 24 of 1956. The parties therefore agree that the [Applicant] will be entitled to the full benefits arising from the pension fund of the [Member].

- 8 On the 24 February 2022, the Applicant forwarded the Co-Habitation Agreement to the Fund and the Member died on 9 July 2022.
- 9 The circumstances of the conclusion of the agreement are rather unusual. The Applicant explained that during 2019 the Member was diagnosed with Motor Neuron Disease and his employment was terminated due to his medical condition, but he remained a member of the Fund. He moved to Stilbaai during 2020, and “I gave up all of my businesses in Bloemfontein and I relocated with” him.
- 10 During the late 2021, “the Member could no longer communicate verbally. We made a huge board with different letters and then we would show him the different letters and he would blink once if that were the letter that he wishes to spell and twice if it is not the letter. The [Member] indicated to me that he wishes to ensure that his full pension benefit be awarded to myself. I then asked my current attorney of record, who was a mutual friend . . . for his advice. My attorney of record then advised that we enter into a Co-Habitation Agreement “.
- 11 The attorney, as notary, attested that the thumb print on the Agreement was that of the Member, that he had explained the content of the Agreement to him and that he confirmed it, whether by blinking his eye for every letter or once is not disclosed.
- 12 The Applicant, the Fund accepted, was dependent on the Member and that he had been nominated as a co-beneficiary by the Member during 2020. The Fund and the Adjudicator also found that the sisters had been nominated during 2020, and that the 2022 agreement did not replace the 2020 nomination. They relied on the wording of sec 37C(1)(c) which requires a nomination in writing by the Member to the Fund arguing that the Member did not notify the Fund in writing – the Applicant did and (presumably) there is no indication that the Member authorized the Applicant to notify the Fund.

- 13 The allocation was thus made on the basis that the Applicant was a dependant and a nominee and that the sisters were nominees and not dependants.
- 14 The application for reconsideration is based on the ground that the Fund and the Adjudicator had erred in finding that the nomination of the sisters during 2020 was extant at the time of the Member's demise. Before the correctness of the submission can be considered, the application for condonation must be decided.
- 15 The decision of the Adjudicator, with detailed reasons, was given to the Applicant on 3 November 2023. The Applicant was informed that he had 60 days to file an application for reconsideration. Full particulars as to how and where a reconsideration application may be filed were given. The 60 days is laid down in sec 230(2)(b) of the FSR Act.
- 16 The Rules of the Tribunal state for the sake of lay persons that
- “Day” for purposes of the Act and these rules does NOT refer to court or business days but (in accordance with the Interpretation Act) to ordinary days and shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.
- 17 Why the Applicant was advised otherwise is not understood. But although the period lapsed at the beginning of January, the Applicant only applied for reconsideration on 28 May. The explanation for this is that when he was asked by his attorney during November whether to proceed with an application, he, apparently, decided not to do so because of a lack of funds.
- 18 This is a strange allegation. The dispute is simple; the reconsideration form is simple; and the Applicant is educated and business savvy. Many reconsideration applications are filed by unsophisticated persons and the Applicant was informed that he could approach a legal aid bureau for advice.

- 19 But the allegation of lack of funds is untrue. He may not have had ready cash but he is relatively wealthy. He owns a farm and lets two houses on it; he bought a holiday home in Stilbaai for cash; he receives the monthly pension and his monthly income is in excess of R43 000.00; he is 51 years of age, inter alia a qualified teacher, and apparently leads a life of leisure.
- 20 The reason for his change of heart during May was because his attorney convinced him to proceed and that he would do the matter pro bono. But since he chose in November not to proceed, this is not good enough.
- 21 An application for condonation who relies on an apparent untruth for the exercise of a discretion is bound to be dismissed.

## ORDER

The application for condonation is dismissed.

Signed on behalf of the Tribunal on 1 October 2024 by Ms Zama Nkubungu-Shangisa  
(Panel Member) with JUDGE LTC HARMS.

