

**THE FINANCIAL SERVICES TRIBUNAL**  
("the Tribunal")

Case No. PFA67/2024

In the matter between:

**MADISHA LUCAS MALAKA**

Applicant

and

**CAROLINE MALEFU CHOKOE**

First Respondent

**PERSONAL PORTFOLIOS  
RETIREMENT FUND**

Second Respondent

**THE PENSION FUNDS ADJUDICATOR**

Third Respondent

**GLACIER BY SANLAM**

Forth Respondent

*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.*

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**DECISION**

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**A: INTRODUCTION**

1. The Applicant is Madisha Lucas Malaka ("the Applicant").
2. The First Respondent is the Caroline Malefu Chokoe ("the life partner").
3. The Second Respondent is Personal Portfolios Retirement Fund ("the Fund")
4. The Third Respondent is the Pension Funds Adjudicator ("the Adjudicator").
5. The Fourth Respondent is Glacier by Sanlam, the administrator of the

Fund.

6. This is an Application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the Adjudicator, pursuant to a complaint laid in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
7. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.
8. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant to lodge this Application for reconsideration and seek appropriate relief.

**B: THE FACTS AND THE COMPLAINT**

9. The essence of the Applicant's complaint is that he is aggrieved at the Fund's allocation of the death benefit of Mr Louis Malaka ("the deceased") or, more pertinently, his exclusion from the allocation.
10. The Applicant is the deceased's brother.
11. The Applicant maintains that he and the deceased agreed on their shared responsibilities toward each other's families and that, in any event, he was the nominated beneficiary and should have received the death benefit.
12. The Applicant further maintains that the Fund ignored this agreement nomination and took into account irrelevant factors while ignoring relevant factors.

13. The deceased was a member of the Fund until his death on 6 December 2022.
14. On his passing, a death benefit of R4,181,587.21 became available for distribution in terms of Section 37 C of the PFA.
15. The Fund allocated the death benefit as follows:

Beneficiary	Relationship	Age	Amount
CM Chokoe	Life Partner	62	R4,061,587.21
Y Kunene	Major Daughter	46	R120,000.00
<b>TOTAL</b>		<b>100%</b>	<b>R4,181,587.21</b>

16. Aggrieved by death benefit allocation, the Applicant laid a complaint with the Adjudicator on 16 February 2024.
17. The Adjudicator handed down a determination on 27 June 2024, the essence of which was that the Adjudicator was satisfied that the Fund took into account all the relevant factors and ignored irrelevant factors and that there was no cause to interfere with the Fund's discretion.
18. Accordingly, the complaint was dismissed.
19. The Applicant applied for a reconsideration of the Adjudicator's Determination on 23 September 2024. This application was filed out of time, and the Applicant has filed an application for condonation which is

granted.

20. The Applicant complained further to this Tribunal in relation to a naming error in relation to the Fund. This issue was dealt with in a Procedural Ruling handed down by the Tribunal on 1 November 2024, and nothing further needs to be said about this.

### **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**

21. 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:

21.1 Age of the dependants;

21.2 the relationship with the deceased;

21.3 the extent of the dependency;

21.4 the wishes of the deceased;

- 21.5 the future earning capacity of the beneficiary, and
- 21.6 the amount available for distribution.
22. In its reply to the Adjudicator on 26 April 2024, the Fund comprehensively set out the methodology it adopted in compliance with Section 37 C of the PFA and the factors it considered.
23. The Fund confirmed that it had identified six potential dependants, namely:
- 23.1 Caroline Malefu Chokoe.
- 23.2 Yvette Kunene.
- 23.3 Mpho Palesa Malaka.
- 23.4 Thuto Malaka.
- 23.5 Emily Pinky Malaka.
- 23.6 Modishe Lucas Malaka
24. The Fund noted that the deceased had nominated the Applicant to receive the death benefit but established that Caroline Malefu Chokoe, the life partner and Yvette Kunene, a major daughter, were dependants as defined in the legislation and whose needs had not been met.
25. The Fund communicated its allocation to the potential dependants on 18 December 2023. Within three days, the Applicant wrote to the Fund indicating his arrangement with the deceased and that the death benefit allocation arrived at by the Fund was, therefore, incorrect.
26. The Fund considered the representations made by the Applicant and revisited their allocation. On 2 February 2024, the Fund advised the Applicant that their allocation was to remain unchanged.
27. The Fund's investigations determined that:

Caroline Malefu Chokoe – surviving life partner

1. The life partner is 62 years old, unemployed, and she was living with the deceased since 2008.
2. The trustees considered that she received no income, that the deceased took care of all household expenses, he paid for her medical expenses and gave her spending money. The trustees also considered the living standard of the deceased and the life partner prior to his death.
3. Three properties are bequeathed to the life partner (to the value of as per the L&D account). The ownership of the properties will be transferred to a trust if she should pass away.
4. The life partner will be responsible for the monthly expenses and costs related to the properties.
5. The life partner confirmed that the three properties are being rented out and could generate a rental income of approximately R33 000.00 per month. We were however notified that the rental income on one of the properties is in arrears and that they are trying to recover this from the renter.
6. Additionally, she is renting a separate home for her to live in at R13 500.00 per month.

Yvette Kunene – major daughter of deceased

1. Yvette is the major daughter of the deceased. As indicated on her potential dependent form she received R10 000.00 each month to assist her with her medical condition, arthritis, (causing her to move around with difficulty) as well as her grocery needs.
2. The life partner confirmed that the deceased supported Yvette with her financial needs.
3. Yvette is 46 years old, unemployed and did not live with the deceased at the time of his death.

Mpho Palesa Malaka - the major daughter of deceased

1. Mpho is the major daughter of the deceased. As indicated on her potential dependent form she did not receive financial aid from the deceased.
2. Mpho is 36 years old unemployed pharmacist.
3. She lived rent free, with the deceased at the time of his death, however she moved back to her mother's house. She only moved into the deceased's house during October 2023 to assist the life partner and the deceased during his illness but moved out when he was admitted to hospital.

Thuto Malaka - the major son of deceased

1. Thuto is the major son of the deceased.
2. Thuto is 40 years old and an executive manager.
3. He did not live with the deceased and confirmed that he was not financially dependent or supported by the deceased.

Emily Pinky Malaka – ex-spouse of deceased

1. Emily confirmed she did not stay with the deceased, was not supported by him. Nor was she financially dependent on him.

Modishe Lucas Malaka – the brother of the deceased

1. Mr. ML Malaka indicated that he was not financially dependent on the deceased.
2. As per the wishes of the deceased, Mr. ML Malaka was appointment as nominee of the Annuity.
3. Mr. ML Malaka is awarded shares (valued at R1,5 million in the L&D account) in terms of the will.

28. The Fund confirmed *inter alia* that in arriving at its allocation, they:

28.1 acted in accordance with their duties as prescribed in the Fund's Rule and the Legislation.

28.2 determined the dependency of each potential dependant, based on the information supplied.

28.3 noted that the Applicant did not claim to be a dependant but instead relied on an agreement with the deceased, alternatively the nomination.

29. In the circumstances, the Fund considered its distribution fair, reasonable and in accordance with Section 37 C of the PFA.

30. It is clear from the Determination that the Adjudicator considered the Fund to have fulfilled its duties. This Tribunal cannot fault the Adjudicator's reasoning on the facts presented by the Fund.

**E: CONCLUSION**

31. In the circumstances, the Application for a reconsideration of the Fund's decision must fail.

**ORDER**

(a) The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 19 March 2025.



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**PJ VELDHUIZEN & LTC HARMS**