

**THE FINANCIAL SERVICES TRIBUNAL**

Case №: PFA70/2024

In the matter between:

<b>PAMELA XOLISWA MATE</b>	<b>APPLICANT</b>
and	
<b>MA LUKHAIMANE</b>	<b>FIRST RESPONDENT</b>
<b>PENSION FUNDS ADJUDICATORS</b>	<b>SECOND RESPONDENT</b>
<b>OLD MUTUAL SUPERFUND PROVIDENT FUND</b>	<b>THIRD RESPONDENT</b>
<b>NMPUMELEO DAMENI</b>	<b>FOURTH RESPONDENT</b>

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**DECISION**

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Tribunal: Judge LTC Harms (Chairperson) and Adv W Ndinisa  
(Member)

Date of hearing: No hearing, matter decided on papers

Date of Decision: 8 April 2025

Representations: Applicant represented by B Nduli & Co Attorneys

Third Respondent represented by its official(s)

Summary: Section 37C of Pension Funds Act 24 of 1956 – distribution  
of death benefit – read with section 1 – definition of  
dependant – marriage without more does not automatically

entitle a surviving spouse to a portion of death benefit – the Fund has large discretion

1. The applicant brings this application in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”) for reconsideration of the determination of the Pension Funds Adjudicator, the third respondent (“the PFA”) dated 23 August 2024.
2. The second respondent is the PFA and will accordingly be referred to as such in this decision.
3. The third respondent is Old Mutual Superfund Provident Fund (“the Fund”), a registered fund in terms of the Pension Funds Act, 24 of 1956 (“the Pension Funds Act”).
4. The fourth respondent is Nompumelelo Dameni. She is not participating in these proceedings.
5. The parties agreed that this matter be decided on the documents filed, and on written submissions made, on record and for that reason waived their rights to oral hearing.
6. This matter is about allocation of a death benefit by the Fund following the death of its member, Mr Ntaba Mate (“the deceased”).
7. The deceased was a member of the Fund until he passed away on 13 December 2022. He was married to the applicant and the marriage

subsisted until his death.

8. Death benefit in the amount as specified in the record become available for allocation to the deceased's beneficiaries. The board of the Fund investigated and thereafter allocated the death benefit.
9. The Fund identified five beneficiaries, namely the applicant (spouse), the fourth respondent (partner), major daughter, major son and the deceased' sister.
10. It is the allocation of the benefit to the deceased's beneficiaries that the applicant is contesting. More specifically the applicant is aggrieved at the allocation of 65% of the death benefit to the fourth respondent. The Fund provided the basis for the allocation which will be referred to later in this decision. The applicant and the sister to the deceased received no allocation of payment.
11. The applicant lodged a complaint with the offices of the PFA. After having assessed the submissions from the applicant and the Fund, the PFA came to the determination that the Fund took into account the relevant factors and did not abuse its discretion in the allocation of the death benefits. The complaint was thereafter dismissed.
12. The applicant submitted her grounds for reconsideration and same will be summarised in the next paragraphs of the decision for purposes of avoiding prolixity.
13. The applicant submitted that the decision of the Fund favoured the fourth

respondent (the partner of the deceased) to the exclusion of the wife of the deceased. According to the applicant, the decision of the board did not take into consideration that the deceased and the applicant had two children, who were still dependent on them.

14. Further, the applicant referred to section 37C of the Pension Funds Act and stated that this section deals with two types of dependents, namely the legal dependant and a factual dependant. The allocation (payment) made, so the applicant submitted, clearly prioritizes the needs of the factual dependant over and above the needs of the legal dependants.
15. Furthermore, the applicant submitted that the decision of the board may have unintended consequences of encouraging divorce between parties. In short, the applicant submitted that a spouse may opt to obtain a divorce, in order to ensure that she receives 50% rather than to pursue reconciliation.
16. The applicant submitted that the fourth respondent, who was a partner of the deceased had reached 60 years of age and therefore she is entitled to receive government pension and none of the other dependants qualify to receive any pension from government. The applicant contended that to award the fourth respondent bulk of the benefit is therefore irrational, unfair and wrongful.
17. The Fund opposed the application for reconsiderations and its submissions will be summarised. It is the submission of the Fund that it acted within the parameters of section 37C of the Pension Funds Act

when it investigated dependency and ultimately allocated the death benefit. In support of that, the Fund stated the following: -

- 17.1        The deceased and the applicant were separated for a number of years;
  - 17.2        They did not live in the same household at the time of deceased's death;
  - 17.3        The applicant is employed and has no disability or illness that could prevent her from not being able to work in the future;
  - 17.4        Although the applicant was married to the deceased before his death, she was not dependent on the deceased. The mere fact that a person qualifies as a dependant does not automatically give them a right to receive a portion of the death benefit; and
  - 17.5        Dependency is decided by a number of factors, which include financial dependency on the deceased before his death.
18.        Further, in its investigation the Fund established the following in respect of the fourth respondent: -
- 18.1        The fourth respondent, who was a partner of the deceased, was 60 years old;
  - 18.2        She was in a relationship with the deceased for more than 15 years and lived with the deceased at the time of his death;

and

18.3 She was unemployed and fully dependant on the deceased and she is eligible for a state old age grant.

19. The PFA referred to section 37C of the Pension Funds Act and stated that it is the Fund's responsibility when dealing with payment of death benefits to conduct a thorough investigation to determine beneficiaries. She stated that the Fund, after having investigated, decide on an equitable distribution and on the most appropriate mode of payment of the benefits payable.
20. Further, the FPA referred and mentioned factors that the Fund consider in making an equitable distribution. On its path to arrive at what is an equitable distribution the Fund, according to the PFA, need to consider all relevant information and ignore irrelevant facts.
21. Further, the PFA referred and quoted section 1 of the Pension Funds Act in dealing with what "*Dependant*" means and stated that the law recognises three categories of dependants based on the deceased member's liability to maintain such a person, namely legal dependants, factual dependants and future dependants.
22. The PFA in her analysis considered the facts established by the Funds' investigation, which are not disputed by the applicant. The facts are: the applicant was estranged from her husband for years; did not share a common home; the deceased lived with the fourth respondent until his

death; and the deceased and the fourth respondent share a common household. The fourth respondent was identified as a factual dependant and therefore, a beneficiary.

23. It is noted that the two children of the deceased and applicant, who are at tertiary institutions, were considered as legal dependants and therefore, beneficiaries.
24. It was contended, on behalf of the applicant, that she was married to the deceased and therefore there is a reciprocal duty to support each other. Further, the contention persisted that the applicant falls within one of the categories of dependants mention in the definition of the “*Dependant*”, and therefore she cannot be excluded.
25. The legal framework for the allocation and distribution of death benefit in terms of the Pension Funds Act falls within section 37C, read with section 1 dealing with the definition of dependant. The determination of the PFA and the submissions of the parties on record have referred and quoted same. For purposes of brevity, the relevant sections will not be quoted in full.
26. A fund is entrusted with a duty to investigate and identify dependants of the deceased who may qualify for an equitable distribution from the deceased's death benefit. Further, a fund is vested with a large discretion to determine, in the light of its assessment of the dependants' respective needs, in what proportions the death benefit will be distributed among the

class of dependants.<sup>1</sup>

27. It is submitted on behalf of the applicant that she is a legal dependant of the deceased which is created by virtue of marriage. This is common cause.
28. In this matter, the Fund considered number of factors to come to its decision in the distribution of the death benefit. The record show that the Fund considered, amongst other things, factors such as: the needs of financial support and school funding of the two children of the deceased; the fourth respondent being 60 years old and that she was in a relationship with the deceased for 15 years and lived with the deceased until his death; the fourth respondent is unemployed and fully dependant of the deceased.
29. The Fund noted in respect of the applicant that she and the deceased were separated for number of years and were not living in the same household. Further, the Fund stated that the applicant is employed and had no disability or illness that would prevent her from not being able to work in the future. Furthermore, the Fund stated that the applicant was not dependent on the deceased.
30. The Fund noted that the death benefit due by the Fund was not sufficient to cater for the current and possible future financial needs of all the dependants.

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<sup>1</sup> *Fundsatwork Umbrella Pension Fund v Guarnieri and Others* (830/2018) [2019] ZASCA 78 (31 May 2019), par 8

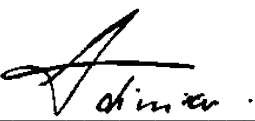


31. The applicant submitted that it is wrongful for the Fund to come to the conclusion that the lawful wife of the deceased is not entitled to anything. This submission has no basis in law. Being married to the deceased alone, without proof of financial dependence, as in this matter, does not automatically entitle the applicant to a portion of the death benefit.
32. After having considered the record and the submissions of the parties, we find no legal basis to interfere with determination of the Pension Funds Adjudicator.

**ORDER:**

The application for reconsideration is dismissed.

Signed on behalf of the panel at Pretoria on 8 April 2025.



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Adv W Ndinisa