



Case No: PFA76/2025

In a matter between:

**LAIQAH DINIE**

**APPLICANT**

and

**OLD MUTUAL SUPERFUND PROVIDENT FUND**

**FIRST RESPONDENT**

**THE PENSION FUNDS ADJUDICATOR**

**SECOND RESPONDENT**

**CHANTAL PITCHER**

**THIRD RESPONDENT**

**TRIBUNAL PANEL:** Judge L.T.C Harms & Adv K.D Magano

Date of Decision: 23 March 2026

**Summary:** *Application for Reconsideration-Pension Funds Act 24 of 1956 — section 37C — distribution of death benefit — application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 — whether the Pension Funds Adjudicator erred in upholding the fund's allocation excluding an adult dependent — consideration of dependency, financial circumstances, and external benefits — whether alleged factual*

*discrepancies (including age and income assessment of a cohabiting partner) materially affected the outcome — role of the Tribunal on reconsideration — no material misdirection or irregularity established — determination upheld — application dismissed.*

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## **DECISION**

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### **INTRODUCTION**

1. The Applicant, Ms L Dinie, seeks reconsideration of a determination issued by the Second Respondent, the Pension Funds Adjudicator (“the Adjudicator”), on 26 September 2025 (“the Determination”).
2. This application is brought in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”), in terms of which the Applicant challenges the Adjudicator’s dismissal of her complaint.

### **FACTUAL BACKGROUND**

3. The late Mr I Dinie (“the Deceased”) was, until his death on 17 December 2024, a member of the Old Mutual Superfund Provident Fund (“the First Respondent”).
4. The Deceased is survived by his life partner, Ms Pitcher (“the Third Respondent”), two minor children, D Dinie and I Dinie, and an adult son, N Dinie, who is the Applicant's son. The Applicant is the deceased’s former wife.
5. After the death of the deceased, the Board of the First Respondent conducted an investigation in terms of section 37C of the Pension Funds Act 24 of 1956 (“the

Pension Funds Act”) for the purpose of identifying all persons who qualified as dependants of the deceased at the time of his death.

6. The Board identified the following persons as dependants of the deceased:

7.1. Ms Pitcher.

7.2. N Dinie.

7.3. D Dinie; and

7.4. I Dinie.

7. It is common cause that all four individuals fell within the statutory definition of “dependant” as contemplated in section 1 of the Pension Funds Act, albeit on different basis, namely, factual dependency in respect of the life partner and legal dependency in respect of the children.

8. Having identified the pool of dependants, the Board proceeded to consider the appropriate allocation of the death benefit. In doing so, it was required to exercise its discretion in a manner that is equitable, taking into account the circumstances of each dependant, including their ages, financial circumstances, extent of dependency, and future needs, as well as any benefits received from other sources arising from the death of the deceased.

9. The death benefit available for distribution amounted to R1 580 517.29 before tax. On 24 April 2025, the Board resolved to allocate the death benefit as follows:

Name	Age	Relationship	percentage
CA Pitcher	57	Life Partner	40%
D Dinie	9	Minor Child	30%
I Dinie	15	Minor Child	30%
N Dinie	18	Major Child	0%

10. The record shows that, in making its decision, the Board placed greater importance on the needs of the deceased's minor children, as they required ongoing financial support. The Board also accepted that Ms Pitcher was financially dependent on the deceased because she lived with him and they shared household expenses.
11. In relation to N Dinie, the Board took into account that he had received a substantial lump-sum benefit of R585,660.50 arising from an external group life assurance policy in consequence of the deceased's death. The Board considered this factor as being relevant to his immediate financial needs and concluded that a further allocation from the deceased's death benefit was not required in order to achieve an equitable distribution.
12. The allocation of 0% to N Dinie must be understood in the context of the overall distribution exercise, in which the Board sought to balance competing dependency interests within a finite fund. The Board was not required to achieve equality of treatment between dependants, but rather an outcome that is equitable in all the circumstances.

### **THE APPLICANT'S COMPLAINT AND THE ADJUDICATOR'S DETERMINATION**

15. The Applicant lodged a complaint with the Adjudicator in terms of section 30M of the

Pension Funds Act. The complaint concerned the manner in which the Fund distributed a death benefit following the deceased's death.

16. The Applicant contended that the Fund acted unfairly and irrationally in excluding the deceased's adult son, N Dinie, from any share of the death benefit. She further alleged that the Fund failed to properly consider relevant factors, including N's financial circumstances and the manner in which the external group life assurance benefit had been treated.
17. In response to the complaint, the Fund maintained that it had properly identified all dependants, conducted a thorough investigation, and exercised its discretion in accordance with section 37C of the Pension Funds Act. It further submitted that the exclusion of N Dinie was justified, having regard to the external lump-sum benefit he received and his financial circumstances at the time of distribution.
18. Having considered the complaint together with the Fund's response and the supporting record, the Adjudicator found that the Fund had correctly identified the deceased's dependants and had taken the relevant factors into account when making its decision.
19. The Adjudicator further held that section 37C of the Pension Funds Act grants the Board a wide discretion to determine an equitable distribution of the death benefit.
20. The Adjudicator found no evidence that the Fund had exercised its discretion irrationally, unfairly, or in breach of its duties.
21. The Adjudicator accordingly concluded that the Applicant had failed to establish any

basis upon which the Fund's decision could be interfered with, and the complaint was dismissed.

## **RECONSIDERATION AND GROUNDS THEREOF**

22. The Applicant advances several grounds upon which she contends that the Adjudicator's determination falls to be reconsidered. These grounds relate primarily to the manner in which the Fund identified and assessed the dependants of the deceased and the manner in which the death benefit was allocated.
23. In summary, the Applicant contends that:
  - 23.1. The Fund failed to properly and consistently assess the financial circumstances of the dependants.
  - 23.2. There were material inconsistencies in the information relied upon in relation to the dependants' financial positions.
  - 23.3. The Fund treated similar external benefits differently in respect of different dependants; and
  - 23.4. The decision to exclude N Dinie from the distribution was not supported by a rational and fair application of section 37C.
24. It is on these grounds that the Applicant submits that the Adjudicator erred in concluding that the Fund acted lawfully, rationally, and in accordance with section 37C of the Pension Funds Act.

## **TRIBUNAL'S ANALYSIS AND FINDINGS**

25. The Tribunal has considered the full record of proceedings, the Adjudicator's determination, and the parties' submissions. The central issue for determination is whether there is any lawful basis to interfere with the Adjudicator's finding that the Fund exercised its discretion in terms of section 37C of the Pension Funds Act 24 of 1956 in a lawful, rational, and equitable manner.
26. The analysis of the facts turns on the proper interpretation and application of section 37C of the Pension Funds Act.
27. Section 37C serves an important social protection function. Its purpose is to ensure that persons who were dependent on the deceased are not left destitute upon the death of a fund member. The provision accordingly limits freedom of testation and obliges boards of pension funds to conduct a fair and equitable distribution of death benefits.
28. The proper application of section 37C requires a structured inquiry. The board must identify all dependants, determine an equitable distribution having regard to relevant factors, and decide on an appropriate mode of payment. Although the board is vested with a wide discretion, such discretion must be exercised rationally, reasonably, and fairly.
29. In assessing equity, relevant considerations include the age of dependants, the extent of dependency, and their financial circumstances. The board must also consider the amount available for distribution and any other benefits received by

dependants as a result of the death.

30. The Tribunal further accepts that, as confirmed in *Mutsila v Municipal Gratuity Fund*,<sup>1</sup> dependency is assessed at the time of the member's death, but the fund may take into account materially changed circumstances at the time of distribution where these affect the ongoing need of a dependant
31. It is common cause that the Fund identified all relevant dependants of the deceased, including the minor children, the adult son N Dinie, and the deceased's permanent life partner, Ms Pitcher.
32. The Tribunal is satisfied that the Fund conducted a proper investigation into the financial circumstances of the dependants and considered relevant factors, including their ages, income, and other benefits received as a result of the death of the deceased.
33. The minor children, D Dinie and I Dinie, were correctly regarded as particularly vulnerable dependents. They are of school-going age and require ongoing financial support for their maintenance and education. The record further reflects that, unlike N Dinie, they did not receive any portion of the external group life assurance benefit. The prioritisation of their needs is therefore consistent with the purpose of section 37C, which is to protect dependents who remain financially vulnerable.
34. The Tribunal accepts that Ms Pitcher qualified as a factual dependent. The evidence

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<sup>1</sup> (CCT 228/23) [2025] ZACC 17; 2025 (10) BCLR 1139 (CC); 2026 (1) SA 1 (CC) (8 August 2025)

shows that she was in a long-term relationship with the deceased, cohabited with him, and shared household expenses. In addition, they had a child together. These factors support the conclusion that she was financially interdependent with the deceased and was correctly included as a beneficiary.

35. In relation to N Dinie, the Tribunal accepts that he qualified as a legal dependent as the deceased's child and that he was still completing his studies at the time. However, the record shows that he received a substantial external group life assurance benefit of approximately R585,660.50, paid directly to him following the deceased's death.
36. The Fund was entitled to take this benefit into account when assessing N Dinie's financial position at the time of distribution. The evidence indicates that the Fund considered this amount, together with the fact that his educational expenses would be covered by the employer's education fund and that he had some form of income, albeit irregular. In these circumstances, the existence of this additional financial support was a relevant factor in determining whether further provision from the death benefit was required.
37. The Tribunal is not persuaded that the Fund acted irrationally or unfairly in concluding that N Dinie's financial needs were materially reduced by reason of the additional benefits received
38. The Applicant contends that the Fund and the Adjudicator relied on incorrect and inconsistent information regarding the Third Respondent's circumstances. In particular, she points to the incorrect recording of the Third Respondent's age and

conflicting statements in the record as to whether her income exceeded her expenses.

39. Even if these discrepancies are accepted, the Tribunal is not satisfied that they materially affected the outcome of the allocation. The record shows that the Third Respondent was treated as a dependant primarily on the basis that she was the deceased's long-term life partner who shared a household and expenses with him. Her inclusion and allocation were therefore based on her dependency, and not on any single disputed factor such as age or income alone.
40. It is also necessary to emphasise that the role of the Tribunal is not to determine whether a different allocation would have been preferable. The question is whether the Fund exercised its discretion improperly. The Applicant must therefore show that the Fund relied on incorrect information in a way that materially affected the decision, or that it failed to consider relevant factors.
41. On the record before the Tribunal, this has not been established. The Applicant's case amounts to a disagreement with the outcome of the allocation rather than proof of a material misdirection or irregularity in the exercise of the Fund's discretion

## **CONCLUSION**

42. Having regard to all the circumstances, the Tribunal is satisfied that the Adjudicator properly considered the relevant facts and correctly applied section 37C of the Pension Funds Act in assessing the Fund's decision.
43. The Adjudicator's conclusion that the Fund exercised its discretion lawfully,

rationality, and equitably is supported by the record and does not disclose any material error of law or fact, nor any misdirection in the exercise of that assessment.

44. In these circumstances, the Tribunal finds that the Applicant has not established any basis upon which the Adjudicator's determination may be set aside or remitted for reconsideration.

### **ORDER**

45. As a result, the following order is made:

45.1. The application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 is dismissed.

45.2. The determination of the Pension Funds Adjudicator dated 26 September 2025 is confirmed.

Signed on behalf of the Tribunal panel.

\_\_\_\_\_ *Sgd Adv KD Magano* \_\_\_\_\_

**KD MAGANO**