



**Financial Services
Tribunal**

THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA56/2025

In a matter between:

MS ALTEVESE SIR-MONE PUNI MODIBOA

APPLICANT

and

SENTINEL PENSION FUND

FIRST RESPONDENT

PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

AMOGELANG/JOYCE PHILLIPS

THIRD RESPONDENT

K O NZIMKULU/PORTIA NZIMAKULU

FOURTH RESPONDENT

BOPHELONG METSING

FIFTH RESPONDENT

IMAN MANYONI

SIXTH RESPONDENT

WONGA PHILLIPS

SEVENTH RESPONDENT

RAMANTSI PHILLIPS

EIGHTH RESPONDENT

APPEARANCES:

TRIBUNAL PANEL:

Judge MF Legodi, KD Magano & P Maseko

For the Applicant:

N Olifant

For the First Respondent:

K Magan

For the Second Respondent:

No Appearance

For the Third Respondent:

No Appearance

For the Fourth Respondent: M Steyn-Du Toit
For the Fifth Respondent: In Person
For the Sixth Respondent: No appearance
For the Seventh Respondent: B Letuka
For the Eighth Respondents: In Person

Date of hearing: 16 February 2026

Date of Decision: 09 March 2026

Summary: *Application for reconsideration of the Pension Fund's Adjudicator's Determination filed in terms of section 230 of the Financial Sector Regulation Act of 2017 and condonation, dated 20 August 2025 - Application for condonation and reconsideration dismissed.*

DECISION

INTRODUCTION

1. This is an application for the reconsideration of a determination made by the Pension Funds Adjudicator ("*the Adjudicator*") on 16 May 2025. The application is brought in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 ("*the FSR Act*").
2. The underlying dispute concerns the distribution of a death benefit following the passing of Mr MG Phillips ("*the Deceased*"). The Sentinel Pension Fund ("*the Fund*") exercised its discretion under section 37C of the Pension Funds Act, 24 of 1956 ("*the Pension Funds Act*") to distribute the benefit among the Deceased's dependants.

3. The Applicant, a major daughter of the Deceased, is dissatisfied with her allocation of 8% of the benefit. She contends that the Fund's Board of Trustees ("*the Board*") laboured under a factual error regarding her financial dependency, leading to an inequitable distribution. The Adjudicator dismissed her initial complaint, prompting her to approach the Tribunal.
4. A preliminary issue arises regarding the timeous filing of this application. The Applicant acknowledges that she received the Adjudicator's determination on 19 May 2025. In terms of Section 230(2)(b) of the FSR Act, the Applicant was required to lodge this application within 60 days of that notification. However, the application was only filed on 20 August 2025, some 97 days outside the prescribed statutory period.
5. Consequently, the Applicant has applied for an order to condone the late filing of her application for reconsideration. The Tribunal must initially decide whether the interests of justice permit the granting of such condonation before proceeding to consider the merits of the reconsideration.
6. However, to properly evaluate the application for condonation, specifically the prospects of success and the potential prejudice to the respective parties, it is necessary to first outline the factual background and the nature of the dispute that brings the parties before this Tribunal.

FACTUAL BACKGROUND

7. The Deceased passed away on 15 June 2021. Upon his death, a lump sum death benefit of R14,891,779.00 became available for distribution in terms of Section 37C of the Pension Funds Act.

8. The Board initially identified a pool of potential beneficiaries. Over the course of a year-long investigation and subsequent reconsiderations, largely prompted by objections from the Applicant, the allocation of the benefit evolved as follows:

Beneficiary	Relationship	Initial (18 Apr 2024)	Re-allocation (13 Mar 2025)	Final (10 Apr 2025)
KO Nzimankulu	Minor Daughter	28%	32%	34%
RM Phillips	Minor Son	18%	21%	22%
WOK Phillips	Major Daughter	16%	18%	19%
BM Kolobi	Major Son	12%	14%	14%
ASP Modiboa	Applicant (Major Daughter)	6%	8%	8%
IKS Manyoni	Stepdaughter	3%	3%	3%
CM Phillips	Mother of Deceased	4%	4%	0%
Amogelang Phillips	Alleged Son	13%	0%	0%
TOTAL		100%	100%	100%

9. The Applicant's primary grievance is the 8% allocation. She contends that the Board's decision was based on a flawed factual premise: namely, that she was a self-supporting adult. The Fund's investigation established that at the time of the Deceased's death, the Applicant was a Real Estate Agent. Conversely, the Applicant maintains that she was factually dependent on the Deceased. She states that she was unemployed and had not earned commission for six months before his death.
10. In seeking to establish a claim of factual dependency under Section 1 of the Pensions Funds Act, the Applicant sought to introduce several documents, much of which was tendered belatedly on 9 July 2025.

11. The first category of evidence related to historical educational support, specifically a university transfer instruction dated 15 July 2014. While this document confirms a past act of financial assistance, it precedes the Deceased's death by seven years. The record contains no evidence of subsequent or ongoing funding for the Applicant's education that would establish a subsisting dependency in June 2021.
12. The second category involved childcare and nursery school records for the Applicant's son, dated 27 October 2020. Ironically, the correspondence attached to these records undermines the Applicant's claim. In emails to the school, the Applicant explicitly stated that she was responsible for the fees and requested that the Deceased be removed from future billing and correspondence. This contemporaneous written statement by the Applicant herself directly contradicts the assertion that she was factually dependent on the Deceased for the maintenance of her household and child.
13. Regarding housing, the Applicant presented an "Offer to Purchase" a residential property, signed by the Deceased in June 2020. She argued that this demonstrated the Deceased's intent to provide her with a permanent maintenance structure. However, the factual record contains no evidence that the transaction was ever finalised, that the property was transferred, or that the Applicant ever occupied a residence owned or maintained by the Deceased.
14. Finally, the Applicant submitted bank statements and family affidavits. The bank statements, however, covered the period from October 2024 to August 2025, some three to four years after the member's death. As the legal inquiry is fixed

at the date of death, these statements offer no factual insight into her financial status at that time.

Proceedings before the Pension Funds Adjudicator

15. Following her dissatisfaction with the Fund's allocation, the Applicant lodged a formal complaint with the Office of the Pension Funds Adjudicator ("*the Pension Funds Adjudicator*") on 16 July 2024. This complaint was brought in terms of Section 30A of the Act.
16. The gravamen of the Applicant's complaint before the Pension Funds Adjudicator was that the Fund improperly distributed the deceased member's death benefit in terms of section 37C of the Pension Funds Act.
17. The Applicant alleged that the Fund failed to allocate to her the 20% share reflected in the deceased's beneficiary nomination form and instead awarded her a smaller percentage of the benefit. She further contended that the Fund incorrectly allocated a larger share of the benefit to other beneficiaries, including BM Kolobi, and initially included Amogelang Phillips as a beneficiary, whom she claimed was neither the biological child of the deceased nor financially dependent on him.
18. In essence, the Applicant argued that the Fund failed to properly consider the deceased's wishes and made an inequitable distribution of the death benefit, and she therefore sought intervention from the Pension Funds Adjudicator to review the allocation.
19. On 24 July 2024, the Pension Funds Adjudicator requested further particulars from the Applicant, including information and documentation relating to her

alleged financial dependency on the deceased, the supporting material previously submitted to the Fund, and the identification of any other potential beneficiaries.

20. The Applicant did not respond to the Pension Funds Adjudicator's request for further particulars. Consequently, on 27 August 2024, the Pension Funds Adjudicator issued a letter informing the Applicant that the file would be closed due to insufficient information relating to the complaint.
21. On 3 September 2024, the Applicant's former attorneys, Abrams Madira Attorneys Inc., submitted a formal response to the Pensions Funds Adjudicator. This response included a detailed letter and a set of annexures intended to address the ten points of inquiry raised by the Pensions Funds Adjudicator.
22. In addressing the specific request for factual dependency, the Applicant's response stated that she was dependent on the deceased as his biological daughter, the Deceased was responsible for her university fees, and the Deceased supported her with "daily necessities and daughter duties" up until the time of his death.
23. Regarding other beneficiaries, the Applicant provided a comprehensive list to the Adjudicator, identifying the minor children (KO Nzimankulu and RM Phillips), the major siblings, and the Deceased's mother (CM Phillips). Notably, she disputed Amogelang Phillips's claim.
24. Upon receipt of this response, the Pensions Funds Adjudicator referred the complaint to the Sentinel Retirement Fund for a response.

25. The Fund conducted a series of internal reviews between October 2024 and April 2025. These reviews arose from developments in the factual circumstances surrounding the complaint, including the Applicant's challenge to the paternity of the alleged son, Amogelang Phillips, and the subsequent passing of the Deceased's mother, CM Phillips. As a result, the Fund's Board of Trustees convened on three occasions to reconsider the allocation of the death benefit.
26. In its final response to the Pension Funds Adjudicator, the Fund submitted that its Board had considered the competing needs of all identified dependants. The Fund indicated that, although the 2008 nomination form had been taken into account, the thirteen-year lapse since its completion, the birth of additional minor children, and the death of the primary nominee (the Deceased's spouse) constituted reasons for deviating from the proportions reflected in the nomination. The Fund further submitted that the Applicant, as a self-supporting adult with earning capacity, required a lesser degree of financial support than the Deceased's minor children.
27. On 16 May 2025, the Pension Funds Adjudicator issued the final determination. In dismissing the complaint, the Pension Funds Adjudicator held that the Fund's Board had conducted a proper investigation in accordance with section 37C of the Pension Funds Act. The Pension Funds Adjudicator found that the Board had considered the relevant factors and that the allocation prioritising the needs of the minor children was rational and equitable.
28. In relation to the Applicant's grievance regarding her allocation, the Pension Funds Adjudicator concluded that the 8% share awarded to her was reasonable in light of her status as an employed and self-supporting adult at the time of the

Deceased's death. The Pension Funds Adjudicator further confirmed that the Fund was not bound by the proportions set out in the 2008 nomination form where other relevant considerations justified a different distribution.

29. It is this determination that the Applicant now seeks to have reconsidered by this Tribunal.
30. Having summarised the background of the complaint, the Pension Funds Adjudicator's Determination, and the subsequent events leading to the Applicant's referral, the focus now shifts to a preliminary procedural matter: the Applicant's application for condonation of the late filing. Before the Tribunal can consider the merits of the referral, it must first determine whether it is in the interests of justice to permit the matter to be heard despite the delay.

CONDONATION

i. Length of the delay and reasons thereof

31. At the threshold, we must address the Applicant's failure to comply with the statutory timeframes. The length of the delay in this matter is 97 days beyond the 60-day period prescribed by section 230(2)(b) of the FSR Act. The Applicant attributes the delay to the purported withdrawal of her previous attorneys due to financial constraints. However, correspondence from those attorneys indicates that their withdrawal was based on ethical considerations, namely that the Applicant advised them she could finalise the matter more expeditiously herself. The explanation provided by the Applicant is, therefore, inconsistent with the record and lacks credibility.

32. The Applicant's explanation also fails to account fully for the 97-day delay. She does not indicate the precise timing of her appointment of new attorneys, nor the period it took for them to commence acting in the matter. As the Constitutional Court emphasised in **Van Wyk v Unitas Hospital and Another**,¹ an Applicant seeking condonation must provide a full and reasonable explanation for the entirety of the delay. Inordinate or unexplained delay, even where important rights are at stake, is not excusable, and the absence of a credible explanation undermines the interests of justice.
33. Moreover, in **Van Wyk**, the Court stressed that prospects of success are of limited weight where the delay is substantial and unexplained. In the present matter, the Applicant's delay, coupled with the contradictions in her stated reasons, significantly weakens the justification for condonation. The Tribunal is therefore constrained to view the application with scepticism, because permitting condonation under these circumstances would undermine the principles of finality and diligence that the statutory timeframes are designed to promote.
34. Notwithstanding this conclusion, and in the interests of completeness, the Tribunal will proceed to consider the question of prospects of success. This requires a limited examination of the substantive merits of the Applicant's complaint, including whether the allocation of the death benefit by the Fund, as reviewed by the Adjudicator, was rational, equitable, and consistent with the provisions of section 37C of the Pension Funds Act. This exercise is undertaken solely to satisfy the statutory and procedural obligations of the Tribunal and does not diminish the significance of the unexplained delay as a decisive factor.

¹ [2007] ZACC 24; 2008 (2) SA 472 (CC),

ii. Prospects of success

35. The starting point of this inquiry is the provision itself, which states in relevant part:

"37C (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit... payable by such a fund upon the death of a member, shall... 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 board, to one of such dependants or in proportions to some of or all such dependants..."

36. Section 37C creates a statutory framework designed for social protection. Its primary objective is to ensure that those who were dependent on a deceased member for the necessities of life are not left destitute. Jurisprudence has refined the Board's obligations into a mandatory two-step approach.
37. The Board is first burdened with a proactive, "fiduciary-like" duty to conduct a thorough investigation to identify all potential dependents and nominees. The Board must not merely wait for claims to be lodged but must actively seek out those who fall within the statutory definitions of dependants under Section 1 of the Pensions Funds Act.
38. In the present matter, the Identification Phase was particularly complex. The Board initially identified a pool that included an alleged son and a surviving mother. However, as the investigation matured, largely due to the Applicant's objections and the subsequent disclosure of the death of the Deceased's mother.

The Board corrected the pool by excluding the alleged son and noting the 0% allocation for the deceased mother.

39. It is common cause that the Applicant was successfully identified as one of the Deceased's biological children and, consequently, as a legal dependant. The Tribunal finds that the Board ultimately satisfied this first phase by identifying the correct circle of dependants before making the final allocation.
40. Once the pool of dependants and nominees has been correctly identified, the Board must move to the second stage of the inquiry: the Equitable Distribution Phase. Here, the Board must exercise its discretion to decide who receives a portion of the benefit and in what proportion.
41. This discretion is wide, but it is not absolute. To achieve an "equitable" result, the Board is required to weigh several competing factors, including:
 - 41.1. The age of the dependants;
 - 41.2. The extent of their financial dependency on the Deceased;
 - 41.3. The financial affairs and future earning potential of each beneficiary; and
 - 41.4. The wishes of the Deceased (as expressed in the nomination form).
42. In the present matter, having finalised the circle of beneficiaries, the Board moved into the Equitable Distribution Phase by apportioning the death benefit in the percentages and amounts detailed in the allocation table above. This final distribution, sought to balance the minor children's immediate and long-term maintenance needs against the claims of the major, independent beneficiaries.

43. The Applicant argues that the Board did not properly exercise its discretion in allocating the death benefit. In particular, she asserts that the Board failed to adequately consider her financial dependence on the Deceased and did not give proper weight to the Deceased's wishes as stated in the nomination form. According to the Applicant, if these factors had been properly considered, the allocation of the benefit would have been different.
44. The Applicant further contends that the Adjudicator erred in dismissing her complaint and in upholding the Board's allocation of the death benefit. In this regard, she submits that the Pension Funds Adjudicator misdirected herself by accepting that the Board had properly exercised its discretion in terms of section 37C of the Act. According to the Applicant, the Pension Funds Adjudicator failed to adequately appreciate that the Board did not properly consider her financial dependency on the Deceased and the Deceased's wishes as expressed in the nomination form and consequently reached an incorrect conclusion in upholding the Board's decision.
45. The allocation of a death benefit under section 37C of the Pension Funds Act involves the exercise of a discretion by the board of the fund. While that discretion is wide, it is not unfettered.
46. The principles governing interference with the exercise of a discretion are well established. The Tribunal may interfere with the exercise of the board's discretion only where it is shown that the discretion was not properly exercised. This may happen if the board failed to conduct a proper investigation to identify the deceased's dependants, ignored relevant considerations, took into account irrelevant considerations, acted arbitrarily or in bad faith, or reached a decision

so unreasonable that no reasonable board could have arrived at it. Unless such a misdirection occurs, the Tribunal will not interfere simply because it might have reached a different decision.

47. Having established the legal framework, the Tribunal must now determine whether there is any basis to interfere with the Pension Fund's Adjudicator's determination, which upheld the Fund's final allocation.
48. The Board's decision to award the Applicant 8% (approximately R1.19 million) must be considered alongside the 34% and 22% awarded to the minor children. At the time of the distribution, the Applicant was a 41-year-old with a developed earning capacity. In contrast, the minor children faced many years of future dependency without parental support from the Deceased. The social-protection purpose of Section 37C is specifically aimed at prioritising those dependants who would otherwise be left destitute.
49. Regarding the Applicant's claim of factual dependency, the evidence she provided, such as a 2014 tuition payment and 2020 nursery school records, failed to establish a consistent pattern of factual dependency at the date of death in 2021. In fact, her own correspondence requesting that her father be removed from school billing records served as contemporaneous evidence of her financial independence.
50. The Applicant further relied on a June 2020 Offer to Purchase, signed by the Deceased, which she contended demonstrated his intention to provide her with housing due to her alleged unemployment. According to the Applicant, this document evidenced financial support that should have been taken into account in assessing her dependency.

51. This contention cannot be sustained. There is no evidence on the record to suggest that the transaction was ever finalised or that the property was transferred. An unfulfilled intention to purchase immovable property does not constitute the provision of maintenance and therefore cannot, without more, establish factual dependency.
52. Moreover, even if the transaction had been successfully concluded, the property would have been registered in the Deceased's name. Because the Deceased passed away intestate, such property would have formed part of his deceased estate and not the pension benefit administered by the Fund. In those circumstances, the asset would have been subject to the rules of intestate succession, under which the Deceased's children would have equal claims to the estate. The mere existence of an offer to purchase a property that would ultimately fall into the estate cannot, therefore, be construed as evidence of the Applicant's exclusive or heightened factual dependency.
53. The Applicant also submitted bank statements covering the period from October 2024 to August 2025. The Tribunal finds that these documents are of no assistance in establishing factual dependency. For purposes of section 37C, dependency must be assessed as it existed at the date of the member's death. Financial circumstances arising several years after the member's death are not relevant to the Board's determination.
54. In any event, the Applicant did not provide bank statements or other contemporaneous financial records from the period surrounding the member's death in 2021. As a result, she failed to rebut the Fund's finding that she was an

adult with the capacity to earn a stable income at the time of the Deceased's passing.

55. In these circumstances, the additional documentation relied upon by the Applicant does not establish factual dependency, nor does it demonstrate that either the Board or the Pension Funds Adjudicator overlooked material evidence in reaching their respective conclusions.
56. Consequently, the Tribunal concludes that the Board did not act irrationally or unfairly. It weighed the Deceased's wishes against the stark reality of the minor children's needs. The Adjudicator's decision, which determined that the Fund had conducted a proper investigation and reached an equitable allocation, is legally sound. There is no evidence of a "gross unreasonableness" or a failure to consider relevant factors that would justify interfering with the Pension Fund's Adjudicator's findings or the Board's discretion.
57. The Applicant has failed to demonstrate any reasonable prospects of success in the reconsideration application.

CONCLUSION

58. In light of the above, there is no basis to find that the Pension Funds Adjudicator's decision to dismiss the Applicant's complaint is irrational. The Adjudicator correctly determined that the Fund's investigation and its final distribution were rational, fair, and aligned with the spirit of the Pension Funds Act.
59. In the absence of any irregularity or irrationality in the Board's exercise of its discretion, this Tribunal has no grounds to interfere with the final determination.

ORDER

60. The following order is made:

60.1. The application for condonation for the late filing of the application for reconsideration is dismissed.

60.2. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal panel.

_____ *Sgd Adv KD Magano* _____

KD MAGANO