



**Financial Services
Tribunal**

THE FINANCIAL SERVICES TRIBUNAL

CASE NO. PFA4/2026

In a matter between:

NOMSA ESTHER NDLANGAMANDLA

APPLICANT

and

BECSA PROVIDENT FUND

FIRST RESPONDENT

NHLANHLA NDLANGAMANDLA

SECOND RESPONDENT

SLINDILE MALANGENI

THIRD RESPONDENT

PENSION FUND ADJUDICATOR

FOURTH RESPONDENT

TRIBUNAL PANEL:

Appearance for Applicant: n/a

Appearance for Respondents: n/a

Date of hearing: n/a

Date of Decision: 26 May 2026

Summary: Section 37 of the Pension Fund Act No 24 of 1956 – Allocation of Death Benefits

DECISION

INTRODUCTION

1. The Applicant is **NOMSA ESTHER NDLANGAMANDLA**, the deceased's estranged spouse ("the Applicant").
2. The First Respondent is **BECSA PROVIDENT FUND**, ("the Fund").
3. The Second Respondent is **NHLANHLA NDLANGAMANDLA**, the deceased's girlfriend.
4. The Third Respondent is **SLINDILE MLANGENI**, an adult child of the deceased.
5. The Fourth Respondent is the **ADJUDICATOR** ("the Adjudicator").
6. The deceased is **ISACK BAFANA NDLANGAMANDLA**, the deceased ("the deceased").
7. This is an Application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the Determination of the Adjudicator, pursuant to a complaint laid in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
8. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.
9. 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.

THE FACTS AND THE COMPLAINT

10. The complaint before the Adjudicator concerned the allocation of a death benefit following the death of the deceased.
11. The essence of the Applicant's complaint is that she is aggrieved at the Fund's allocation of the deceased's death benefit, and at her exclusion from any portion of the death benefit.
12. The deceased passed away on 7 September 2023, and a death benefit of R3521,416.44 after tax became available for distribution in terms of Section 37C of the PFA.
13. The Fund allocated the death benefit as follows:

Name	Age	Relationship	%
Nokuthula Marcia Ndlangamandla	38	Daughter	15%
Thembelihle Mzila	24	Daughter	22.5%
Slindile Mlangeni	23	Son	22.5%
Mafate Mabule	18	Son	25%
Nhlanhla Ndolvu	32	Girlfriend	15%

14. Aggrieved by the death benefit allocation, and her exclusion, the Applicant laid a complaint with the Adjudicator and submitted, *inter alia*, that:

- 14.1 She was married to the deceased and was financially dependant on him.
- 14.2 Although she could not provide proof of financial support in the form of bank statements, the deceased had provided her with cash and groceries.
- 14.3 Although she did not reside with the deceased, she would visit him on the weekends or when she was off from work.
- 14.4 Words to the effect that Fund had failed to exercise their discretion fairly and equitably.
15. In response to the complaint, the Fund indicated that it considered, *inter alia*, the following facts:
- 15.1 Upon investigation, it was furnished proof that the Second Respondent was the deceased's partner and that she had been residing with him since June 2022 until his death.
- 15.2 The Second Respondent provided bank statements indicating funds received from the deceased proving her financial dependency. The Fund accepted that the Second Respondent and the deceased shared a common household and shared household responsibilities. Accordingly, she was a factual dependant. In contrast, the Applicant provided no such bank statements or any other objective proof of dependency.
- 15.3 The Fund was unable to establish the Applicant's dependency on the deceased.
16. The Adjudicator dealt with the posthumous registration of the marriage between the Applicant and the deceased, and although considering

discrepancies in this regard, ultimately accepted that the posthumous marriage registration is in order.

17. The Adjudicator held that the issue for determination was whether or not the Fund had exercised their discretion properly or not in terms of Section 37C of the PFA when it excluded the Applicant.

18. The Adjudicator held that the Fund considered relevant factors and ignored irrelevant factors, did not fetter its discretion in the allocation of the deceased's death benefit, and therefore, there was no reason to set aside its decision. In the circumstances, the Applicant's complaint was dismissed.

19. The Applicant now seeks to set aside the Adjudicator's determination on *inter alia* the following basis:

19.1 The Fund failed to actively investigate and identify potential dependants, in particular, the Applicant.

19.2 By virtue of the Applicant's marriage to the deceased, she qualified as a legal dependent.

19.3 The Fund's misplaced reliance on the evidence of the Second Respondent.

THE LEGISLATION

1. "dependent", 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.]

DISCUSSION

20. The Fund is enjoined to investigate and ensure an equitable allocation of a death benefit to dependents. 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 the:

20.1 Age of the dependants.

20.2 Relationship with the deceased

20.3 Extent of the dependency.

20.4 Wishes of the deceased.

20.5 Future earning capacity of the beneficiary, and

20.6 Amount available for distribution.

21. The factors to be considered by the Fund are those that exist and are apparent when the discretion is to be exercised. Put differently, the Fund exercises its discretion and makes the allocation decision based on the known facts at the time. In response to the complaint, the Fund provided a comprehensive account of the factors it considered in arriving at the allocation decision.
22. It is only for the Adjudicator to decide whether the Fund acted rationally and arrived at a proper and lawful decision. In this regard, the Adjudicator was satisfied that the board did not fetter its discretion in the allocation of the death benefit and did not establish any reason to set aside the Fund's decision.
23. In the absence of any proof of dependency by the Applicant, the Fund could not come to any other allocation decision.

THE CONCLUSION

24. In the circumstances, the Application for a reconsideration of the Adjudicator's determination must be dismissed.

ORDER

The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 26 May 2026.

___*Sgd PJ Veldhuizen*_____

PJ VELDHUIZEN

LTC HARMS