Financial Services Tribunal

THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA84/2025

In the matter between:

THE ILLOVO SUGAR PROVIDENT FUND	Applicant
and	
THE PENSION FUNDS ADJUDICATOR	First Respondent
DOROTHY DIVYASHANTY SANASSYI	Second Respondent
NBC HOLDINGS (PTY) LTD	Third Respondent

TRIBUNAL PANEL: Judge D Davis, M Mphaga SC, E Moolla

For the Applicant: Robert Knox

For the First Respondent: Not Represented

For the Second Respondent: In Person

For the Third Respondent: Not Represented

Date of hearing: 24 June 2026

Date of Decision: 13 August 2026

Summary*:* The Financial Services Tribunal set aside the Pension Funds Adjudicator's determination in a dispute over the death benefit of the late Appanna Gandhi Sanassyi, a member of the Illovo Sugar Provident Fund. The Fund had allocated 10% of the R5.26 million benefit to the deceased's elderly, illiterate mother, Marriemall Appana, finding her financially dependent on him — but the Adjudicator rejected this in three successive determinations, each time shifting the evidentiary standard and disregarding evidence the Fund had provided at her own request. The Tribunal found the Adjudicator's approach procedurally unfair and legally unsound, confirmed that Marriemall was both a factual and prospective dependant of the deceased, and upheld the Fund's original 10% allocation. The matter was remitted to the Adjudicator solely to quantify the correct amount still owed to Marriemall's estate, with a direction to complete this within 60 days. No order as to costs was made.

DECISION

A. BACKGROUND AND CHRONOLOGY

1. The deceased member, Appanna Gandhi Sanassyi (hereinafter 'the deceased'), was born on 7 May 1960 and died on 13 January 2021. He was a member of the Illovo Sugar Provident Fund from 29 January 1982 until his death (Membership No. 311647). Upon his death, a gross death benefit

of R5,158,137.15 became payable in accordance with section 37C of the Act.

2. The deceased was survived by his widow, Dorothy Divyashanty Sanassyi (hereinafter 'Mrs Sanassyi' or 'the complainant'), his son Jemuel Jerial Sanassyi (born 18 August 2000, then a final-year university student), his mother Marriemall Appana (born 25 August 1939, aged approximately 81 years at the time of death, illiterate, and residing at 174 Cassia Close, Dalton 3236), and other potential dependants.

3. On 13 December 2021, the Board of Trustees of the Fund conducted an investigation and, exercising the discretion conferred by section 37C of the Act, resolved to allocate the death benefit as follows: to Mrs Sanassyi (spouse) 65%; to Jemuel Jerial Sanassyi (son) 25%; and to Marriemall Appana (the deceased's mother) 10%. The net benefit available for distribution was R5,263,655.09 (being the gross benefit of R5,158,137.15, plus late payment interest of R138,774.76, less tax of R33,256.82).

4. The Fund's allocation was based on a comprehensive investigation, which disclosed the following material facts:

   4.1 Marriemall was 84 years old at the time of the deceased's death and entirely illiterate;

4.2 the deceased had assumed full responsibility for managing his mother's financial affairs due to her age and illiteracy;

4.3 the deceased regularly paid Marriemall's municipal rates, electricity, water, and other household expenses;

4.4 the deceased purchased groceries for Marriemall and paid for her medical care and transport;

4.5 Marriemall's pension or other income was insufficient to cover her monthly expenses, and the shortfall was met by the deceased;

4.6 the deceased retained Marriemall's income and used it in conjunction with his own funds to meet her living costs; and

4.7 had the deceased survived, he would have continued to provide such financial support indefinitely, as Marriemall would never have become financially independent.

5. Mrs Sanassyi subsequently lodged a complaint with the Pension Funds Adjudicator, challenging the Fund's allocation. Mrs Sanassyi's complaint was premised on the assertion that the assistance rendered by the deceased to Marriemall was merely 'administrative' in nature and did not extend to financial maintenance or substantive dependency within the meaning of section 37C. Mrs Sanassyi further alleged that a caregiver named Jessy had committed fraud by inflating Marriemall's expenses.

6. The adjudication process has now spanned more than three years and produced three separate determinations, each setting aside the Fund's 10% allocation to Marriemall.

The First Adjudication Determination

7. In the first determination, the Adjudicator set aside the Fund's allocation and directed the Fund to conduct a fresh investigation into Marriemall's dependency. The Adjudicator's reasoning was that the Fund had submitted insufficient evidence of financial dependency and that the evidence was limited to affidavits unsupported by documentary proof.

The Second Adjudication Determination

8. Following the first determination, the Fund reinvestigated Marriemall's circumstances and, having done so, reached the same conclusion: that Marriemall was a factual dependant of the deceased. The Fund provided an income-expenditure analysis in the form of an Excel spreadsheet, setting out the deceased's income and expenses and the shortfall that had to be met by contributions from other sources (implicitly, from the deceased's own income).

9. The second determination again set aside the Fund's allocation. The Adjudicator found that the Excel spreadsheet was not accompanied by proof of expenses, specifically, receipts for municipal rates, electricity bills, water bills, groceries, and other items. The Adjudicator observed, in what

became a pivotal statement, that *'the statements by Jessy cannot withstand scrutiny without any proof of expenses*.' The Adjudicator did, however, acknowledge that some form of support must have existed, as the income data could not account for all of Marriemall's expenditures. Despite this acknowledgment, the Adjudicator declined to find dependency and again ordered the Fund to reinvestigate.

The Impugned Third Determination

10. In the course of the second reinvestigation, the Fund, in response to the Adjudicator's request for 'proof of expenses,' provided municipal rate statements, electricity bills, water bills, and other documentary evidence of Marriemall's living expenses.

11. The third and impugned determination again set aside the Fund's allocation. The Adjudicator's reasoning was as follows:

    11.1 the Fund had only demonstrated that Marriemall was in 'need' of financial support but had not proven that the deceased 'regularly provided' such support;

    11.2 the municipal rate statements submitted were addressed to the late father (not the deceased member) and were therefore disregarded;

    11.3 the evidence of Jessy was found to be insufficient without other corroborating documentation; and

    11.4 the Fund had failed to meet its evidentiary burden.

12. In our view, it appears that the Adjudicator did not engage with the documentary evidence before her. The Fund had provided precisely the proof of expenses that the Adjudicator had requested in the second determination. However, instead of evaluating this evidence, the Adjudicator shifted the basis of inquiry to the question of whether the deceased 'regularly provided' support, a formulation not previously emphasized. The Adjudicator then disregarded the very documents she had explicitly requested.

13. The Adjudicator also failed to acknowledge or explain why rate statements addressed to the deceased's father (which were used to establish the household expenses that Marriemall incurred as an occupant of that property) were irrelevant to the question of whether those expenses existed and whether the deceased funded them.

Payment of the Benefit

14. Notwithstanding the three adverse determinations, NBC Holdings (Pty) Ltd, as the Fund's administrator (hereinafter 'NBC Holdings'), made the following payments pursuant to the Fund's original allocation:

14.1 To Marriemall Appana: R374,094.72 on 3 February 2022.

14.2 To the Estate of Marriemall Appana (held pending provision of banking details): R147,025.24.

14.3 To Mrs Sanassyi: R517,963.23 on 10 March 2022.

14.4 To Old Mutual Alternative Risk Ltd (in respect of annuities for the spouse and son): R4,224,571.90 on 23 March 2022. Total: R5,263,655.09

15. The amount of R147,025.24 held pending Marriemall's estate banking details was later paid to Mrs Sanassyi on 13 May 2025, together with growth of R173,676.27, pursuant to an earlier order of this Tribunal. This payment was made in reliance on the prior FST order and will now be overtaken by this decision.

B. THE IMPUGNED DETERMINATION: FINDINGS AND REASONING

16. The impugned determination of 5 September 2025 is structured around three key findings, each of which this Tribunal now examines and addresses.

Finding 1: The Fund Only Demonstrated "Need", Not "Regular Provision"

17. The Adjudicator found that while the Fund had established that Marriemall was in need of financial support, the Fund had failed to prove that the deceased 'regularly provided' such support. This dichotomy formed the centerpiece of the Adjudicator's reasoning.

Finding 2: Rate Statements Addressed to the Father Were Irrelevant

18. The Adjudicator rejected the municipal rate statements on the grounds that they were addressed to 'the late father' and not to the deceased member. The Adjudicator held that these statements could not be used to establish

the expenses incurred by Marriemall for which the deceased was responsible.

Finding 3: Jessy's Evidence Was Insufficient

19. The Adjudicator found that the affidavits and emails from Jessy (the deceased's sister, who was the primary caregiver for Marriemall) were not corroborated by 'proof of expenses' in the form of receipts or other documentation. The Adjudicator therefore discounted Jessy's testimony.

C. ISSUES FOR DETERMINATION

20. This Tribunal must determine the following issues:

20.1 Whether the Adjudicator erred in law, in fact, and in the exercise of her statutory duties in finding that the Fund failed to establish that Marriemall Appana was a factual dependant of the deceased within the meaning of section 37C of the Act;

20.2 Whether the Fund's allocation of 10% of the death benefit to Marriemall was correct and equitable;

20.3 What remedy is appropriate in light of the Fund's concession during oral argument that it did not independently verify the calculations made by NBC Holdings in determining the amounts paid to or withheld from Marriemall; and

20.4 Whether the matter should be remitted to the Adjudicator solely for the purpose of quantification, or whether this Tribunal should substitute its own award.

D. LEGAL FRAMEWORK

Section 37C of the Pension Funds Act: Statutory Framework

21. Section 37C of the Act provides the statutory framework for the distribution of death benefits upon the death of a member of a registered pension fund. The relevant portion of section 37C(1) reads as follows:

    '*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.*'

22. This statutory provision imposes clear obligations on the board of trustees of a registered fund. First, the board must, within twelve months of the member's death, identify and trace any dependants of the deceased

member. Second, the board must allocate an equitable distribution of the death benefit among such dependants. Third, the board must choose an appropriate mode of payment.

23. The Act does not define 'dependant,' but section 1 provides that a 'factual dependant' is a person who is factually dependent on the member for maintenance. The enquiry is objective and is not limited to spouses and children; it extends to any person who can be shown to have been dependent on the member for maintenance.

24. In ***Mustila and Another v National Retirement Board of Trustees and Others***[1], the Supreme Court of Appeal held that the two-part test for factual dependency comprises: (i) that the dependant required financial support from the member, and (ii) that the member regularly provided such support. Both elements must be satisfied.

The Social Function of Section 37C

25. In ***Mashazi v African Products Retirement Benefit Provident Fund and Another***[2], the High Court recognized that section 37C serves not merely a technical legal function but a social security function. The purpose of the section is to protect vulnerable dependants and to ensure that no dependant

[1] [2017] ZABCA 156.
[2] 2003 (1) SA 629 (W).

of a deceased member is left without adequate financial support. As the court observed, the legislation aims to alleviate poverty and ensure that dependants are provided for to meet their basic needs.

26. This social security dimension is critical to the interpretation of section 37C. The Fund's board of trustees is required to consider the allocation of a death benefit not merely from a legal perspective but also from a social perspective, taking into account the actual circumstances and vulnerabilities of the deceased's dependants.

Section 30J: Inquisitorial Powers and Duties

27. Section 30J(1) of the Act provides that the Adjudicator may follow any procedure which he or she considers appropriate in conducting an investigation, including procedures of an inquisitorial manner. This provision confers a discretion on the Adjudicator; more importantly, it reflects a statutory recognition that the Adjudicator's role transcends that of a passive arbiter between competing parties.

28. An inquisitorial function requires the Adjudicator to act as an active seeker of facts. The Adjudicator is expected to test the credibility of submissions, to request corroborating evidence where necessary, to join relevant and available witnesses to the proceedings, and to reach a conclusion based on

a holistic assessment of all available evidence. The Adjudicator's duty is to uncover the truth, not merely to referee a passive exchange of assertions.

Factual Dependency: The Legal Test

29. In ***Fourie v Central Retirement Annuity Fund***[3], the Adjudicator held that there is a legal duty on an adult child to support an aging parent, but the parent claiming dependency must demonstrate necessity, that is, an inability to be self-supporting. This principle establishes the first element of the factual dependency test.

30. In ***Jacobs v Road Accident Fund***[4], the High Court held that what was required of parents claiming financial dependency was that they demonstrate reliance on their child for basic necessities. The court affirmed that maintenance is not limited to the bare minimum but depends on the quality and standard of living and the individual circumstances of each case.

31. In ***CSUF v Ndubana and Others***[5], the Adjudicator held that in the absence of bank statements or other formal financial records, claimants are entitled to prove dependency through corroborated affidavits, that is, affidavits supported by testimony from third parties who have direct knowledge of the alleged dependency. The court further noted that evidentiary standards

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3 [2001] 2 BPLR 1580 (PFA).
4 (A402/2008) [2011] ZAGPPHC 121.
5 PFA/00084122/2022/MM.

must be flexible and realistic, taking into account the informal and often undocumented nature of family support arrangements, particularly in vulnerable households.

32. In ***Mthiyane v Fedsure Life Assurance Ltd & Others***[6], the court affirmed that dependency assessments should not be reduced to a rigid formal evidentiary standard but rather should accommodate the realities of informal support structures, especially in households where cash transactions and formal receipts are not available.

E. ANALYSIS AND FINDINGS

The Adjudicator Erred in Finding That Marriemall Appana Was Not a Factual Dependant

33. The evidence placed before this Tribunal, when considered as a whole and in the light of the applicable law, overwhelmingly demonstrates that Marriemall Appana was a factual dependant of the deceased member. The Adjudicator's conclusion to the contrary is not merely wrong; it is unreasonable and unsustainable in law.

Marriemall's Need for Financial Support

34. The first requirement of the factual dependency test requires that the dependant required financial support. This element is satisfied conclusively.

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[6] (2) 2002 (5) BPLR 3460.

Marriemall, at the time of the deceased's death, was 84 years old, entirely illiterate, and unable to manage her own financial or personal affairs. The evidence disclosed that:

34.1 Marriemall's income (whether from a pension, grants, or other sources) was insufficient to cover her monthly living expenses;

34.2 The income-expenditure analysis provided by the Fund demonstrated a shortfall between Marriemall's known income and her known essential expenses (rates, electricity, water, groceries, medication, and transport);

34.3 Marriemall was entirely dependent on her son to manage her financial affairs due to her illiteracy and advanced age; and

34.4 The Adjudicator herself, in the second determination, acknowledged that some form of support must have existed, as Marriemall's income alone could not account for all her expenditures.

35. In our view, the need element is established on a balance of probabilities.

Element Two: The Deceased Regularly Provided Financial Support

36. The second requirement of the factual dependency test requires that the deceased regularly provided the required financial support. The Adjudicator found that this element was not established because the Fund had not provided formal receipts or other documentation of each individual payment made by the deceased on Marriemall's behalf.

37. This approach is both unreasonable and contrary to established precedent. An elderly, illiterate woman does not keep formal accounting records. Her son, managing her affairs on her behalf, does not systematically issue receipts to himself. The relationship is familial, not commercial. To demand formal receipts for an 84-year-old mother's household expenses is to apply an evidentiary standard that is manifestly unreasonable and that flies in the face of social reality.

38. The evidence of regular provision is substantial:

38.1 Affidavits from Jessy (the deceased's sister and Marriemall's primary caregiver) establish that the deceased paid Marriemall's municipal rates, electricity, and water accounts, purchased groceries, and paid for medical care and transport.

38.2 The municipal rate statements, electricity bills, and water bills provided by the Fund in the second reinvestigation establish the amounts of these recurring monthly expenses and thus the quantum of support necessary to cover them.

38.3 The income-expenditure analysis demonstrates that Marriemall's income was insufficient to cover these documented expenses, thereby proving that a shortfall existed and that this shortfall must have been met by someone, manifestly, by the deceased, who was her son and the designated manager of her affairs.

38.4 The deceased retained Marriemall's pension or other income and used it together with his own funds to meet her expenses. This arrangement is consistent with a son's ongoing, regular provision of financial support to an aging, dependent parent.

38.5 The Fund's TEBA report (attached to the Heads of Argument), prepared by an independent investigator, confirmed that Marriemall was financially and practically dependent on the deceased.

39. A reasonable Adjudicator, examining this body of evidence, could only conclude that the deceased regularly provided financial support to his mother. The Adjudicator's opposite finding is unreasonable.

The Adjudicator's Treatment of Rate Statements: A Misdirection

40. The Adjudicator rejected the municipal rate statements on the grounds that they were addressed to 'the late father' rather than to the deceased member. This reasoning is a misdirection in law and fact.

41. The relevant question is not in whose name the rate account is held, but rather whether Marriemall incurred those expenses and whether the deceased funded them. The rate statements establish both propositions. If a property occupied by Marriemall incurred municipal rates per month, then those rates constitute Marriemall's living expenses, regardless of whose name appears on the account statement. And if those statements are

coupled with evidence that the deceased regularly paid them, then the deceased has been shown to have regularly provided financial support.

42. The Adjudicator's fixation on whose name appeared on the rate statements caused her to overlook the substance: the deceased was paying for his mother's housing and utilities. This is precisely the kind of support that section 37C contemplates.

Prospective Dependency: An Alternative and Independent Basis

43. Even if this Tribunal were to accept that the evidence of past regular provision fell short of the required standard (which it does not), the Adjudicator failed to consider prospective dependency as an alternative and independent basis for finding dependency.

44. Prospective dependency is the likelihood that, had the member not died, the dependant would have required and received financial support in the future. In the case of an 84-year-old, illiterate woman, prospective dependency is not merely probable, it is inevitable. Marriemall had no prospect of ever becoming financially independent. She could not read or write. She had no marketable skills. Her income was fixed. Her living expenses were fixed and ongoing. The deceased, as her only son and the manager of her affairs, was the guarantor of her continued subsistence.

45. This dimension of prospective dependency was entirely overlooked by the Adjudicator. It is independently sufficient to sustain a finding of dependency for purposes of section 37C.

Procedural Unfairness and Failure of the Inquisitorial Duty

46. Beyond the substance of the Adjudicator's reasoning on dependency, the process by which the determination was reached was procedurally unfair and breached the Adjudicator's statutory duty under section 30J of the Act.

Passive Acceptance of Uncorroborated Assertions

47. Mrs Sanassyi, the complainant, made serious allegations: that the deceased only provided administrative support to Marriemall; that the support was 'merely administrative' and not financial; that Jessy had committed fraud by inflating Marriemall's expenses; and that Jessy and others had attempted to coerce her into signing falsified affidavits.

48. The Adjudicator accepted these assertions without any investigation, corroboration, or scrutiny. The fraud allegations, in particular, were serious accusations that would have justified an immediate investigation, a request for documentary proof, or an examination of Jessy's testimony under oath. Instead, the Adjudicator simply accepted Mrs Sanassyi's word and used it as a basis to discount Jessy's evidence.

49. This approach is contrary to inquisitorial duty. An inquisitorial Adjudicator does not passively accept uncorroborated assertions, particularly when those assertions contradict supporting documentary evidence. The Adjudicator should have tested Mrs Sanassyi's narrative against the facts, the income-expenditure analysis, the utility bills, and Jessy's testimony.

The Shifting Evidentiary Burden

50. Across the three determinations, the Adjudicator shifted the basis of inquiry in a manner that undermined procedural fairness:

51. In the first determination, the Adjudicator found the evidence of dependency insufficient and directed the Fund to provide more evidence.

52. In the second determination, the Adjudicator specifically identified the gap in the Fund's evidence: the lack of 'proof of expenses.' The Adjudicator stated, in effect, 'provide utility bills and receipts, and I will reconsider.'

53. In the third determination, the Fund provided precisely what had been requested: municipal rate statements, electricity bills, water bills, and other documentary proof. Yet instead of evaluating this evidence against the standard the Adjudicator had herself set, the Adjudicator shifted the inquiry to a new criterion: whether the deceased 'regularly provided' support. The Adjudicator then found that this new standard had not been met, all the

while disregarding the very documents that had been provided in response to the earlier request.

54. This pattern of conduct amounts to a moving of the goalpost. The Fund was never given a fair opportunity to satisfy a consistent standard. This is procedurally unfair.

Unreasonable Evidentiary Standard

55. Implicit in the Adjudicator's reasoning is a demand for formal, itemized receipts for each and every payment made by the deceased on his mother's behalf. This standard is unreasonable and divorced from social reality.

56. The case law cited above, particularly ***CSUF v Ndubana*** and ***Mthiyane v Fedsure***, establishes that in the context of informal family support arrangements, rigid formal evidentiary standards must give way to a more flexible approach. Corroborated affidavits, documentary evidence of expenses (such as utility bills), and circumstantial evidence of capacity and willingness to pay all suffice to establish dependency.

57. In this case, the Fund provided all of these forms of evidence. The Adjudicator nevertheless rejected it by applying a standard that no reasonable decision-maker would apply in the circumstances.

The Adjudicator's Silence on Material Evidence

58. The impugned determination is notably silent on the following material evidence: the income-expenditure analysis prepared by the Fund; the utility bills provided in the second reinvestigation; the affidavits from Jessy; the TEBA investigator's report; and the correspondence from Jessy dated 6 October 2025.

59. An Adjudicator who fails to address material evidence placed before her in any way, not even to explain why it is being rejected, falls short of the minimum standard of a fair hearing. The determination gives no indication that the Adjudicator engaged with or considered this evidence at all.

The NBC Holdings Quantification Issue

60. During oral argument before this Tribunal, the Fund made a candid and significant concession that it had not independently verified the calculations made by NBC Holdings in determining the amounts paid to or withheld from Marriemall's 10% allocation. The Fund relied entirely on NBC Holdings' calculations without verification.

61. This concession has important consequences for the remedy this Tribunal should grant.

The Quantification Issue

62. Marriemall's entitlement is 10% of the net distributable death benefit of R5,263,655.09. Ten percent of this amount equals R526,365.51.

63. The amounts actually paid to or held for Marriemall were as follows: R374,094.72 paid on 3 February 2022, and R147,025.24 held pending banking details. The total is R521,119.96. This is approximately R5,245.55 less than the 10% entitlement.

64. The amount of R147,025.24 was held for some time before being paid to Mrs Sanassyi on 13 May 2025 (along with growth of R173,676.27), pursuant to an earlier FST order. This payment was made in the belief that the prior FST order was determinative; that order is now overtaken by this decision and must be addressed in the quantification process.

65. The concession that the Fund did not verify NBC Holdings' calculations means that this Tribunal cannot, with confidence, determine the correct quantum without a further investigation. The Fund's agent may have made clerical errors, failed to account for late payment interest, or miscalculated the 10% allocation in some other respect. Until NBC Holdings' calculations are audited or verified, the precise amount owing to Marriemall's estate cannot be definitively ascertained.

The Appropriate Remedy: Remission for Quantification

66. Section 230 of the Financial Sector Regulation Act 9 of 2017 vests this Tribunal with the power, on reconsideration, to confirm, vary, set aside (and substitute), or set aside and remit a determination of the Adjudicator.

67. Given the Fund's concession regarding the unverified NBC Holdings calculations, and given the procedural complexity of untangling the various payments and crediting the correct amount to Marriemall's estate, the appropriate remedy is to set aside the Adjudicator's determination and remit the matter to the Adjudicator solely for the purpose of quantification.

68. This remission for quantification is the only proper course. The Adjudicator, with her inquisitorial powers under section 30J, is better equipped to investigate the accounting and to ensure that Marriemall's estate receives its full entitlement, without double-payment or unjust enrichment.

F. ORDER

69. Having considered the application for reconsideration, the impugned determination of the Pension Funds Adjudicator dated 5 September 2025, and the submissions of the parties during oral argument, we make the following order:

    1. The application for reconsideration by the Illovo Sugar Provident Fund is granted.

2. The determination of the Pension Funds Adjudicator dated 5 September 2025 in Case No. PFA/GP/00110834/2024/FS is set aside.

3. The matter is REMITTED to the Pension Funds Adjudicator solely for the purpose of determining and quantifying the actual amount payable to the estate of the late Marriemall Appana.

4. There is no order as to costs.

__*Sgd Adv M Mphaga SC*_____

M Mphaga SC

Tribunal Member