



DEATH BENEFIT INVESTIGATIONS IN TERMS OF SECTION 37C OF THE PENSION FUNDS ACT

Section 37C of the Pension Funds Act governs the distribution of retirement fund benefits upon a member's death. It requires that these benefits must be paid to dependants and nominees, ensuring that the interests of dependants are prioritised. It also sets out the process that trustees must follow when deciding who qualifies as a dependant or nominee, and how much to allocate to them.

This piece of legislation aims to prevent disputes over pension payouts and to protect vulnerable beneficiaries. In order to discharge this duty fully, S37C gives trustees 12 months in which to conduct a thorough investigation to identify the dependants and to determine the extent of their dependency.

Section 37C(1)(a) reads as follows:

"(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."

RECENT HIGH COURT RULING ON INVESTIGATION PERIOD – CASE NUMBER 4544 / 2023

In *South African Retirement Annuity Fund v Pension Funds Adjudicator and S Viljoen*¹, the High Court had to consider when this 12-month period starts - whether it starts on the

date of the member's death, or once the fund becomes aware of the member's death.

The facts in this case were that a member of the fund died in December 2019. The benefit that became payable from the fund amounted to about R52 000. His spouse, a housewife had been fully dependent on the member and who was surviving on an old age SASSA grant, was not aware of this benefit. The member left no will and had not signed any beneficiary nomination form. He also left a relatively small estate (with a value less than R250 000) and initially no executor was appointed. The spouse only became aware of the benefit about 3 years later when she consulted with a financial planner to assist her in finalising the deceased's affairs. She submitted a claim to the Fund in March 2022.

The fund, on the basis of section 37C(1)(c) of the Pension Funds Act, paid the benefit to the deceased's estate.

Section 37C(1)(c) of the Act reads as follows:

"If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the

¹ Unreported Case No 4544/2023, dated 8 August 2024

member or, if no inventory in respect of the member has been received by the Master of the Supreme Court ..., into the Guardian's Fund or unclaimed benefit fund.” [our underlining]

The member's spouse submitted a complaint to the office of the Pension Funds Adjudicator, who found in favour of the spouse and determined that the 12-month period referred to in Section 37C(1) starts when the board of a fund becomes aware of the death of the member.

In her determination she stated the following:

“The general rule expressed in section 37C(1) of the Act that the death benefit does not form part of the estate is subject to three exceptions. The Fund can pay a death benefit into the deceased's estate only under the following circumstances:

- It has not identified any dependant and there is no nominated beneficiary, but the estate's liabilities exceed its assets; or*
- The deceased has no dependants and did not designate a nominee in writing; or*
- The deceased has designated a nominee only to receive a portion of the death benefit, and the remaining balance must be paid to the estate ...”*

She further referred to the decision of the High Court in *Masindi v Chemical Industries National Provident Fund*, in which the court stated the following:

*“Whilst section 37C(1) does not expressly state that the 12 month investigation period to trace the dependants of a deceased only commences once the Fund has obtained knowledge of the death of the deceased, the only logical interpretation of this section is that a Fund cannot comply with its obligation if the legislative requirement for its imposition, namely the death of a member, is not made known to the Fund. In *Government Employees Pension Fund Provincial Government of Gauteng v Buitendag & Others* it was held that the employer in that matter had the obligation to provide the Fund with information pertaining to the dependents of the deceased. By implication, the employer had to inform the Fund of the death of the deceased as well. The 12-month period could only have commenced to run from the time that the respondents became aware that the deceased had died.”*

Aggrieved by the decision of the Pension Funds Adjudicator, the fund applied to the High Court to have the determination set aside. The Court agreed with the interpretation in the *Masindi* case, namely that the 12-month period only starts when the fund becomes aware of the death of a member, and held that:

- Any other interpretation would be absurd and defeat the purpose and spirit of section 37C of the Pension Funds Act. It would also fail in ensuring that the fund carries out its mandate to trace the dependants of a deceased member and investigate their dependency on the deceased member.
- The fund's interpretation would shorten the 12-month period, as in almost all cases, the fund will not be aware of a member's death on the date of death.
- The interpretation in *Masindi* appears to be in line with approved general approach in many other similar provisions, to the effect that the countdown of a period only commences when one is made aware of the root cause, as opposed to the date of the root cause.
- The fund's interpretation was too rigid, and in the process, it forgets the purpose for the existence of the same statutory provision it attempts to interpret. It is for this reason that in *Fundsatwork Umbrella Pension Fund v Guarnieri and Others*⁸, the SCA said, where there is doubt about the identity of the dependants who are to receive a distribution, or as to the correct distribution among those dependants, the board is not bound by the twelve months period, but may delay for a time necessary to resolve the issue.

The order of the Pension Funds Adjudicator was confirmed.