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Beneficiary nomination forms

Beneficiaries often complain when death benefits paid from a pension fund (also known as approved benefits) are not paid according to the beneficiary nomination form completed by the member before he / she died. Many beneficiaries believe that they are entitled to the benefit because they were nominated by the member. They see any payment that is not in line with the beneficiary nomination form as being against the clear wishes of the deceased member.

Beneficiaries often do not realise that section 37C of the Pension Funds Act controls the distribution of death benefits when a member of a registered pension fund dies. The main aim of section 37C is to ensure that all dependants of the deceased member are left with sufficient financial support after the member dies. This indirectly reduces the burden on the State and promotes social protection.

In *Mashazi v African Products Retirement Benefit Provident Fund*, the High Court held that section 37C was intended to serve a social function and was enacted to protect dependency, even over the clear wishes of the deceased. The section specifically excludes the benefits from the assets in the estate of a member. It restricts freedom of testation in order that no dependants are left without support. The effect of section 37C is that the fund is expressly not bound by either a will or a nomination form. The contents of the nomination form are there merely as a guide to the trustees in the exercise of their discretion.

The Pension Funds Adjudicator (“the Adjudicator”) has also consistently held in a number of cases that the beneficiary nomination form is merely a guide to the fund and that the board of the fund (“the board”) must not fetter its discretion by rigidly adhering to the beneficiary nomination form. In *Moir v Reef Group Pension Plan and Others*, the Adjudicator held that the board had fettered its discretion by blindly following the beneficiary nomination form and refusing to consider other factors.

The board is required to investigate and identify the dependants and nominees of the deceased member. The board then has to make a distribution that will be considered fair.

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The board has to consider all factors in coming to a fair distribution. These factors will include, for example, the wishes of the deceased, the financial status of each beneficiary, the future earning capacity of each beneficiary, the extent of dependency, the ages of the beneficiaries, the relationship with the deceased and the amount available for distribution.

The wishes of the deceased as expressed in the beneficiary nomination form are only one of the factors that the board will consider when it makes the distribution. The beneficiary nomination form therefore only serves as a guide to the board. The board still has to consider all factors in coming to a fair distribution and cannot blindly follow the beneficiary nomination form.

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