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IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case number: **2938/2021**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

SELLMURRY ROUSSEAU

1st Applicant

FRANCOIS JOHN DOMBURG

2nd Applicant

JUANDRE ADRIAN DOMBURG

3rd Applicant

and

GOVERNMENT EMPLOYEES PENSION FUND

1st Respondent

MINISTER OF DEFENCE

2nd Respondent

GERTIE MARY DOMBURG

3rd Respondent

MAROUISE WILNET JONICA DOMBURG

4th Respondent

GERALDINE SAMANTHA DOMBURG

5th Respondent

ANDREA JACQUILINE DOMBURG

6th Respondent

**GOVERNMENT PENSION -
ADMINISTRATION AGENCY**

7th Respondent

SHERIFF OF BLOEMFONTEIN WEST

8th Respondent

CORAM:

REINDERS ADJP et CHESIWE J

JUDGMENT BY:

REINDERS ADJP

HEARD ON:

25 APRIL 2022

DELIVERED ON:

21 OCTOBER 2022

[1] At the time of his demise on 11 January 2019 Mr WAF Domburg (the deceased) was in the employ of the South African National Defence Force (SANDF), enjoying the benefits of a pension fund held with the first respondent, the Government Employees Pension Fund (GEPF). At the heart of this application lies the award of the deceased's pension gratuity (interchangeably referred to as the pension benefits/pension gratuity) pursuant to his passing.

[2] The first applicant is the deceased's life partner. The two biological sons born from this union, are the second and third applicants respectively. Although the second applicant turned 18 years at the time of launching the application, reference to the second and third respondents will be "the minor children". The third respondent is the deceased's ex-wife who received 50% of his pension fund benefit when the parties divorced in 2013. The fourth, fifth and sixth respondents are the deceased's major children born from the marriage between the deceased and the third respondent (the major children). The Government Pension Administration

Agency (GPAA) is the seventh respondent, whilst the Sheriff of Bloemfontein West is the eight respondent.

[3] The gist of the relief claimed by applicants is orders directed at the first and seventh respondents to have the decision made to award a portion of the pension gratuity to the major children, reviewed and set aside. Only the first and seventh respondents (collectively referred to as the respondents) opposed the relief claimed (in as far as it relates to them).

[4] For sake of completeness the relief claimed in the applicants' amended notice of motion is quoted verbatim:

‘1. That, insofar as condonation is required in terms of Section 7(1) of the Promotion of Administration Justice Act 3 of 2000 for the late institution of the review, that such delay be condoned;

2. That exceptional circumstances exist for the matter to be heard and that the Applicants be exempted from exhausting any further internal remedies which may be applicable;

3. That the Government Pension Administration Agency be joined as Seventh respondent in this application;

4. That the Sheriff of Bloemfontein West be joined as eighth respondent in this application;

5. That the decision to overrule the nominations of Willem Andries Domburg (Identity Number: [...]), which nominations are dated 5 July 2010 with document number [...], in terms of pension benefits payable under pension number [...], be reviewed and set aside;

6. That the decision to consider the Fourth, Fifth and Sixth Respondents as beneficiaries of the benefits of the deceased's pension interest be reviewed and set aside.

7. That the decision to award any portion of the deceased's pension interest to the Fourth Respondent, Fifth Respondent and Sixth Respondent be reviewed and set aside.

8. That the decision to stand by the such overruling, as communicated the First Applicant on 1 April 2021 be reviewed and set aside;

9. That the decision to pay any monies to the Fourth, Fifth and Sixth Respondents be substituted and that the First Respondent and/or Seventh Respondent is ordered to pay to the Applicants all benefits payable to them in terms of the deceased's nomination dated 5 July 2010 according to document number [...] under pension number [...] within 30 days of date of this order, less any funds held by the Eighth Respondent.

10. That the Eight Respondent be order to pay over such funds as he has attached from the Fourth - Sixth Respondents' bank accounts, pursuant to an order obtained under case number 3071/2021, to the Applicants in accordance with the nomination forms of the deceased dated 5 July 2010 under pension policy with pension number [...];

11. Alternatively, that the matter be remitted to the First Respondent in order for it to reconsider how 100% of the pension interest should be divided among the Applicants.

12. Alternatively, that the matter be removed from the roll and the Applicants be ordered to submit a complaint to the Pension Fund Adjudicator.

13. Cost of the application against the First Respondent, Fourth Respondent, Fifth Respondent and Sixth Respondent, the one paying the other to be absolved.'

[5] There was no objection to the joinder of the seventh and eight respondents. Prayers 1 and 2 of the Amended Notice of Motion were included *ex abundanti*

cautela and given the facts and timelines followed, unnecessary to adjudicate. Prayers 11 and 12 were abandoned by the applicants. Condonation was granted to the respondents for the late filing of their answering affidavit and heads of argument. Accordingly, we were called upon to adjudicate prayers 5 to 10 and 13 of the Amended Notice of Motion. The disputes ultimately revolved around the interpretation of a “dependent” and the nature of the discretion bestowed on the Board of Trustees (the Board) regarding the award/allocation of the pension gratuity of a deceased member of the fund.

[6] The GEPF is a pension fund contemplated in section 2 of the Government Employee Pension Law, 1996¹ (the GEP Law). The GEPF operates under the GEP Law and the rules as published in Schedule 1 of the GEP Law. The GEP Law regulates the distribution and pay out of pension benefits and gratuity of members of the GEPF. The Government Pensions Administration Agency (GPAA), by means of the Board, administers funds and schemes on behalf of the GEPF.

6.1 Section 22 of the GEP Law regulates the payment of a gratuity to beneficiaries designated by a member of the GEPF.

‘22.1 If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the prescribed form and subject to the prescribed conditions, notify the Board of his or her wish that the said gratuity be paid on his or her death to the beneficiaries mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form.

22.2 Notwithstanding anything to the contrary in any law contained, the Board may on the death of a member who so notified the Board pay at its discretion the gratuity concerned in accordance with the member’s wish.’

6.2 A ‘dependant’ is defined in s 1 of the GEP Law as follows:

¹ (Proclamation 21 of 1996 as amended)

‘dependant, in relation to a member or a pensioner, means—

‘(a) any person in respect of whom the member or pensioner is legally liable for maintenance;

(b) any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person—

(i) was, in the opinion of the Board at the time of the death of the member or pensioner in fact dependent upon such member or pensioner for maintenance;

(ii) is the spouse of the member or pensioner, including a party to a customary union according to indigenous law and custom, or to a union recognised as a marriage under the tenets of any religion; or

(c) a posthumous child of the member or pensioner; and

(d) a person in respect of whom the member or pensioner would have been legally liable for maintenance had that person been a minor.’

whilst ‘beneficiary’ is defined as follows:

‘Beneficiary means the dependant or nominee of a member or pensioner as the case may be.’

[7] The first applicant is the deponent to the founding affidavit. She states that at the time of the deceased’s passing they had been living together for a period of roundabout 20 years, and the deceased supported herself and the two minors. On 7 September 2010, in accordance with the pension fund policy and on the official nomination form designated therefore, deceased had nominated herself and the two minors as the only beneficiaries of his pension benefit held with the first respondent. After the deceased had passed on, she started making enquiries on when the benefit

would be paid out. Having made enquiries with the first respondent about the deceased's pension benefit, it became evident to her that the first respondent was not in possession of the beneficiary/nomination form of the deceased and was in the process of processing payments solely in accordance with the payroll system (PERSAL) of the SANDF. She hereupon raised a formal dispute with the first respondent to halt payment of the pension benefit per the said PERSAL. First respondent however proceeded to allocate 45% of the deceased's pension benefit to the major children, and informed her on 3 February 2021 that payment was about to be released. On even date a letter was addressed to the first respondent requesting written reasons for its decision to amend/overrule the nominations made by the deceased, and a further request to pay out the pension benefits in accordance with such nominations. An employee of first respondent informed her that the matter was being reviewed internally. The first respondent was also requested to indicate if any internal procedure had to be followed before a court may be approached, but did not receive any reply thereto. On 1 April 2021 she was notified by the first respondent that it had internally reviewed/reconsidered its decision, and that the first respondent stood by its decision to include the major children as dependants of the deceased and beneficiaries of his pension interest. First applicant states that on 8 April 2021 under case no 1528/2021 an urgent application was issued against respondents to, amongst others, interdict the GEPP from releasing any pension funds pending the outcome of the review application currently before court, which order was made final on 27 May 2021. The applicants instituted the current review application on 28 June 2021. On 31 June 2021 (according to the respondents 6 July 2021) the respondents proceeded to pay out monies in accordance with their initial apportionment, which prompted the applicants to launch an urgent application on 6 July 2021 under case number 3071/2021 to preserve the funds paid out to all beneficiaries pending the finalization of this review application. The interim order of 6 July 2021 was confirmed on 5 August 2021.

[8] After more communication and documentation had come to light, first applicant supplemented her papers. Of importance is the fact that the GPAA on 4 March 2021 in a letter addressed to the GEPP (ostensibly intended to serve as the record of the proceedings) had indicated that the only nomination form that could be found was a form completed by the deceased on 7 August 1999 wherein the third

respondent was nominated to get 100% of the death benefits. Reasons for the decision why the pension benefit was allocated and paid out to the majors were received on 15 July 2021. Based on these reasons the applicants delivered their Amended Notice of Motion and Supplementary Founding Affidavit. Mr Buys alluded to the insufficiency of the documents provided by the respondents as constituting “the record”. He submitted that it is unknown when exactly the decision was made, by whom it was made and which documents were actually considered to reach the conclusion as they did to distribute the pension benefits.

[9] The respondents in their opposing affidavit state that they deny “any form of liability levelled or implied” against them. Reliance is placed on the provisions of the GEP Law, more specifically that the majors were entitled to be paid as beneficiaries as contemplated in the definition of a “dependant”. The deponent to the answering affidavit, Mr L Lange (legal manager in the employ of the GPAA in Pretoria), avers that the Board paid at its discretion the gratuity concerned after receipt of the affidavits of the majors (confirming that they are the biological children of the deceased). Annexing a document termed “Allocation of Dependents (WP 169)”, the distribution of the gratuity is set forth:

10% to the first applicant, 20% and 25% respectively to the two minor children and 13%, 15% and 17% respectively to the three major children.
The document was ostensibly signed 27 and 28 October 2020.

[10] Both in their founding and replying affidavits the applicants set out the grounds relied upon for the review and setting aside of the Board’s decision. It was emphasised by applicants that the first/seventh respondent not only disregarded the wishes of the deceased as preferred in the nomination form of 2010, but misdirected itself in exercising its discretion by including the major children in the distribution of the pension gratuity. Accordingly, so the argument goes, the decision to award a portion of the deceased’s pension fund to the major children, was taken without any basis therefore and arbitrarily.

[11] The respondents, represented by Ms Nhantsi, persisted therewith that the pension fund benefits were processed and distributed in terms of the GEP Law.

Reliance was placed thereon that respondents exercised the discretion conferred upon them by section 22(2) of the GEP Law. However, she responsibly conceded that, as is evident from the papers filed by both the applicants and the respondents, the Board had not been in possession of the nomination form of 2010 when making the decision on the apportionment of the pension gratuity.

[12] The respondents did not take issue with the applicability of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in this matter, in my view correctly so. In determining whether the impugned decision made by the seventh respondent falls within the scope of PAJA, the definition of “administrative action” in section 1(b) is the point of departure:

‘ “administrative action” means any decision taken, or any failure to take a decision, by –

(a) ...

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affect the rights of any person and which has a direct, external legal effect, ...’

All highlighting effected in the excerpts from case law referred to herein below, is intended for own emphasizing and does not appear as such in the judgments.

[12] In **Public Servants Association of South Africa and Others v Government Employees Pension Fund and Others**² the Supreme Court of Appeal did not deem it necessary, in view of certain conclusions it had already made, to consider the issue whether a decision taken by the GEPPF constitutes an administrative action reviewable in terms of PAJA. However, Navsa JA held as follows:

‘There is presently no judicial consensus on whether decisions of pension funds either generally, or in limited circumstances, constitute administrative action as contemplated in the PAJA. **It must in my view, depend on the nature of the**

² [2020] 4 All SA 710 (SCA).

power being exercised by the fund, having regard to the related statutory provisions or rule under which it is exercised.’³

[13] Recently, in the unreported judgment of *Moropa and others v Chemical Industries National Provident Fund and others*⁴ the full bench per Adams J held as follows (at para [46-48]):

[46] For all of these reasons, I am of the view that the power of the Trustees to delegate their statutory obligation to properly administer a pension fund, to an external administrator, which is one both empowered and circumscribed by Legislation, is a decision which involves the exercise of public power or the exercise of a public function. **This is so because, considering the definition of ‘administrative action’ in PAJA, a Pension Fund, being a juristic person, in appointing an administrator, exercises such power ‘in terms of an empowering provision’, being the PFA and the regulations promulgated thereunder.** The term ‘empowering provision’ is broadly defined as ‘a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken’. **In this matter, the point is simply that the public has an interest in the lawful administration of pension funds, irrespective of whether they are members of a particular pension fund or not.** Pension fund trustees administer money in trust on behalf of members of the fund and are carefully regulated and controlled by statute and the Registrar.

[47] Moreover, in my view, **the decisions have a direct, external legal effect and affects the rights of members.** Nothing more needs to be said about this requirement.

[48] Accordingly, I am of the view that the decisions sought to be reviewed and set aside in the review application, constitute administrative action as defined in section 1 of PAJA. **This conclusion is consistent with a**

³ At paragraph [42].

⁴ [2022] JOL 54477 (GJ)

number of decisions where courts have held that decisions of a pension fund taken in terms of section 37C of the PFA (which deals with the paying out of benefits upon the death of a member) constitute administrative action and are reviewable under PAJA.'

[14] Reference was made in *Moropa supra* to *Titi v Funds at Work Umbrella Provident Fund*⁵ wherein Smith J concluded in para [14]:

'The respondent, when acting in terms of the provisions of the Act and administering the funds on behalf of its members, is exercising a public power. The decisions which it is empowered to take in terms of s 37C of the Act, and in particular the power to effectively override the express wishes of its members, may conceivably affect members of the public. Any decision made in pursuance thereof and which could negatively impact on members of the public would therefore be subject to judicial scrutiny and review in terms of the provisions of PAJA.'

[15] I align myself with the reasoning in the *Moropa* and *Titi* cases. On the facts before us, the decision sought to be reviewed entailed the power of the fund to exercise a discretion in the equitable distribution of the pension gratuity of its member, the deceased, in terms of the PFF Law and the Pension Funds Act. The power to effectively override the express wishes of its member in my view undoubtedly affect members of the public (the fund members and their beneficiaries). Decisions made pursuant hereto could (and as averred by the applicants did in fact) impact negatively on such members and should undoubtedly therefore be subject to judicial scrutiny as envisaged by the provisions of PAJA. The decision of the Board to distribute the deceased's pension gratuity as it did is thus in my considered view an administrative action as contemplated in PAJA.

[16] Applicants contend that the Board erred in its interpretation of "dependants" as, not only had the majors been estranged from and renounced the deceased as their father for many years, but they were neither financially dependent on the deceased nor minors at the time of the deceased's passing.

⁵ [2011] JOL 23125 (ECM)

[17] In ***Government Employees Pension Fund v Buitendag***⁶ Cloete JA dealt with the interpretation of “dependant”. The background facts herein entailed that the GEPF awarded the gratuity of the deceased member to her husband (and/or stepson). When it made the award, the fund was unaware of the existence of the biological adult children of the deceased from her first marriage. The children prayed for an order reviewing and setting aside the decision of the Board and to have them considered and included in the award of the Board. Cloete JA considered the nature of the definition of “dependant” as follow:

[7] The Provincial Government contended that the children are not ‘dependants’ as defined in the Law. Ms Regina Kgasi, the deponent to the affidavits delivered on behalf of the Provincial Government, said in reply to Ms Scheepers who deposed to the affidavits delivered on behalf of the Fund, that:

‘Ms Scheepers argues in this paragraph that the Applicants are major children of the deceased and that they are therefore “*dependants*” of the deceased. I dispute **the legal correctness of this argument in view of the evidence that none of the Applicants were financially dependent on the deceased at the time of her death.**’ (own emphasis added)

Counsel representing the Provincial Government put forward submissions in support of this contention in the heads of argument. The submissions are untenable. They amount to this: that in the case of children, paragraph (a) of the definition must be confined to minors, and **paragraph (d) must be interpreted as relating to major children who are not self-supporting**. In that way, the written submission proceeded, the common law requirement that a dependant must be in need of support to qualify for support, is preserved: a minor child who is self-supporting could not fall under paragraph (a) and a major child who is self-supporting would not fall under paragraph (d). **But there is no warrant for limiting the provisions of either paragraph (a) or paragraph (d), which are in clear terms. Nor, given the purpose behind the law, is there any reason for excluding**

⁶ [2006] SCA 121 (RSA)

major children who are self-supporting: as I have already pointed out, the purpose of the law is to benefit ‘dependants’, not the member’s estate and there will be many cases where a member has no ‘dependants’ as contemplated in paragraphs (a) to (c) of the definition...’

[18] In my view the contention by the applicants that the majors could not have been included on the basis of them not being financially dependent on the deceased (either upon him completing the nomination form or at the time of his demise), cannot be sustained in view of *Buitendag supra*. Moreover, adopting the same line of reasoning as Cloete JA, I likewise do not find any reason to limit paragraph (d) of the definition to read that dependants had to be minors “at the time of the deceased’s death”. I find further support for my view in the wording of “dependant” under paragraph (b)(i):

‘any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person—

(i) was, in the opinion of the Board **at the time of the death of the member** or pensioner in fact dependent upon such member or pensioner for maintenance;’

The legislature did not include the words “at the time of the death of the member” in the wording of “dependant” in section (d): a person in respect of whom the member or pensioner would have been legally liable for maintenance had that person been a minor.’

[19] Regarding the discretion of the Board in awarding the gratuity Cloete, JA in *Buitendag supra* held as follows:

‘[6] It was nevertheless common cause between the children and the Fund **that the Board has a discretion to choose which dependants will receive a gratuity and in what proportions. It seems to me that, by necessary implication, this must be so.** I say this for the following reasons. If a gratuity cannot be paid to a dependant, it will have to fall into

the deceased member's estate. But the stated purpose of the Law is to benefit inter alia dependants of a member — not his or her estate. In addition, in terms of s 28,⁷ a gratuity payable to a dependant is deemed not to be property in the estate of the member and is accordingly protected from estate duty. Furthermore, s 22.1 presupposes that a gratuity **may** be payable to dependants of a member; **and if the Board has a discretion to override the express wishes of a member contained in a nomination, as it does in terms of that section, it would be logical for it to have a discretion to determine which dependants shall benefit where no nomination has been made.'**

[20] As part of his reasoning that the Board has a discretion in awarding the gratuity, Cloete JA proceeded to deal with the legislation preceding the Law, namely the Government Service Pension Act⁸ which likewise conferred a wide discretion of the nature sought to be implied. Reference was made to section 37C (1) of the Pension Funds Act:

'(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, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of section 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 board, to one of such dependants or in proportions to some of or all such dependants.'

⁷ Section 28 provides: 'Notwithstanding anything to the contrary in any law contained, any benefit or any right to a benefit, due and payable in terms of this Law to the beneficiary of a member, on or as a result of or after the death of that member shall for the purposes of the Estate Duty Act, 1955 (Act 45 of 1955), be deemed not to be property as defined in section 3(2) of that Act.'

⁸ Act 57 of 1973.

[21] In my view, in addition to the aforementioned exposition of the legislation, Rule 14.5.9 of the GEPF Law also finds applicability in confirming the Board's discretion in making an award. It reads:

'If a gratuity is payable to two or more beneficiaries, such gratuity shall be paid to any such beneficiaries and in such proportions as the board may deem fit.'

[22] The argument of Mr Buys that the Board could not exercise its discretion by overriding the wishes of the deceased, can thus not be sustained.

[23] The Board was unaware of the 2010 nomination and did not consider it in coming to a decision. It misdirected itself therefore as it was compelled to have considered same in coming to a conclusion. In my view it would serve no purpose for the member to be invited to indicate such if it is not taken into account by the fund when it must allocate the gratuity. Once they are appraised thereof, they are entitled of course to exercise a discretion whether they want to follow that or if they deem it appropriate, to differ therefrom. In casu it is common cause that the Board had no knowledge of the nominations made by the deceased in 2010, at the time of their decision. With the result that at the time of the decision, the board could not and did not take the nomination into consideration. This being so, the decision maker took a decision without all the relevant information and knowledge. It does not avail the decision maker that it took knowledge of the fact after it had already made the decision. Absent therefore the nomination, it vitiated the decision. The result is therefore that I intend to remit the decision to the Board for reconsideration. Obviously it might result in them making any decision, including a similar one than before. However, it is important that an appropriate decision can only be made on all the information including the 2010 nomination form of the deceased.

[24] I pause to mention in passing that the relief claimed by applicants that respondents should consider the applicants to be the only beneficiaries and accordingly pay the amounts to applicants in line with the nominations, cannot be granted. It is not for this court to tread on the domain of the discretionary powers of

the fund and interfere therewith. This court can only decide whether, on the papers before us, the discretion was exercised rationally or not.

24.1 In *Oskil Properties (Ltd) v Chairman of the Rent Control Board and Others*⁹ Van Rensburg J concluded:

'In reviewing the proceedings of a statutory or other body lawfully vested with a discretion, the jurisdiction of a court of law is limited to the question whether that body has in fact exercised its discretion. **It has no jurisdiction to enquire into the correctness of the conclusion arrived at by it on the evidence before it.**'

24.2 The pension funds adjudicator echoed this principle in *Stacey (Koevort) v Old Mutual Protektor Pension Fund and Another*¹⁰:

'As already alluded to in the preliminary ruling, **the effecting of an equitable distribution requires of the board of trustees to take into consideration all the relevant factors and discard irrelevant ones.** The board may also not unduly fetter its discretion, nor should its decision reveal an improper purpose. If it has acted as aforesaid, no reviewing tribunal will lightly interfere with their decision. **It should be noted that even if I may not necessarily agree with the decision of the board, that in itself is not a ground for setting aside the board's decision.** This is because it is not my role as a reviewing tribunal to decide on what is the fairest and most generous distribution. **The test in law is whether the board has acted rationally and arrived at a proper and lawful decision.**'

[25] It would appear from the papers that the seventh respondent made an allocation of dependants in the "Allocation of Dependants (WP 169)" signed on 27 and 28 October 2020. As mentioned the applicants objected thereto where after the matter was reconsidered. On 1 April 2021 the applicants were informed that the decision will not be amended. For the reasons mentioned, the decision of seventh respondent dated 27 and 28 October 2020 was tarnished in that it did not consider or

⁹ 1985 (2) SA 234 (SE) at 237I

¹⁰ [2005] 1 BPLR 73 (PFA) at para [15]

acknowledge the 2010 nomination form and preferences of the deceased. It is for that reason that it is the aforementioned allocation/decision that stands to be reviewed and set aside. In my view the matter should be referred back for reconsideration with the instruction that seventh respondent is to duly consider the 2010 nomination as part of the relevant information and or factors.

[26] There is no reason why costs should not follow the event. Mr Buys argued that the cost order should include that of the postponement of 21 February 2022 in view of the respondents' disregard for the rules of court in, amongst others, not having filed answering papers way past the time frames mandated by the Uniform Rules of Court. I am in agreement with the submission.

[27] Accordingly the following orders are made:

1. The decision of the seventh respondent and the allocation of dependants by the seventh respondent (including any allocations dated 27 and 28 October 2020) in respect of Willem Andries Franswa Domburg (Identity Number: [...]) in terms of pension benefits payable under pension number [...], is reviewed and set aside.
2. The matter is referred back to the seventh respondent for reconsideration and reallocation of dependants and the seventh respondent in coming to a decision, is ordered to take cognisance of the nomination form of the deceased dated 5 July 2010.
3. In order to give effect to prayer 2 above, the Board of Trustees of the seventh respondent is directed to, within 30 (thirty) days of the granting of this order, convene a board meeting and within 10 days after having made a determination, indicate in writing the outcome thereof by furnishing full reasons for such determination.
4. The seventh respondent is ordered to pay the costs, such cost to include the cost of 22 February 2022.

5. The interim order of this court dated 8 April 2021 and confirmed on 6 May 2021 is extended in as far as the eight respondent is to retain the funds attached in terms of the order.

C REINDERS, ADJP

I concur.

S CHESIWE, J

On behalf of the Applicants:

Instructed by:

Adv JJ Buys

Willie J. Botha Inc

BLOEMFONTEIN

On behalf of the 1st and 7th Respondents:

Instructed by:

Adv NO Nhantsi

Mpoyana Ledwaba Incorporated

c/o Modisenyane Attorneys Inc

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