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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 110292/23

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

DATE 21/10/2025

SIGNATURE

In the matter between:

M[...], L[...] K[...]

Applicant

and

NATIONAL EMPOWERMENT FUND

First Respondent

PENSION FUND ADJUDICATOR

Second Respondent

ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD

Third Respondent

MOLA, PRECIOUS MTOMBUFUTHU

Fourth Respondent

NTSHANGASE, BONGI

Fifth Respondent

MAUKA, SMANGELE

Sixth Respondent

KHOZA, AYANDA

Seventh Respondent

JUDGMENT

LABUSCHAGNE J

- [1] The applicant is the former wife and sole nominee in respect of death benefits in the pension of the deceased, M[...] M[...] E[...] (the “deceased”). They were married on 06 October 2006 out of community of property with the accrual system and one minor child, M[...], M[...] D[...] M[...] was born on 28 January 2005.

- [2] The applicant is also the sole beneficiary under the Will of the deceased.

- [3] During his lifetime the deceased was employed by the National Empowerment Fund, and he was a member of the pension fund administered by the third respondent.

- [4] The parties were divorced on 11 May 2012. The decree of divorce was intended to be an annexure to the founding affidavit but does not appear in the papers before court.

- [5] After the death of the deceased in 2021, the Pension Fund Adjudicator made a determination dated 11 August 2023 in terms of section 37C of the Pension Funds Act, excluding the applicant from receiving death benefits and awarding such benefits pro rata to the biological children of the deceased. The applicant initially sought an order directing DNA tests for all such children, some of who who are individual respondents to these proceedings. However, the applicant failed to join her daughter to these proceedings, who also obtained benefits in terms of the determination of the Pension Fund Adjudicator.

- [6] The applicant brought a statutory appeal in terms of section 30P of the Pension Funds Act, seeking the determination of the second respondent dated 11 August 2023 to be reviewed and set aside.

- [7] The applicant later had a change of heart and filed a notice of intention to amend the relief that she sought by excluding the prayer requiring DNA tests for all children who alleged to be the biological children of the deceased.

One of the beneficiaries in terms of the Pension Fund Adjudicator included the brother of the deceased.

- [8] The application was only opposed by the third respondent, who is one of the beneficiaries of the determination made by the Pension Fund Adjudicator.
- [9] The applicant contends that the Pension Fund Adjudicator failed to conduct a proper investigation on the issue of dependency. She contends that she is unemployed and is a dependent who was reflected as such in the certificate of Discovery Medical Aid issued at the time of the death of the deceased. The failure to conduct a proper investigation into dependency would render the determination assailable in terms of section 30P of the Pension Funds Act (see **Mutsila v Municipal Gratuity Fund and Others** [2025] ZACC 17).
- [10] The third respondent has pointed out that this application has on two occasions been postponed to enable the applicant to join two parties to whom the Pension Fund Adjudicator had allocated benefits in the determination. The last of these occasions was on 11 June 2025 when the Deputy Judge President postponed the matter to enable the joinder of two dependants. These dependants were allocated 5% and 10% respectively but were not joined to these proceedings despite the aforesaid postponements.
- [11] The applicant formulated an amendment citing the seventh and the eighth respondents but did not serve that amendment on the seventh and eighth respondents and there is no court order joining them. The third respondent contends that the non-joinder of these beneficiaries is fatal to the application.
- [12] The applicant assailed the determination of the grounds that the reasons advanced for the determination in excluding her from benefits are irrational. One of the reasons advanced is that the applicant and the deceased had an antenuptial contract and for that reason she was excluded as a dependant. This is clearly non-sensical as the antenuptial contract does not regulate anything other than the marital regime between the parties, which was

dissolved in 2012. The reflection of the applicant as a dependant on the medical scheme of the deceased at the time of his death was seemingly ignored by the Pension Fund Adjudicator.

[13] As this reason is clearly irrational, the applicant would have had a basis to establish a right to review, provided all relevant parties were before court.

[14] In light thereof that the applicant failed to join two dependants, despite being given an opportunity to do so on two occasions, has the effect that an order setting aside the benefits accruing to beneficiaries is sought in the absence of parties affected by that order. This is clearly not permissible in law as the dependants have a material and substantial interest in the proceedings before this court (Sec 165(5) of the Constitution).

[15] The non-joinder of all dependants who obtained benefits from the determination of the Pension Fund Adjudicator is fatal to the application. Even if I err in this regard, the non-joinder of all essential parties is the reason , even though the applicant might have established a basis for review, why I decline to come to the assistance of the applicant.

[16] In the premises the application is dismissed with costs, including costs reserved by Ledwaba AJP on 10 June 2025.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT : ADV MKIZE
ATTORNEY FOR APPLICANT : SIGAMA ATTORNEYS

COUNSEL FOR RESPONDENT : ADV TWALA

ATTORNEY FOR RESPONDENT : TWALA ATTORNEYS