

Pension Funds Adjudicator press release regarding Damoense and ABSA Pension Fund and another

By [Shamaa Sheik](#)

The following matter was heard by the Pension Funds Adjudicator:

- *JT Damoense* (complainant) v *ABSA Pension Fund* (first respondent) and *ABSA Consultants and Actuaries (Pty) Ltd* (second respondent)

Fast facts

Pension Funds – death benefit – beneficiary nomination – financial dependency

Summary

Background

The complainant was the former life partner of LB Mantju who passed away in a car accident on 4 March 2017 together with their minor son. The deceased was a member of the first respondent, administered by ABSA Consultants and Actuaries (Pty) Ltd (second respondent).

Following the deceased's demise, a death benefit in the amount of R1 million became available for distribution to his beneficiaries and dependants. The board resolved to allocate the entire benefit to the deceased's mother, RD Mantju, to the exclusion of the complainant.

The nature of the complaint

The complainant claimed that she was a nominee in the deceased's beneficiary nomination form and as such, she ought to have been considered by the fund when the benefit was paid out.

She further contended as follows:

- That despite the fund's submission that it considered all the relevant factors in deciding to exclude her, it failed to consider the fact that Ms Mantju was 75 years of age and received an old age grant from the State which satisfied all her maintenance needs.
- That the board failed to consider Ms Mantju's financial needs, the extent of her dependency on the deceased, as well as verification of additional income from other sources.
- That the board failed to consider her personal circumstances and the fact that she was a nominee and entitled to 50% of the death benefit.

The complainant added that the board's failure to consider that the deceased's mother may have had additional sources of income led to a lack of consideration for the impact that a partial allocation of funds to the complainant could have had on her needs.

She, in turn, questioned whether the deceased's mother would have endured any socio-economic difficulty if she (the complainant) was allocated 50% of the death benefit as set out in the beneficiary nomination form.

ABSA's response

ABSA Consultants and Actuaries submitted that during its investigation, the board established the following factors before arriving to its decision:

- The deceased's mother, Ms Mantju, was a pensioner and was financially dependent on the deceased for maintenance prior to his demise.
- Ms Mantju was also nominated to receive 50% of the death benefit in the deceased's beneficiary nomination form and since the deceased had to maintain his mother, she was accordingly identified as his factual dependant.
- The deceased was involved in a life partnership with the complainant when he signed the beneficiary nomination form on 5 March 2010 and that the relationship between the deceased and the complainant was non-existent at the time of his demise.
- Following the dissolution of the relationship, the deceased maintained his son with the complainant. Thus, the extent of financial dependency of the complainant on the deceased was the contributions towards his son's general maintenance and not directly towards the complainant's financial needs.
- The board's investigation revealed that the complainant was gainfully employed, earned a stable salary and was found to be fully able to generate income through her employment.

It was hence submitted that even though the complainant was a nominee, the board identified her as not being financially dependent on the deceased as the level of financial dependency to maintain their son did not exist anymore as their son passed away with the deceased.

Determination

In her determination, the Pension Funds Adjudicator (PFA), Ms Lukhaimane, said in principle a member is legally liable for the maintenance of a spouse and children as they rely on the member for the necessities of life. In the case of factual dependants, where there is no duty of support, a person might still be a dependant if the deceased in some way contributed to the maintenance of that person.

With regards to the board's decision to allocate the entire death benefit to the deceased's 75-year-old mother, to the exclusion of the complainant, it was found that where there are dependants and nominees, the Pension Funds Act provided for the board to make an equitable distribution.

The deceased's mother had received the full death benefit amounting to just over R1 million. She had also received a payment in respect of a group life assurance benefit.

Ms Lukhaimane highlighted that despite the deceased having completed a beneficiary nomination form where he had assigned 50% of the death benefit to the complainant and another half to his mother, the board failed to follow the deceased's wishes.

The PFA stated that the board ought to have considered the complainant on the basis that she was a nominee adding that the complainant should not have to prove that she was financially dependent on the deceased for her to be considered.

She concluded that the mere status of being a nominee compelled the fund to consider the complainant's circumstances together with other relevant factors.

Order

Ms Lukhaimane set aside the decision of the board of ABSA Pension Fund to allocate the entire amount of the death benefit to Ms Mantju, to the exclusion of the complainant, without considering relevant factors.

The board of ABSA Pension Fund was ordered to re-exercise its discretion in terms of section 37C of the Act which deals with the disposition of pension benefits upon death of member.

The law

- Pension Funds Act 24 of 1956 – s 37C