



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 2023-062156

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: 6 FEBRUARY 2025
SIGNATURE: [REDACTED]

In the matter between:

CHAISA MACHIPI

First Applicant

CALIPHONIA MACHIPI

Second Applicant

and

PALABORA MINING COMPANY

BOARD OF TRUSTEES OF PALABORA

First Respondent

MINING COMPANY

Second Respondent

SANLAM LIFE INSURANCE LTD

Third Respondent

The matter was heard in open court. The judgment is handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down is deemed to be 6 February 2025.

J U D G M E N T

Mazibuko AJ

Introduction

- [1] The applicants seek an order declaring that the nomination member beneficiary form ('the form'), nominating them as beneficiaries to a life insurance policy signed by the late Lunga Kopolo ('the deceased') is an instruction to the respondents to make payment of the death benefits to them, and that the first and second respondents have no jurisdiction to deciding on payout of the deceased's life insurance policy administered by Sanlam. Further, the third respondent is to pay the applicants in their capacities as nominated beneficiaries of the benefits accrued due to the passing of the deceased in terms of the life insurance policy.
- [2] The second and third respondents oppose the application on the basis that the death benefits ought to be paid in terms of section 37C of the Pension Fund Act¹ ('the PFA'). The first respondent files no opposing papers.

Parties

- [3] The first applicant is a grandmother to the deceased, the late employee of the first respondent ('Palabora'). She is a nominated beneficiary of 40% of all the benefits, including those from the Group Life Insurance Policy (GLIP) as a result of the demise of the deceased.
- [4] The second applicant is the deceased's aunt, the sister to his late father, and a nominated beneficiary of 60% of all the benefits, including those from the GLI, due to the deceased's demise.
- [5] The first respondent is Palabora Copper (Pty) Limited ('Palabora'), incorrectly cited as Palabora Mining Company, a company with limited liabilities, incorporated in terms of the Companies Act with its registered office at 1Copper road, Palaborwa.

¹ Act 24 of 1956.

- [6] The second respondent is Palabora Pension Fund ('the Fund'), incorrectly cited as the Board of Trustees of Palabora Mining Company. The Fund is a juristic entity registered and regulated under the PFA. It is a policyholder/owner.
- [7] The third respondent is Sanlam Life Insurance Limited ('Sanlam'), an insurer. The Fund entered into an insurance policy contract to provide risk benefits.

Brief background

- [8] The Fund procured a group scheme policy from Sanlam for Palabora's employees who are members of the Fund. Under the policy, the benefits of the deceased's membership of the Fund included death benefits, payable in terms of the Fund rules in accordance with the PFA in the event of his death.
- [9] At the time of his demise, on 18 May 2022, the deceased was employed by Palabora from 1 October 2021. As an employee, he was a member of the fund. On 6 October 2021, he completed a form nominating his grandmother and aunt as beneficiaries of 40% and 60% of all his benefits, including the death benefit.
- [10] The Fund trustees allocated the deceased's death benefits at 5% and 15% to the first and second applicant respectively and 80% to the deceased's minor, born a few months after the form was signed.

Assertions

- [11] The applicants contest the trustees' allocation, contending that the nominated beneficiaries must be paid in terms of the nomination form. Further, the life insurance policy does not form part of the fund. Consequently, the PFA, specifically section 37C, does not apply, but the Long Term Insurance Act² ('the LTI') does.
- [12] The Fund opposes the application on the grounds that the contract governing the death benefits is between Sanlam and itself, and extending the same to include the applicants is impermissible.

² Act 52 of 1998 as amended.

[13] Sanlam opposes the application on the basis that the policy is a group scheme policy held by the Fund, not the deceased. According to the policy terms, the death benefits are payable per the Fund rules in accordance with the PFA. The policy terms preclude Sanlam from effecting payment only to the applicants, given the trustees' determination of the death benefits' allocation.

Issue

[14] The court is to determine whether the group life insurance scheme falls under the ambit of the PFA.

Discussion

[15] The rules governing the Fund, as per the extract provided by Sanlam state:

10.1.1 'On the death of a MEMBER whilst in the service of an EMPLOYER, there shall be payable to the MEMBER'S DEPENDANTS and/or NOMINEES in such proportions as determined by the TRUSTEES in terms of Section 37C of the ACT, a pension purchased from an INSURER of such amount as can be purchased by:

- (a) subject to the provisions of RULE 4.7, such multiple of the MEMBER'S PENSIONABLE SALARY as can be secured by the EMPLOYER'S contribution to the FUND in terms of RULE 8.2.2(a) or RULE 8.2.3, as applicable; plus*
- (b) the MEMBER'S FUND CREDIT at the date of death.'* (sic).

[16] It is not disputed that Sanlam administers all the employees' insurance policy-related matters of Palabora, including the GLIP. Notably, the nomination form bears the Sanlam emblem and the words 'Administered by Sanlam.' It is not in dispute that the nomination form applied to the benefits accruing from the Fund and GLIP as administered by Sanlam.

[17] In terms of the PFA, the fund's task in allocating a death benefit in terms of section 37C of the Act is to identify all the potential beneficiaries (see *Van Schalkwyk v Mine Employees' Pension Fund and Another* [2003] BPLR 5087 (PFA) at paragraph 15). The board of the fund is vested with discretionary

powers to decide on an equitable distribution of the death benefit. It is only in cases where it has exercised its powers unreasonably and improperly or unduly fettered the exercise thereof, that its decision can be reviewed (see *Mongale v Metropolitan Retirement Annuity Fund* [2010] 2 BPLR 192 (PFA)).

- [18] The PFA is applicable to many other types of pension funds but not to group life insurance. In the matter of *Pieters v Shrosbree No & Others V Love & Others* [2006] 3 All SA 343 (SCA), the Supreme Court of Appeal held that in the ordinary course, the proceeds of an insurance policy will go directly to a nominated beneficiary. It does not form part of the deceased's estate like other proceeds.
- [19] In the matter of *Xaba and Others v Xaba NO and Others*,³ the court, faced with a similar set of facts, like this court, held: '*The Fund and Sanlam policy are two separate entities and that the benefits payable from the Fund are to be distinguished from the benefits payable under the policy. It further found that the benefits payable in terms of the Pension Fund are regulated by the Pension Fund Act and the benefits payable in terms of the Group Life Insurance policy are determined by the conditions of applicable law.*'
- [20] The applicants, in their capacity as nominated beneficiaries to both the Fund and policy, seek an order that Sanlam make a specific payment to them flowing from the GLIP due to the death of the deceased. The second and third respondents argue that the Fund rules govern all the death benefits; therefore, the trustees, as empowered by section 37C, must allocate the benefits. In my respectful view, their submission is misplaced when regard is had to the relief sought, *Xaba and Pieters supra*.
- [21] I have no grounds to disagree with the applicants, as the benefits payable in The PFA does not determine the terms of the GLIP. Therefore, the issue of determination and allocation of benefits is not in the purview of the Fund trustees like other benefits, though they can be referred to as death benefits or

³ (A279/2013) [2014] ZAGPPHC 812 (15 October 2014).

are administered by the same insurer. It is uncontested that the death benefits are from the Fund and the GLIP. This, therefore, requires to be administered differently as they, respectively, have unique consequences.

[22] I find that section 37C of the PFA does not find application with regard to the relief sought, even though the same insurer, Sanlam, administers all the benefits relating to the employees. I, therefore, find that the Fund trustees have no jurisdiction and if they elect to allocate the benefits, they will be acting *ultra vires*, especially, contrary to the nomination form. Accordingly, the application ought to succeed.

[23] Regarding the costs, I find no reason why the applicants, as successful parties, cannot be awarded the costs. As a result, the respondents are to bear the costs.

[24] In the circumstances, the following order is made;

Order:

1. The application is granted.
2. The third respondent must pay the Group Life Insurance Fund benefits within 30 days in accordance with the member beneficiary nomination form signed by the deceased.
3. The second and third respondents are jointly and severally liable for the costs, including the costs of two counsel at scale B, with one paying the other to be absolved.

N G M MAZIBUKO

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 6 November 2024

Judgment delivered on: 6 February 2025

APPEARANCES:

For the applicant: Adv T J Masutha with
Adv A Sefupa

Attorneys for the applicant: Ramkolo Attorneys

For the second respondent: Adv K Megan

Attorney for the Respondent: Jonathan Mort Inc

For the third respondent: Adv T Sarkas

Attorney for the Respondent: Werksmans Attorneys