



OMBUDSMAN
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FOR ALL

THE COMPLEXITIES OF PENSION BENEFITS:

LEGAL DEPENDANTS, FACTUAL DEPENDANTS

BY: ANDILE NDZABANDZABA AND
MBONGENI SIBANDZE

THE intersection of retirement funds and the provision for dependants is a critical aspect of financial planning and social security, particularly within the legal framework of Eswatini.

The country's legislation, primarily the Retirement Funds (RFA) Act of 2005 which sets out the legal framework for the rules of the respective retirement funds outlines the responsibilities of fund management boards/boards of trustees, fund administrators and the rights of beneficiaries concerning retirement benefits and the distribution of accumulated retirement savings. These laws aim to ensure that, upon retirement or death of a fund member, their dependants are adequately provided for, reflecting a commitment to social security and financial stability for families.

DIFFERENTIATION BETWEEN A LEGAL DEPENDANT AND A FACTUAL DEPENDANT

According to Section 2 of the Retirement Funds Act, 2005, a legal dependant means in relation to a member, a person in respect of whom the member is legally liable for maintenance whereas a factual dependant relates to a person in respect of whom the member is not legally liable for maintenance if such a person:

- i) was in the opinion of the management board, dependant on the member for maintenance;
- ii) is the spouse of the member and shall include a spouse as a result of any customary or religious union;
- iii) is a child of the member and shall include a posthumous child, an adopted child and an illegitimate child;
- iv) is a person in respect of whom the member would have become legally liable for maintenance, had the member not died.

A legal dependant as pointed out in Section 2 of RFA is a person for whom a member has a legal obligation to



provide maintenance and they are in essence eligible for both lump sum benefits and annuities. This means that there exists a formal recognised relationship where the member is bound by law to support this individual financially. Common examples include spouses, children or other relatives who are entitled to receive financial support due to established legal relationships. The existence of this legal liability is typically governed by statutes or family law provisions that outline the responsibilities of individuals towards their dependants.

In contrast, a factual dependant refers to an individual who may not have a formal legal claim for maintenance but is nonetheless considered dependant on the member for their financial needs. According to Subsection (b) (i) of Section 2, the management board can determine that such a person was dependant on the member for maintenance based on their assessment of the situation. This could apply in scenarios where individuals live together and share financial resources without any formal legal ties, such as cohabiting partners or extended family members who rely on each other for support. Persons in this category are only eligible for lump sum benefits.

The case of Makhosazane Smith's and Muzi Sibbo's Pension Benefits* Makhosazane Smith,* a girlfriend of Muzi Sibbo* complained of being excluded from Muzi's pension benefits alleging that she was the deceased's fiancée. The deceased had paid *inkhomo yekucela* and that the deceased had maintained her monthly during their relationship up until his demise. She further alleged that due to her being health-challenged, the deceased assisted her in starting her business. She further argued that she would like to be included as a beneficiary of the deceased's death benefit from his employer-sponsored retirement fund, since the deceased maintained her general upkeep. She alleged that the deceased also opened a business for her upkeep and also claims that the deceased even preached *kukhonta* (to request land or pay allegiance to the chieftom) for her in preparation for their family home after marriage.

Upon investigation by the OFS and getting a response from the respondent, it was established that Makhosazane Smith was excluded from Muzi Sibbo's death benefits since she did not qualify to be a dependant of the deceased. Instead, the respondent argued that she only received occasional assistance from the deceased just like his other girlfriends who also regularly

visited him and had no legal dependence on the deceased. Although there was evidence that she once received some money from the deceased, around the time that she alleges to have then opened a business, she was not able to present evidence to the deceased's retirement fund (the respondent) to show how the deceased had maintained her monthly upkeep.

OFS DECISION

The OFS, as an independent function that investigates complaints found that the respondent acted fairly and reasonably when deciding who should receive the death benefit.

They reviewed all the necessary information to determine whether the complainant (Makhosazane) and others were truly dependant on the deceased.

The Ombudsman decided that based on the law (specifically Section 2 of the Retirement Funds Act, 2005), the Complainant (Makhosazane) did not meet the definition of a 'dependant'. Because of this, the Ombudsman concluded that the Respondent made a proper decision about how to distribute the death benefit and there was no reason for the Ombudsman to overturn that decision.

The Ombudsman exists to level the playing field between these two par-

ties in a fair and accessible way. The aim is essentially to bring economic sustainability by receiving the complaints and first making an effort to either conciliate, facilitate or mediate settlement between them (Financial Services Provider (FSP) and the consumer) with the view to sustain the business relationship between the FSP and the consumer.

Should settlement not be successful, the Ombudsman then investigates the matter with the view to make a decision on the complaint, based on what is fair and reasonable in all the circumstances of the case, for good industry practice and economic stability to be upheld.

Our process for lodging a complaint is as follows:

1. First contact your FSP and submit a written complaint, giving them 30 days to respond. If you do not get a response or you are not satisfied with their response, you may come to the Ombudsman with your complaint.
2. Raise your issue using the Ombudsman's website link <https://www.ombudsf.org.sz/contacts/> OR
3. Get a copy of our complaint form (available in both Siswati and English) at our office, a CMAC branch near you or from our website: www.ombudsf.org.sz
4. Submit your completed complaint form together with all your supporting documentation in person or by email.

*Not real names

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Tel: +268 2404 7653/2404 4464
WhatsApp: +268 76987570
Fax: +268 2404 0636
Email: info@ombudsf.org.sz
Website: www.ombudsf.org.sz
Follow us on Facebook, X (Twitter), and LinkedIn: Ombudsman of Financial Services

The Office of the Ombudsman of Financial Services details:
3rd Floor, West Wing
Ingcamu, (PSPF) Building,
Mhlambanyatsi Road, Mbabane
PO Box 8490, Mbabane
Eswatini

Electricity, Energy dept to launch G20 clean cooking project

JOHANNESBURG - The Department of Electricity and Energy will launch a legacy project aligned to the G20 Clean Cooking Outcome, to accelerate investment in clean cooking in Africa.

The department's Energy Transition working group held its third technical meeting in Sun City, and touched on the implementation of Just Energy Transition programmes, which include

clean cooking.

According to the International Energy Agency, four in five families across the continent still cook with polluting fuels like wood, charcoal or dung, often over open fires or basic stoves.

These practices contribute to over 800 000 premature deaths each year due to household air pollution.

Matsatseng Village, 30 kilometres from Mahikeng has been in existence

for years still does not have electricity. One of the residents Karlina Nabe, says they survive by living like in the olden days using open fires to cook.

"Yes we grew up cooking on the bonfire, but we need better ways of cooking. We need government to help us with electricity. We can't grow up and die using these methods of cooking. I used to have great eyesight but now my eyes are always itching. I

can't even see when I write."

Electricity and Energy Deputy Minister, Samantha Graham-Maré says this also affects those who can't afford electricity.

"What we're finding now is that with the cost of electricity going up, people are now having to make choices. Do I buy food, do I buy electricity? So with that happening they are now resorting to alternative methods of

cooking and that is creating a harmful environment for women, particularly and for children. So, within the continent of Africa, 500 000 women and children die prematurely every year as a result of the toxins that are released from the fuels that they are using to cook. So, we're trying to eliminate that throughout Africa and in South Africa, we're trying to find an alternative to electricity so that we can find cheaper ways for people to actually be able to cook." **SABC new**