

THE ADMISSIBILITY OF AFFIDAVITS AS EVIDENCE IN DEATH BENEFIT CLAIMS



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Under South African law, an affidavit is a statement made under oath by an individual to a commissioner of oaths. While the person making the statement does so with the knowledge that if it contains false information they could face a jail sentence, this doesn't necessarily mean that the affidavit is proof of the claims it contains. This means that trustees should be wary of simply accepting affidavits as substantial evidence to back a benefit claim.

In terms section 37C of the Pension Funds Act 24 of 1956, death benefits do not form part of a deceased person's estate. Therefore, it is the responsibility of the trustees to still make sure that the death benefits are allocated fairly to all dependants.

Section 37 essentially places three main responsibilities on the trustees:

- To identify the dependants and nominees of the deceased member;
- To effect an equitable distribution of the benefit among such dependants and nominees; and
- To determine an appropriate mode of payment.

This 'freedom' granted trustees to make decisions regarding the distribution of death benefits often gives rise to claims by various people against the death benefits that become available when a fund member passes away.

The Pension Fund Adjudicator has identified the following key factors for trustees to consider when deciding on the equitable distribution of death benefits:

- The age of the parties;
- The relationship with the deceased;
- The extent of dependency;
- The financial affairs of the dependants; and
- The future earning potential and prospects of the dependants.

In the case of "spouses" of the deceased, trustees are able to consider three main categories of spouse, namely permanent life partners spouse and civil union partners. For anyone to be recognised as any of these under the Act, they must prove they were married to the deceased in line with either the Marriage Act, 1961 (Act No. 68 of 1961), the Recognition of Customary Marriages Act 1968 (Act No. 68 of 1997), or the Civil Union Act, 2006 (Act No. 17 of 2006), or the tenets of a religion.

Often, to meet these requirements, the claims lodged by those professing to be e.g. a customary law spouse or permanent life partner of the deceased are supported by means of a sworn affidavit to that effect. However, given the responsibility that trustees have to thoroughly investigate any such claims, an affidavit alone should not automatically be deemed adequate proof of such a relationship.

PFA ruling shows affidavits alone are not enough

This fact was demonstrated by a ruling of the Pension Funds Adjudicator (Maake vs Old Mutual SuperFund Provident Fund and Old Mutual Life Assurance Company; 2013) where a complainant took issue with the fact that a woman claiming to have a customary marriage with a deceased member, and children by him, was awarded a portion of his death benefit.



The main substance behind the woman's claim was an affidavit stating that she was married to the deceased under customary law. The trustees of the fund awarded her the benefit primarily on the basis of the affidavit, as well as a supporting letter from one of her family members.

The Adjudicator ruled in favour of the complainant and stated that, while affidavits are applicable as components of a death benefits investigation, by merely accepting the affidavit from the claimant at face value, the trustees had neglected to consider that an affidavit does not prove the truth of its contents.



The trustees' responsibility for thorough investigation

It is the trustees' responsibility, when dealing with death benefit allocations or distributions, to undertake a thorough investigation. The primary objectives of this are to find and determine the validity of, potential dependants (including spouses). Thereafter, it is to decide on an equitable distribution amongst one or more of these dependants.

In the case of **Maake vs Old Mutual SuperFund Provident Fund**, the Adjudicator pointed out that the trustees had made a mistake by placing an unduly high probative value on the affidavit deposited by the woman who claimed to be married to the deceased. The decision to put aside the distribution was based on the fact that no other evidence existed to corroborate the claims made in the affidavit. This would include a customary marriage registration certificate, supporting affidavits by family members who had attended the customary marriage ceremony, or evidence of lobola or any other customary marriage documentation.

It must be remembered that section 37C was instituted as a way of ensuring that dependants of a deceased fund member are provided for financially given the loss of income pursuant to the member's death. Unfortunately, there are no clear and comprehensive guidelines on the processes trustees should follow in determining such fair allocation of benefits.

While this absence of guidelines may make the process of benefit distribution more complex, it doesn't make it any less important. It is vital that boards of trustees never lose sight of the fact that their decisions in this regard could very well mean the difference between financial survival and destitution for legitimate dependants of the deceased member.

With that in mind, the importance of thorough investigation and unfettered discretion cannot be over-emphasised.