




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
10/11/14	
DATE	
	SIGNATURE

7/11/2014

CASE NUMBER: 51529/2012

In the matter between:

C E GREYLING

APPLICANT

AND

GOVERNMENT EMPLOYEES PENSION FUND

1ST RESPONDENT

L C BERNING (PREVIOUSLY GREYLING)

2ND RESPONDENT

JUDGMENT

LEPHOKO AJ

[1] The applicant seeks an order declaring her, being the mother of A B Greyling (the Deceased"), to be the sole dependent of the deceased for purposes of payment of

death benefits from the first respondent, the Government Employees Pension Fund ("the Pension Fund).

[2] The second respondent in her capacity as executrix of the estate of the Deceased brought an application to intervene in the application. She later withdrew that application and opted to abide by the decision of the court regarding the payment of pension benefits. She also gave up her right to claim in the estate of the deceased.

Background

[3] The Deceased was employed as a captain in the syndicate and fraud unit of the South African Police Service. He went missing during November 1995. At the time he went missing the Deceased was married to the second respondent. The second respondent obtained a divorce order on 14 February 1997 and an order declaring the Deceased dead on 12 September 2011.

[4] The second respondent was no longer married to the Deceased at the time he was declared dead by the court. Consequently she could not be regarded as a widow for the purposes of the estate or for the purposes of deriving a benefit payable to a widow of a member of the Pension Fund.

[5] The applicant, who is the mother of the deceased, is his only surviving relative. She claims the death benefits as a dependent in terms of the rules of the Pension Fund, although she was not financially dependent on the Deceased at the time of his death.

- [6] There are two issues to be determined by the Court, namely:
- (a) whether the applicant is a dependant as defined in section 1 of the **Government Employees Pension Law, 1996 (Proclamation 21 of 1996)** by virtue of her being the mother of the deceased, and
 - (b) whether her financial independence is a relevant factor that disqualifies her from receiving the death benefits.

Applicable Legal Principles

[7] The payment of death benefits is regulated *inter alia* by section 22 of the Government Employees Pension Law (the Proclamation) and rule 14.5 of the Pension Fund Rules. Section 22 of the Proclamation regulates the procedure to be followed by a member who wishes to nominate a beneficiary to receive the gratuity on the death of that member.

[8] Section 22 of the Proclamation provides as follows:

1. *"If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the prescribed form and subject to the prescribed conditions, notify the Board of his or her wish that the said gratuity be paid on his or her death to the beneficiaries mentioned in that form and be divided amongst such beneficiaries in the proportion mentioned in that form.*

2. *Notwithstanding anything to the contrary in any law contained, the Board may on the death of a member who so notified the Board pay at its discretion the gratuity concerned in accordance with the member's wishes."*

[9] Rule 14.5.2 reads: *"If a member with at least 10 years pensionable service dies, a gratuity shall be paid to his or her beneficiaries or to his or her estate if there is no beneficiary which is equal to the sum of the gratuity and five times the annuity which would have been payable to him or her in terms of rules 14.2.1(a) and (b) respectively, if he or she had retired for a reason referred to in rule 14.1.1(a) on the day of his or her death".*

[10] In section 1 of the Proclamation a beneficiary is defined as:

"the dependant or nominee of a member or pensioner, as the case may be"

and a dependant is defined as:

- a) any person in respect of whom the member or pensioner is legally liable for maintenance;
- b) any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person-
 - (i) was, in the opinion of the Board at the time of the death of the member or pensioner in fact dependent upon such member or pensioner for maintenance;

- (ii) is the spouse of the member or pensioner, including a party to a customary union according to indigenous law and custom, or to a union recognised as a marriage under the tenets of any religion; or
- c) a posthumous child of the member or pensioner; and
- d) a person in respect of whom the member or pensioner would have been legally liable for maintenance had that person been a minor."

[11] Rule 14.5.2 reads: *"If a member with at least 10 years pensionable service dies, a gratuity shall be paid to his or her beneficiaries or to his or her estate if there is no beneficiary which is equal to the sum of the gratuity and five times the annuity which would have been payable to him or her in terms of rules 14.2.1(a) and (b) respectively, if he or she had retired for a reason referred to in rule 14.1.1(a) on the day of his or her death"*.

[12] In the unreported case of ***RA Jordaan NO v The Government Employees Pension Fund Case No A565/2004 (TPD)*** the full court stated the following at page 13: *"In my judgment it is clear that the purpose of section 22 of the proclamation is to allow a member of the Pension Fund to nominate a beneficiary and that upon the death of the member any benefit be paid directly to such nominee without the intervention of the executor of the deceased's estate. In that way the benefit cannot be eroded by payment to creditors of the deceased's estate and be utilized for the exclusive benefit of the deceased's dependant or nominee. That purpose is also clear from other provisions of the proclamation. See for example section 21 (prohibition on session and attachment of*

benefits). Section 23 (benefit not an asset in the insolvent estate). And section 28 (benefit not property for purposes for estate duty”.

[13] The court continued to state as follows at page 14: “*It is clear that after the death of a member payment will first be effected to the deceased’s dependants. Secondly, payment to the member’s nominee will be considered even if it is to be apportioned between the dependant and the nominee. Lastly and in the event of there being no dependant or nominee, payment will be effected to the deceased’s estate”.*

[14] In my view the position as stated by the court in Jordaan’s case (*supra*) is correct as the exemption from attachment, cession, insolvent estate and estate duty supports the conclusion that these benefits were never intended to form part of the deceased’s estate and will be payable to his estate only where there is no dependant of the estate.

[15] In ***Government Employees Pension Fund And Another v Buitendag And Others 2007 (4) SA 2 (SCA)*** at paras 6-8 the Supreme Court of Appeal held that the stated purpose of the Law (i.e. the Proclamation) is to benefit, *inter alia*, dependants of a member – not his or her estate and that given the purpose behind the Law, there is no reason for excluding major children who are self-supporting and they qualified as dependants of the deceased envisaged in section 1 of the Law.

[16] The three prerequisites of a legal duty of support are a relationship; need on the part of the person to be supported; and adequate resources on the part of the person

who is called upon to provide support. See Schafer: Family Law Service, Chapter C: Maintenance at page 1.

[17] The case of *Government Employees Pension Fund And Another v Buitendag And Others* (*supra*) also involved a claim for payment of benefits in terms of rule 14.5.2 by a stepson of the deceased member. The court stated at para 15 that the stepson qualified to be considered as a dependant if he was in fact dependent on the deceased at the time of her death, even though she had no duty to maintain him. Although this conclusion is supported by the definition of "dependant" in section 1 of the Proclamation, by drawing a distinction between the stepson and the biological children of the deceased, the decision to regard self-supporting major children as dependants seem to have been based on the stated purpose of the Proclamation and, *inter alia*, the existence of the relationship between the member and her biological children and presumably their reciprocal duty of support.

[18] My view is that in the light of the Buitendag decision (*supra*), the interpretation of "dependant" in section 1 of the Proclamation should be extended to include a self-supporting or non-dependent parent of a member or pensioner. I think that there would be no rational basis for holding that a self-supporting major child qualify as a dependant envisaged in section 1 of the Proclamation but that a self-supporting parent does not. Accordingly I hold that a self-supporting parent qualify as a dependant for purposes of payment of death benefits.

[19] I am of the view that in cases like the present one, effect must be given to the manifest purpose of the Proclamation that death benefits must first be paid to the dependants of a member, and to the deceased's estate as a last resort and only where there are no dependants. I therefore find that the death benefits in respect of the late A B Greyling must be paid to the applicant.

In the premises I make the following order:

1. The applicant is declared to be the sole dependant of A B Greyling, who was declared deceased by the court on 12 August 2011.
2. The Government Employees Pension Fund is ordered to pay the death benefits in terms of its rule 14.5.2 in respect of A B Greyling to the applicant directly.
3. The first respondent is ordered to pay the costs of the application.



A L C M LEPHOKO
ACTING JUDGE OF THE HIGH COURT

Heard on: 28 July 2014.

Judgment delivered on: 7 November 2014

For the Applicantt: Adv JL Basson

Instructed by: Botes Attorneys

For the First Respondent: Mr ML Magolego (Attorney)

Instructed by: Modzukula And Magolego Inc