

## FA rules that wife accused of murder cannot claim death benefit

23 February 2024 Pension Funds Adjudicator



The Pension Funds Adjudicator Muvhango Lukhaimane

The Bloody Hand Rule has been cited in a matter before the Pension Funds Adjudicator in which a spouse accused of murder made a claim to the death benefit.

The Pension Funds Adjudicator Muvhango Lukhaimane referred to the common law principle “De bloedige hand en neemt geen erfenis” (the bloody hand does not inherit”) in a matter dealing with a death benefit.

In terms of this principle, persons who unlawfully and intentionally cause the death of a person will be considered unworthy to inherit from that person or receive any benefit from that person’s estate.

A complaint was lodged against PSG Wealth Retirement Annuity Fund concerning the delay in the allocation of a death benefit in respect of the deceased. The complainant indicated that the spouse was accused of the murder of the deceased.

The deceased’s fund credit was R633 429.04 on 18 August 2023. The board of management of the fund had not finalised its decision in respect of the allocation of the death benefit. The fund had advised that the death benefit cannot be paid until the criminal proceedings against the spouse have been concluded.

The complainant submitted that in civil proceedings, the High Court of South Africa Western Cape Division found that the spouse was not entitled to a benefit from the deceased estate.

The fund advised that it was not satisfied that it will be able to make an equitable allocation of the death benefit before the criminal court ruled on the culpability of the spouse. The fund stated that the civil court dealt with the deceased's estate. However, the death benefit is not part of the deceased estate. Further, section 37C of the Act did not compel distribution at the expiry of the 12-month period. The fund indicated that the deceased has two major children and requested that the complaint be dismissed.

In her determination, Ms Lukhaimane said the payment of a death benefit was regulated in terms of section 37C of the Pension Funds Act which provides that the disposition of death benefits shall not form part of the assets in the estate of a deceased.

"The complainant stated that the deceased's spouse is accused of his murder. The fund submitted that a civil judgment was issued which only concerns the deceased estate and that the death benefit does not form part thereof.

"However, at paragraph 136 the court referred to *Casey N.O v The Master & Others 1992(4) SA 505 (N) p 507C* where it was stated that law and public policy require that the applicant should forfeit the benefits of maintenance against the deceased's estate.

"At paragraph 177 of the civil judgement, the court, inter alia, held that: 'Her involvement in the planning of the murder, the callous execution and her subsequent conduct in forging documents does not only disqualify her from the inheritance in the entire estate, but to receive any benefit including maintenance.'

"Therefore, the civil judgment does not only limit the issues to what was payable by or from the estate, but also any other benefit including maintenance and the death benefit payable by the fund."

Ms Lukhaimane said: "It should be noted that 'De bloedige hand en neemt geen erfenis' is an established common law legal principle.

"The criminal proceedings have not been concluded in respect of the spouse's culpability and this is the reason the fund gives as to why it has not finalised its decision in the allocation of the death benefit.

"However, the civil court held that the spouse should be disqualified from receiving any benefit including maintenance. The witnesses that gave evidence are the same witnesses that will give evidence in the criminal trial with one of those involved in the murder of the deceased having turned state witness.

"Whether or not the spouse is found guilty in the criminal proceedings is irrelevant. It is unconscionable that given the findings of the Western Cape High Court in the civil matter, with witnesses detailing the extent to which the spouse was willing to go to end the deceased's life, her impatience in that regard, her multiple attempts at relying on forged documents, such a spouse can even be considered for a death benefit allocation in terms of section 37C.

"It is unimaginable that a deceased person would want, under any circumstances, for a person responsible for their death, to benefit owing to such demise.

“Consideration should also be had to public morals in general. As a community, do we want to live in a society where dependants may benefit from having caused the death of another if such a person has not been found guilty in a criminal court.

“The civil judgment was as a result of the spouse approaching the court initially on an urgent basis. She got an adverse judgment, which stands until such time that it is successfully appealed – which has not occurred. Moreover, the application in this judgment served before the court before arrests were made, five months after the death of the deceased.

“Therefore, the fund should exclude the spouse and proceed with the allocation of the death benefit to the other beneficiaries of the deceased. The fund is bound by the clear ruling in the civil judgment,” said Ms Lukhaimane.

The fund was ordered to exclude the spouse and proceed with the allocation of the death benefit to the other beneficiaries of the deceased.