

How PAJA applies to Pension Funds Act decisions

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In February, the High Court confirmed that the Promotion of Administrative Justice Act (PAJA) applies to section 37C decisions on the distribution of death benefits made by the boards of retirement funds under the Pension Funds Act. In *Mbatha v Transnet Sector Retirement Fund and Salt Employee Benefits* the court also confirmed the accepted principles that:



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In *Mbatha v Transnet Sector Retirement Fund and Salt Employee Benefits* the court also confirmed the accepted principles that:

1. On the death of a member, a pension fund is not bound by a deceased's will nor by the deceased's nomination form because s37C expressly restricts freedom of testation so that no dependants are left without support; and
2. The board of a pension fund has the discretion to administer benefits payable to minor dependants within the fund in accordance with s37C(3). The pension fund is not obliged to pay over those sums to the legal guardian of the minor but it does have the discretion to make ad hoc and monthly payments to the legal guardian for necessities such as school fees and the like, if it is in the best interests of the minor to do so.

As such, boards of funds must be aware that their decisions on death benefits are open to review under PAJA. A successful review could mean the setting aside of a board's decision on the distribution of a deceased member's death benefits.

The facts of the case involve the death of a father of two minor children who are taken care of by their mother. The death benefit was allocated to both minor children and the mother of the children. The Fund paid the portion of the death benefit allocated to the mother to her and administered the benefits of the minors in accordance with s37C(3). The mother was unhappy with the board's decision and wanted to administer the benefits herself so she approached the court seeking an order that the benefit allocated to her minor children should be paid to her as their legal guardian and caregiver.

The court dismissed the mother's case on the grounds that she failed to set out a basis as to why it would be in the best interests of the minors for their respective allocations to be paid to her as a lump sum. She could also apply to the Fund for ad hoc or monthly payments to cover the educational and other needs of the minors. In addition, the mother had failed to review the decision under PAJA and to exhaust the internal remedies provided in the PFA or apply for exemption from the duty to exhaust internal remedies before approaching the court.

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