



Employment Law

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SOUTH AFRICA

- Constitutional Court clarifies the interpretation of 'dependency' under section 37C of the Pension Funds Act.



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Constitutional Court clarifies the interpretation of 'dependency' under section 37C of the Pension Funds Act.

Section 37C of the South African Pension Funds Act 24 of 1956 (Act) is a special provision that governs how death benefits from a retirement fund must be distributed when a member dies. It is one of the most important (and often misunderstood) sections of the Act.

Section 37C exists to serve a social protection function. Its core purpose is to ensure that people who were dependent on the deceased member are financially protected, even if this overrides the deceased's will or beneficiary nomination.

Importantly, under section 37C: (i) a retirement fund death benefit does not fall into the deceased's estate; (ii) it is not distributed according to a will; and (iii) it is not automatically paid to nominated beneficiaries.

Instead, the benefit must be distributed by the retirement fund trustees in accordance with section 37C. So, it is the board of trustees of the fund who decide and they must:

- Investigate who the deceased's dependants were.
- Identify all qualifying dependants.
- Allocate the benefit equitably, using their discretion.

The Act has three categories of "dependants": legal, factual and future legal.

In *Mutsila v Municipal Gratuity Fund and Others* [2025] (10) BCLR 1139 (CC), the Constitutional Court delivered an important judgment clarifying the proper interpretation of "dependency" under section 37C of the Act. This decision resolves longstanding uncertainty and helps confirm the timing, nature and consequences of dependency determinations.

At the heart of the case is this question: **Was the claimant alleging dependency in fact dependent on the deceased member while the member was alive?** The court made clear that dependency is a historical enquiry. It must be determined with reference to the circumstances that existed at the date of the member's death, not at the date of distribution of benefits.

Events occurring after death cannot create dependency where none existed, nor can they extinguish dependency that was present during the member's lifetime. Post-death developments may become relevant later, when trustees decide how to allocate benefits equitably, but they are irrelevant to the initial question of who qualifies as a dependant. These are important distinctions.





Background

The deceased was a member of the Municipal Gratuity Fund (Fund). He was survived by his civil-law spouse and their five children. A second claimant, Ms Masete, alleged that she was married to the deceased under customary law and that she and her two children were dependent on him. The Fund recognised both households as dependants and allocated 52.5% of the benefit to Masete and her children, and 47.5% to the civil-law spouse and her children.

The civil-law spouse challenged both the recognition of Masete and her children as dependants and the fairness of the allocation. She disputed the existence of a valid customary marriage and contended that factual dependency had not been properly established. The Pension Funds Adjudicator and the High Court agreed that the Fund had failed to conduct a proper investigation. However, the Supreme Court of Appeal (SCA) reinstated the Fund's allocation, reasoning that dependency should be assessed at the time of distribution rather than at the date of death.



Constitutional Court

The Constitutional Court rejected the SCA's approach. It held that section 37C permits only one reference point for determining dependency: the date of the member's death. The enquiry is necessarily retrospective because it asks whether the deceased, during their lifetime, provided maintenance or support to the claimant. The court observed that it would be absurd to suggest that someone could become dependent on a deceased person after death, or that a person who was reliant on the deceased during their lifetime could lose that status because of subsequent events.

In correcting the SCA's reasoning, the court emphasised that the section 37C process involves two distinct stages:

1. First, identifying who qualifies as a dependant.
2. Second, allocating the benefit equitably among those dependants.

The court found that the Fund's investigation was fundamentally flawed. The Fund had relied largely on the alleged relationship between Masete and the deceased, without properly establishing whether she and her children were in fact dependent on him for maintenance while he was alive. Because the dependency enquiry was defective, the allocation decision could not stand. The matter was remitted to the Fund to conduct a fresh investigation and make a new allocation, assessed by reference to the circumstances as they existed at the date of death.



Key takeaways

- Trustees, not the deceased, decide dependency and distribution.
- Dependency is determined as at the date of the member's death.
- The fund is given up to 12 months to investigate and identify dependants.
- Changed circumstances after death may affect the amount allocated, but not whether someone qualifies as a dependant.
- Once dependants are identified, the fund must make an "equitable allocation". This does not mean equal.

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