

2. The Second Applicant is Discovery Life Limited ("Discovery Life"). The Second Applicant is the appointed section 13B administrator and provides administration services to the Fund.
3. The First Respondent is the Pension Funds Adjudicator ("the Adjudicator"), the statutory ombud as defined in section 1(1) of the FSRA and is established in terms of the PFA.
4. The Second Respondent is the Complainant in the matter referred to the Adjudicator in terms of section 30A of the PFA.
5. This is an application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the Adjudicator in terms of Section 30M of the PFA.
6. The parties have waived their right to a formal hearing, and this is the decision of the Tribunal.
7. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for an appropriate Applicant to lodge an application for reconsideration and seek appropriate relief. The applicant must be an "aggrieved" person.

THE FACTS

8. This is an application for the reconsideration of the Adjudicator's decision relating to a death benefit in terms of section 37C of the PFA by the Fund following the death of its member, the late Celenkosini Sikhakhane ("the deceased").
9. The death benefit was R574,505.64 ("the death benefit").
10. The Complainant was Bhekisiwe Beslina Shandu, the deceased's mother.

On the death of the deceased, the Fund resolved to allocate the death benefit as

follows:

Beneficiary	Relationship	Age	%
BB Shandu (the Complainant)	Mother	61	60
J[....] M[....] ("the Child")	Child	6	40%

11. The gravamen of her complaint was that she was the only rightful beneficiary of the deceased.

12. She prefaced her argument by indicating that although the deceased had supported the Child during his lifetime, he had only done so because he believed the Child to be his biological child.

13. The Complainant indicated to the Adjudicator that the Child's mother had, subsequent to the death of the deceased, confessed that the Child was not the biological child of the deceased, and so she argued she was entitled to the entire death benefit and the Child entitled to none.

14. The Adjudicator dismissed the complaint but ordered as follows:

14.1 The decision of the board of the Fund in allocating the death benefit is set aside;

14.2 The Fund is ordered to carry out a paternity test in respect of J[....] with the necessary consent from his mother, within eight weeks of this determination;

14.3 Should the necessary consent not be forthcoming in respect of the paternity test, then the board is ordered to review its decision and exclude

J[....] from the allocation of the death benefit;

14.4 Should J[....]'s mother provide the necessary consent for a paternity test and the results confirm paternity in respect of the deceased, then the board should consider J[....] in the allocation of the death benefit as a legal dependent of the deceased;

14.5 Should J[....]'s mother provide the necessary consent for a paternity test and the results exclude paternity in respect of the deceased, then the board should review its decision in respect of the allocation of the death benefit and establish the extent of J[....]'s financial dependency of the deceased as a factual dependent; and

14.6 Once the board has reviewed its decision in terms of paragraphs 6.1.3, 6.1.4 or 6.1.5 (referring to the number in the Determination), it must notify the Complainant and the other beneficiaries of its decision within two weeks thereof.

LOCUS STANDI

15. The Tribunal has recently indicated in **Discovery Retirement Annuity Fund & Another / PFA & S Govender - Case No PFA26/2023** that while at first blush, it may be tempting to engage with the merits of such a matter, when consideration is given to the locus standi of the Fund to bring this application, it is clear that the Fund is not a person aggrieved as required by section 230 of the FSRA. Accordingly, this application must fail on that preliminary ground alone. It may be that this decision has not yet come to the attention of the Applicants, as it was only handed down earlier this month.

16. That said, it must be that at least the Second Applicant understands the legal position as it was a party to the matter of **Discovery / Ndlovu – Case No PFA19/2023**, where the principles of locus standi were discussed, and the attention was drawn to the applicable legal principles.

17. In the circumstances, while the Applicants are not in a position to bring this application for reconsideration, they are free to consider the facts set out in the application in making the reallocation in due course.

18. Although the Second Respondent filed an “Answering Statement”, suggesting

that the Tribunal lacked jurisdiction and, for the first time in their Heads of Argument, raising the Plascon Evans Rule engaging with the arguments presented in light of the locus standi issue is unnecessary. That said, the question of jurisdiction needs to be addressed. The parties are referred to the decision in **Vivian Cohen / PFA & 3 Others PFA1/2018** wherein the question of the Tribunal's jurisdiction was explained that the *FSRA* “*which came into effect on 1 April 2019, provides for an additional “appeal” route for an aggrieved party, namely reconsideration by this Tribunal*”. This, in essence, puts to bed the question of jurisdiction.

CONCLUSION

19. The First and Second Applicants lack the necessary locus standi to bring this application.

ORDER

(a) The application is dismissed.

Signed on behalf of the Tribunal on 1 September 2023.

PJ Veldhuizen