

**IN THE HIGH COURT OF SWAZILAND**  
**HELD AT MBABANE**

**CASE No. 2002/07**

In the matter between:

**SIMANGELE THELMA MHLONGO**  
**(BORN DLAMINI)**

**APPLICANT**

**AND**

**THE MASTER OF THE HIGH COURT**

**1<sup>st</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**2<sup>nd</sup> RESPONDENT**

**GIDEON MHLONGO N.O.**

**3<sup>rd</sup> RESPONDENT**

**THE TRUSTEES FOR THE TIME**  
**BEING OF THE STANDARD BANK**  
**SWAZILAND PENSION FUND**

**4<sup>th</sup> RESPONDENT**

**STANDARD BANK SWAZILAND LIMITED**

**5<sup>th</sup> RESPONDENT**

**SWAZILAND EMPLOYEE BENEFIT**  
**CONSULTANTS (PTY) LTD T/A ALEXANDER**  
**FORBES FINANCIAL**  
**SERVICES SWAZILAND**

**6<sup>th</sup> RESPONDENT**

Coram

SEY J.

For the Applicant

Mr. J. Manzini

For the 3<sup>rd</sup> Respondent

Advocate P. E. Flynn

Instructed by

Mr. L. R. Mamba

## J U D G M E N T

28 JULY 2011

- [1] This is an application in which the Applicant seeks the following reliefs:
1. That the decision of the 1<sup>st</sup> Respondent dated 29<sup>th</sup> May, 2007 refusing to sustain an objection lodged by the Applicant to the First Liquidation and Distribution Account in the Estate of the Late Mfanzolalaphi Benjamin Mhlongo be and is hereby set aside.
  2. Declaring that all benefits paid by Swaziland Employee Benefit Consultants (Pry) Ltd t/a Alexander Forbes Financial Services Swaziland to the 1<sup>st</sup> Respondent, in particular an amount of E969,778.00 (Nine Hundred and Sixty Nine Thousand Seven Hundred and Seventy Eight Emalangeni) (this amount being the proceeds of cheque No. 012150), and paid out in terms of the Standard Bank Swaziland Pension Fund Rules, do not form part of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.
  3. In the event that prayer (2) is upheld, directing the 3<sup>rd</sup> Respondent to exclude all death benefits received from Swaziland Employee Benefit

Consultants (Pty) Ltd t/a Alexander Forbes Financial Services Swaziland in framing the First Liquidation and Distribution Account of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.

4. Directing the 1<sup>s</sup> and 3<sup>r</sup> Respondents to pay the Applicant forthwith her 50% share of the death benefits which do not form part of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.

5. Directing the 1<sup>st</sup> Respondent to deposit into the Guardian's Fund the 50% share of Bongele Nomathemba Mhlongo (a minor ) pending the finalization of an action to be instituted by the Applicant to contest the appointment of Gideon Mhlongo as legal guardian of the said minor child.

6. Costs of suit.

7. Further and/or alternative relief.

[2] I should mention that the said application was initially brought against the 1<sup>st</sup>, 2<sup>n</sup> and 3<sup>r</sup> Respondents. Thereafter, pursuant to an application made by the Applicant, an Order for joinder of the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents was granted on the 7<sup>th</sup> November, 2008, in terms of which they were directed to file their Answering Affidavits, if any, within a period of 14 (fourteen) days of service of the same.

[3] In support of this application is the Applicant's Founding Affidavit to which is exhibited annexures "SM1" to "SM23" which can be found on pages 27 to 124 of the Book of Pleadings. The 3<sup>rd</sup> Respondent filed an Answering Affidavit sworn to on the 26<sup>th</sup> day of January 2009 to which is exhibited annexures "GM1" to "GM4". Thereafter the Applicant filed a Replying Affidavit dated the 17<sup>th</sup> day of February, 2011.

[4] Upon reading the papers filed, I deem it apposite at this juncture to chronicle the background facts in order to place the reader in a position to understand the substratum of this application.

[5] The Applicant and Mfanzolalaphi Benjamin Mhlongo (hereinafter referred to as the deceased) were married to each other in community of property on the 8<sup>th</sup> day of December, 2001. Prior to their said marriage, the Applicant and the deceased had a child, Bongekile Nomathemba Mhlongo, born on the 22<sup>nd</sup> August, 1996. Also, before the aforesaid marriage, the deceased had executed his Last Will and Testament on the 19<sup>th</sup> day of May, 1999 in terms of which the 3<sup>rd</sup> Respondent was appointed Executor Testamentary.

[6] The deceased died on 16<sup>th</sup> January, 2005 and by virtue of Letters of Administration No. EH27/2005 dated the 7<sup>th</sup> day of July, 2005, (annexure "GM1") it was certified that the 3<sup>rd</sup> Respondent had been duly appointed the Executor Testamentary and was authorised to administer the Estate of the deceased. On receiving Letters of Administration, the 3<sup>rd</sup> Respondent requested Standard Bank to let him have a narration of what happened regarding the estate, to which they responded in terms of annexure "GM2".

[7] In paragraph 6 of her Founding Affidavit, the Applicant deposed to the following facts:-

That the deceased was employed by Standard Bank Swaziland Limited (the 5<sup>th</sup> Respondent named herein) and remained so employed at the time of his death. That as an employee of the 5<sup>th</sup> Respondent the deceased was an eligible and contributing member of the Standard Bank Swaziland Pension Fund (hereinafter referred to as the Pension Fund) which is administered by Swaziland Employee Benefit Consultants (Pty) Ltd t/a Alexander Forbes (the 6<sup>th</sup> Respondent named herein). That after the death of the deceased three payments were made to the 1<sup>st</sup> Respondent by the 5<sup>th</sup> Respondent as follows:

**E622,966.01** (Six Hundred and Twenty Two Thousand Nine Hundred and Sixty Six Emalangi One cent) drawn on cheque number 012199 dated 15 June 2005 and sent under cover of a letter dated 1<sup>st</sup> July, 2005. ("SM5" and "SM6"). **E969,778.00** (Nine Hundred and Sixty Nine Thousand Seven Hundred and Seventy Eight Emalangi) drawn on

cheque number 012150 dated 8 June 2005 and sent under cover of a letter dated 1<sup>st</sup> July, 2005. ("SM7" and "SM8"). **E384,302.60** (Three Hundred and Eight Four Thousand Three Hundred and Two Emalangenzi Sixty cents) paid on or about 10<sup>th</sup> August, 2005. ("**SM4**").

[9] By letter dated 1<sup>st</sup> September, 2005, the Applicant's Attorneys **M. J. Manzini** wrote annexure "SMI2A" to the Standard Bank Human Resources Manager seeking clarification on why the two cheques of **E622,966.01** and **E969,778.00** were paid to the 1<sup>st</sup> Respondent. The Attorneys also contended that in terms of the Pension Fund Rules these benefits did not form part of the estate of the deceased and were meant to be paid directly to the nominated beneficiaries. Attorneys **Currie & Sibandze**, acting on behalf of Standard Bank Swaziland Limited and the Standard Bank Pension Fund, responded in a letter dated 13<sup>th</sup> September, 2005 (annexure "SMI3").

[10] The 3<sup>rd</sup> Respondent prepared his First Liquidation and Distribution Account filed as annexure "SMI9" and thereafter the Applicant lodged an

objection dated 17<sup>th</sup> January, 2007 to the distribution of the benefits (annexure "SM20"). She contended, inter alia, that the deceased's Last Will and Testament was executed on 19<sup>th</sup> May, 1999 and that when the deceased signed the Dependants Card dated 8<sup>th</sup> April, 2002 (see annexure "SM22") he clearly intended that the provisions thereof should override the provisions of his Last Will and Testament with respect to benefits from his place of employment.

[11] On the 29<sup>th</sup> day of May, 2007, the 1<sup>st</sup> Respondent made a Ruling which was exhibited to the Applicant's affidavit as annexure "SM23".

For ease of reference, I shall reproduce the said Ruling hereunder as follows:

"Master of the High Court  
P.O. Box 19  
MBABANE  
Swaziland

29<sup>th</sup> May 2007

M. J. Manzini and Associates  
3<sup>rd</sup> Floor, Lilunga House  
Somhlolo Road  
Mbabane

Dear Sir



**ESTATE LATE MFANZOLALAPHI B. MHLONGO  
MASTER'S REFERENCE NUMBER - EH27/2005**

We acknowledge receipt of your responses to the executor's comments and advise as follows:-

- (i) That we hereby intend (sic) grant authority to the executor testamentary to distribute the estate as per the approved account with regards to the money received from Alexander Forbes as a benefit to the estate because clarification was made through Currie and Sibandze Attorneys, which you acknowledge in your letter dated 20<sup>th</sup> January 2006.
- (ii) That your client claim the balance (through proof) she paid on the car than the ownership.
- (iii) That the legal proceedings on the Guardianship be made within the next thirty (30) days from date and that we be served with such court application.

Yours faithfully

Signed

**PHUMZILE THOMO - MASILELA  
ACTING DEPUTY MASTER OF THE HIGH COURT**

CC: Gideon Mhlongo  
P. O. Box 140,  
MHLUME"

[12] It was on the basis of this Ruling that the Applicant launched the present proceedings seeking the reliefs set out in the Notice of Motion aforesaid.

[13] When the matter served before me for argument on the 18 of March, 2011 the Applicant was represented by **Mr. M. J. Manzini** and the 3<sup>rd</sup> Respondent was represented by **Advocate Flynn**. I should say that I have carefully considered their submissions both in their Heads of Argument filed as well as their oral submissions made in Court and I shall refer to them as the need arises in the course of determining this application.

[14] **Advocate Flynn**, for the 3<sup>rd</sup> Respondent, made two contentions in relation to the joinder of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents. His first was that the Applicant made an application to join, inter alia, the trustees, the 4<sup>th</sup> Respondent, but sought no order in respect of the decision of the Trustees and no papers have been filed on their behalf He referred to the Applicant's affidavit, sworn to on the 9 day of October, 2008, in support of her application for joinder and he submitted that the Applicant had stated the following in respect of the alleged reviewable decision of the 4 and 5 respondents:

"In the event that a declarator in my favour is made an application will be made for an Order directing the Standard Bank (5<sup>th</sup> Respondent) and/or the Trustees for the time being of the Standard Bank Swaziland Pension Fund (4<sup>th</sup> Respondent) and/or Alexander Forbes to recall the funds paid to the Master of the High Court so that they can be dealt with in accordance with the Pension Fund Rules. Should this Order be granted it will not be effectively carried out if the abovementioned are not joined as parties to the main application" (See: Book of Pleadings, Pages 137, paragraph 7.8)

It is submitted by counsel that this Order affecting the Fund is only contemplated after this application and no Order to set aside the decision of the Trustees has been sought.

[15] **Advocate Flynn's** other contention was that the main application before this Honourable Court is essentially directed at secondary decisions made by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents which were based on the primary decisions made by the Trustees. He submitted that if that decision of the Trustees was incorrect or irregular, the Applicant should have instituted appropriate

proceedings to set aside that decision or sought a declaratory order in that regard. It is further submitted that the applicant is not entitled to a declaratory order in these circumstances as the declaratory order sought is linked to the disputed decision in prayer 1 and the Trustees cannot therefore be said to have had the opportunity to defend their own decision by being joined in an application which was initiated in respect of the decision of the Master.

[16] In relation to the joinder of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, it is apparent that the submissions made by counsel for the 3<sup>rd</sup> Respondent revolve around the averments made by the Applicant in her application for joinder of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents. I have considered the said submissions but I am of the view that I need not deal exhaustively with them. Suffice it to say that the 4, 5 and 6 Respondents were properly joined in these proceedings by an Order of Court dated the 17<sup>th</sup> day of November, 2008, which said Order has not been appealed against, reviewed or rescinded and it therefore remains a valid and subsisting Court Order. It is common cause that the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents have not filed any Answering Affidavits challenging the

material allegations made in the Applicant's Founding Affidavit and they have also not participated in the proceedings. Even though the said joinder had afforded them an opportunity to state their case they chose not to do so. To this extent counsel for the 3<sup>rd</sup> Respondent cannot now argue their case for them. Therefore, the issues and allegations raised in the Applicant's affidavit in relation to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents remain unchallenged.

[17] Another argument put forward by the 3<sup>rd</sup> Respondent was that the Master had no authority to reverse a decision of the Trustees and the Master's Ruling on the objection was correct. The 3<sup>rd</sup> Respondent's First Liquidation and Distribution Account was accordingly also correct in respect of the inclusion of the amounts paid by the Fund to the Estate. In paragraph 2 of his Heads of Argument, the 3<sup>rd</sup> Respondent referred to annexure "SMI3", a letter written by Attorneys **Currie & Sibandze**, and he pointed out that this letter was written on behalf of the Bank and the Trustees of the Pension Fund.

[18] At this stage, I deem it expedient to reproduce in full the said annexure "SMI3" because of its singular importance in showing the approach adopted by the 4<sup>th</sup> and 5<sup>th</sup> Respondents herein. It reads as follows:

"13 September 2005

M. J. Manzini & Associates

LILUNGA HOUSE

3<sup>rd</sup> FLOOR MBABANE

**ATTENTION: MR M MANZINI**

Dear Sir

**re: ESTATE LATE**

**MFANZOLALAPHI**

**MHLONGO**

1. We act for STANDARD BANK SWAZILAND LIMITED and the STANDARD BANK PENSION FUND.
2. As you are aware and as is set out in your correspondence dated 1<sup>st</sup> September 2005, the amount from the Pension Fund payment has been forwarded to the Master of the High Court to be dealt with in terms of the last wishes of Mr Mfanzolalaphi Mhlongo.
3. Our client's view, being in possession of the deceased Last Will, was that the deceased intended for the contents of the Pension payouts to form part of his Estate upon his death and to be dealt with in accordance therewith.

4. Whilst we are in agreement that the Pension benefits payable do not automatically form part of the deceased estate, where this is the expressed or implied wish of the deceased, this may not be the case.

5. In any event the matter is now out of our clients hands and our client no longer has any interest whatsoever in the matter and it may well be that you should liase with the Master of the High Court and the Executor of the deceased estate in order to secure your clients rights over which our client no longer has any control.

**YOURS FAITHFULLY**

**SIGNED CURRIE &**

**SIBANDZE ATTORNEYS"**

[19] It is inexorably clear from the contents of "SMI3" that the Trustees were of the view that the payments formed part of the Estate of the deceased and the amounts were paid on this basis.

[20] However, the Applicant's main bone of contention is that, in terms of the Pension Fund Rules, the benefits which were paid out did not form part of the Estate of the deceased and were meant to be paid directly to the nominated beneficiaries. To buttress his submissions Applicant's counsel **Mr. J. Manzini** referred the Court to the Standard Bank Pension Fund Rules

& Resolution annexed to the Applicant's Replying Affidavit at pages 197 - 252 of the Book of Pleadings.

[21] Article 6.4 of the Pension Fund Rules prescribes the manner of Payment of Benefit on death in service. It provides as follows:

"Notwithstanding anything to the contrary contained in any contract or document, any benefit payable by the Fund upon the death of a Member shall not automatically form part of the assets in the estate of such a Member, but shall be dealt with in terms of these Rules.

Payment of a death benefit which is not expressed to be paid to a particular person shall be made to the Member's Dependants in such shares and manner as the Trustees, in their absolute discretion, shall decide. When the Trustees are of the opinion that there are no Dependants the benefit shall be paid to the Member's estate."

[22] It is clear from the aforementioned Rules that the Trustees can only pay a benefit to the Member's Estate where the benefit has not been expressed to be paid to a particular person, or where the Trustees are of the opinion that there are no Dependants. These are the Rules which the Trustees should have



been guided by. Moreover, the deceased had expressed his wishes as to who should be paid the benefits accruing upon his death as evidenced by the Dependants' Card exhibited to the Applicant's Founding Affidavit as annexure "SM22" at page 123 of the Book of Pleadings.

[23] The Dependants' Card which is in terms of Article 18.3 of the Pension Fund Rules is very instructive viz:

"My dependants are as listed below. In the event of my death whilst an employee of Standard Bank Swaziland and member of the Pension Fund, I would like the Trustees to be guided by the indicated percentage for purposes of distributing any lump sum benefit."

The percentage indicated by the deceased on the Dependants' Card are 50% for his spouse Simangele Thelma Mhlongo and 50% to his daughter Bongekile Nomathemba Mhlongo.

[24] In respect of the deceased's Last Will and Testament, I have closely perused annexure "SM2" and I find no express provision therein that any benefits paid out in terms of the Pension Fund Rules should form part of the deceased's Estate. I am of the firm view that at the time of executing his Last Will and Testament, the deceased did not have any proprietary rights to the two payments from the Pension Fund benefits and therefore, he could not have intended that they should form part of his estate. According to the prevailing view in South Africa, "the deceased's estate consists of all assets and liabilities as at the time of death. It does not include rights and liabilities of a purely personal nature which have died with the deceased, such as rights and duties under a contract of personal services or under an option which was only open to the deceased personally." See **The Law of Succession in South Africa by The Hon. M M Corbett at page 6.**

[25] I have also considered clause 2 (e) of annexure "SM2" at page 30 of the Book of Pleadings which contains the bequest to the deceased's daughter as follows:

**"Bongekile Nomathemba Mhlongo**, my daughter born out of wedlock on the 22<sup>nd</sup> day of August 1996 - the residue of my estate, property and effects upon which and after the amounts stated herein above shall have been paid to the other heirs as above stated." Clause 3 is to the effect that should his aforesaid daughter be under the age of 21 years at the date of his death, the Executor and Administrator shall hold in trust "her share of my estate, property and effects (hereinafter referred to as the trust estate)

It seems clear to me that the trust property contemplated by the deceased as outlined above does not include the pension benefits. See

**Ex parte James Kerr 1942 NPD 412.**

[26] In paragraph 32 of the 3<sup>r</sup> Respondent's Answering Affidavit which is to be found at page 162 of the Book of Pleadings, he averred that all sums paid to the deceased's estate in this matter were paid as a result of his employment with the 5<sup>th</sup> Respondent and as such they constituted part of his remuneration and are part of his estate. However, in his Heads of Argument filed, **Mr.**

**Manzini** dismissed the 3<sup>rd</sup> Respondent's contention as being without factual foundation or legal substance and he submitted that benefits arising out of the Pension Fund do not form part of the deceased's remuneration. Counsel cited the case of **Schoeman and Another v. Samsung Electronics SA (Pty) Ltd. (1999) 20 ILJ 200 (LC)** where the Labour Court had stated that "Remuneration", is different from "benefits", which were something "extra", apart from remuneration. See **WORKPLACE LAW** by **JOHN GROGAN 8<sup>th</sup> Edition at page 266-267.**

[27] At this juncture, I need to examine the legal nature of the Standard Bank Pension Fund and the consequences flowing therefrom. Rule 1.3 states that the purpose of the Fund is, in terms of these Rules, to provide annuities and other retirement benefits for employees, former employees and dependants of employees of Standard Bank Swaziland Limited, and benefits in the event of their death.

[28] The question that arises at this juncture is: What is the nature of the payments made by the 6<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent?

[29] I would say that Annexure "SMI2" gives a clear insight into the nature of the payments. It is a letter written by **CURRIE & SIBANDZE** on behalf of the 5<sup>th</sup> Respondent dated 2<sup>nd</sup> September, 2005 and addressed to the 3<sup>rd</sup> Respondent advising him about the payments which had been made. It reads as follows:

"02 September 2005

Mr Gideon Mhlongo P. O. Box 140  
MHLUME

Dear MR MHLONGO

**Re: ESTATE EH 27/2005 MFANZOLALAPHI B MHLONGO**

1. We act for Standard Bank Swaziland Ltd and have been instructed to deal with matters arising from the above. We refer to your letter dated 25<sup>th</sup> July 2005.

2. The benefits accruing to your late brother as a result of his employment are as follows:

- 2.1. **E616,568.76** in respect of the Bank's policy held with the Swaziland Royal Insurance Corporation in respect of accidents befalling its staff
- 2.2. A copy of the communication from Alexander Forbes confirming receipt of this amount is attached hereto.
- 2.3. **E622,966.01** in respect of your late brother's Pension Fund death claim, (my emphasis)
3. Your late brother was further entitled to an amount of **E969,778.00** in respect of his death benefit, (my emphasis)
4. The payment of **E969,778.00** have been sent to the Master of the High Court in favour of your brother's Estate and you may obtain the cheque from the Master of the High Court, the same applies to the Pension withdrawal in the amount of **E622,966.01**.
5. In respect of the payment referred to in 2.1 above, we advise that a cheque in the amount of **E384,302.60** has been forwarded to the Master of the High Court. We enclose a breakdown of deductions made to the Bank."

[33] It is common cause that the 6<sup>th</sup> Respondent made two cheque payments to the 1<sup>st</sup> Respondent, namely an amount of E622,966.01 (annexure "SM5"

and "SM6") as well as an amount of E969,778.00 (annexure "SM7" and "SM8"). The Applicant has alleged that these amounts were benefits accruing in terms of the Rules of the Pension Fund and that they were paid to the 1<sup>st</sup> Respondent by Alexander Forbes and therefore not a benefit received from Standard Bank. Furthermore, the Applicant has averred that the amounts were paid out of the Standard Bank Swaziland Pension Fund as evidenced by annexure "SMU" at page 96 of the Book of Pleadings. The 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Respondents have neither controverted nor disputed these allegations and they therefore remain unchallenged.

[30] Another contention raised by **Advocate Flynn** was to the effect that if the decision of the trustees was incorrect or irregular, the Applicant should have instituted appropriate proceedings to set aside that decision or she should have sought a declaratory order in that regard. Counsel further submitted that the applicant is not entitled to a declaratory order in these circumstances as the declaratory order deals with the same right which is the subject matter of the order sought in prayer 1 reviewing the decision of the

Master. Counsel cited the case of **BAYAT AND OTHERS v. HANSA AND ANOTHER** 1955 (3) SA 547 at 541 in which the Court held, inter alia, that review proceedings are not open to a party aggrieved by a decision of a quasi-judicial body.

[31] In reply, **Mr. Manzini argued** that the 1<sup>st</sup> Respondent exercises both judicial and quasi-judicial functions in terms of the Administration of the Estates Act and where the 1<sup>st</sup> Respondent makes a decision which is based on a wrong view of the law it can be set aside. Counsel referred the Court to **Herbstein and Van Winsen "The Civil Practice of the Superior Court in South Africa" (3<sup>rd</sup> edition) at page 761** and counsel argued that where the 1<sup>st</sup> Respondent makes a decision which is grossly unreasonable, it can be set aside.

[32] In this present application, what the Applicant seeks is an order setting aside the decision of the 1<sup>st</sup> Respondent in terms of which he refused to sustain an objection lodged to the 3<sup>rd</sup> Respondent's First Liquidation and



Distribution Account in the Estate of Late Mfanzolalaphi Mhlongo. She also seeks a declaratory order in respect of benefits paid out by Swaziland benefit Consultants declaring that the funds do not form part of the Estate and an order directing the respondent to exclude all death benefits in framing the account. She also seeks an order directing the first and third respondent to pay her 50% of the death benefits.

[33] On the authority of **BAYAT AND OTHERS v. HANSA AND ANOTHER** (supra) it appears to me that where review proceedings are not open to a party aggrieved by a decision of a quasi-judicial body, or if she decides not to review those proceedings, it is nevertheless competent for her, in certain circumstances, to obtain a declaration of rights, and to do so notwithstanding that she unsuccessfully presented her case on the same question to that body.

[34] In the light of all the foregoing, I am of the view that the 1<sup>st</sup> Respondent's decision in refusing to uphold the objection lodged to the 3<sup>rd</sup> Respondent's

Liquidation and Distribution Account was wrong in law and/or the facts and should be set aside as prayed for in the Notice of Motion.

[35] In the circumstances therefore, in my considered view that this application is meritorious and it succeeds. I therefore grant the following order:

1. That the decision of the 1<sup>st</sup> Respondent dated 29<sup>th</sup> May, 2007 refusing to sustain an objection lodged by the Applicant to the First Liquidation and Distribution Account in the Estate of the Late Mfanzolalaphi Benjamin Mhlongo be and is hereby set aside.

2. It is hereby declared that all benefits paid by Swaziland Employee Benefit Consultants (Pty) Ltd t/a Alexander Forbes Financial Services Swaziland to the 1<sup>st</sup> Respondent, in particular an amount of E969,778.00 (Nine Hundred and Sixty Nine Thousand Seven Hundred and Seventy Eight Emalangeni) (this amount being the proceeds of cheque No.

012150), and paid out in terms of the Standard Bank Swaziland Pension Fund Rules, do not form part of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.

3. The 3<sup>rd</sup> Respondent is hereby directed to exclude all death benefits received from Swaziland Employee Benefit Consultants (Pty) Ltd t/a Alexander Forbes Financial Services Swaziland in framing the First Liquidation and Distribution Account of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.

4. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents are hereby directed to pay the Applicant forthwith her 50% share of the death benefits which do not form part of the Estate of the Late Mfanzolalaphi Benjamin Mhlongo.

5. The 1<sup>st</sup> Respondent is hereby directed to deposit into the Guardian's Fund the 50% share of Bongeje Nomathemba Mhlongo (a minor).

6. Costs of suit.

*M. M. SEY (MRS)*

JUDGE OF THE HIGH COURT