momentum
investments

moment
OF TRUTH

Legal update 5 of 2020: Case law on retirement fund-related matters

Introduction

There have been recent cases that affect retirement funds. Below is a summary of these cases and insight into how we handle such matters should they come across in claims on the Momentum Retirement Annuity Fund, the Momentum Pension Preservation Fund and the Momentum Provident Preservation Fund. We have also included more detail on the cases in the document.

Summary

Case 1: AS and Another vs GS and Another (2020) ZAKZDHC 1 (24 January 2020)
Section 21(2)(a) of the Matrimonial Property Act declared unconstitutional.

- The finding: Section 21(2)(a) of the Matrimonial Property Act, which continued to make marriages entered into under the Black Administration Act automatically out of community of property is unconstitutional.
- How we deal with this: When we receive a valid divorce order for the division of pension interest, we will give effect to it unless it is clear that the parties are married out of community of property with no accrual.

Case 2: Voogt vs Pension Funds Adjudicator and Others (Case number: PFA 59/2019)
The Pension Fund Adjudicator's (PFA) determination to uphold the decision of the beneficiary fund to refuse an ad-hoc payment was reasonable.

- The finding: The Financial Services Tribunal (FST) found that the PFA was correct to uphold the decision of the beneficiary fund to refuse an ad-hoc payment.
- How we deal with this: Death benefits are sometimes paid to the Momentum Umbrella Beneficiary Fund, when it is in the best interests of a beneficiary to do so. The trustees of the beneficiary fund will decide whether a request for a once-off payment to a beneficiary is in the best interests of that beneficiary or not.

More detail on the cases

Case 1: AS and Another vs GS and Another (2020) ZAKZDHC 1 (24 January 2020)
Section 21(2)(a) of the Matrimonial Property Act, which continued to make marriages entered into under the Black Administration Act automatically out of community of property is unconstitutional.

Section 22(6) of the Black Administration Act automatically made marriages entered into under this Act out of community of property. After the Black Administration Act was repealed and the Matrimonial Property Act (the Act) came into effect in 1988, sections 21(1) and 21(1)(a) of the Act provided that marriages entered into under the Black Administration Act continued to be automatically out of community of property.

Mr and Mrs S were married in 1972 under section 22(6) of the Black Administration Act and their marriage was automatically out of community of property. During 2000, they bought property which was registered in Mr S' name. Their relationship deteriorated and Mr S said he was going to sell the property. Mrs S obtained an interdict stopping Mr S from selling the house, while she applied to have sections 21(1) and 21(1)(a) of the Matrimonial Property Act declared unconstitutional and invalid. As the property was in Mr S's name and they were married out of community of property, Mr S could sell the property without Mrs S' consent.

Mrs S argued that sections 21(1) and 21(2)(a) of the Act discriminated against black women because it continued to allow the discrimination that was created by the Black Administration Act. Black women, who were married under that Act, were automatically married out of community of property, which meant their husbands could sell property without their wives' permission.
This discriminated against the most vulnerable class of society. Yet, civil marriages entered into after 1988 were automatically in community of property, which gave women in those marriages the same rights to property as their husbands.

The court agreed with Mrs S, and added that the discrimination against black people, who got married before 1988, created an inequality that stopped a lot of black women from enjoying their constitutional rights.
This denied thousands of black women protection given by a marriage in community of property, and that made them more vulnerable and entirely dependent on the goodwill of their husbands, who generally control the bulk of the family wealth and assets. The wife has no right of ownership in respect of those assets and the husband is able to use and dispose of them without the consent of his wife.

The husband may recklessly dispose of the family assets or disinherit her and leave her with nothing. She may be forced out of her own house. She may be left with nothing to live on in her old age or to ensure that her basic needs are met, including health care, food and security.

The court declared section 21(2)(a) of the Act unconstitutional to the extent that it made marriages entered into under section 22(6) automatically out of community of property. The court also stated that those marriages are now automatically in community of property.

Case 2: Voogt vs Pension Funds Adjudicator and Others (Case number: PFA 59/2019)
The PFA's determination upholding the decision of the beneficiary fund to refuse an ad-hoc payment was reasonable.

Mr Voogt passed away in 2013 and a retirement fund death benefit of R1 378 599 was paid to the Fairheads Umbrella Beneficiary Fund for the benefit of his minor daughter. His daughter's mother, Mrs Voogt, asked the fund for an ad-hoc payment, so she could buy a second-hand car, which she would use to transport her daughter. The fund refused her request and Mrs Voogt lodged a complaint with the PFA against the decision of the fund.

In her complaint, Mrs Voogt said that the dispute was also about educational expenses that were refused to preserve the investment. She also argued that she would be able to achieve better returns if she invested the money herself.

The PFA found the fund's decision to refuse Mrs Voogt's request for an ad-hoc payment to be reasonable.

Mrs Voogt lodged an application for reconsideration of the PFA's determination to the FST.

The fund stated that the decision was reasonable as Mrs Voogt had a duty to support her daughter and she had received 60% of the death benefit, which was about R3 million. She also received R13 000 a month for her daughter's care and upbringing. The fund also allowed ad-hoc payments and, in 2016, they partly helped Mrs Voogt to buy a car to transport her daughter to her extra-mural activities.

The FST agreed with the PFA's reasoning that, although the minor child was 17-years old, she was still a young person that needed financial assistance. Mrs Voogt did not give any evidence that she would be able to earn better returns if she invested the money herself.

The FST found that the fund can only pay ad-hoc payments if it is satisfied that the claim is a valid one. It also agreed that Mrs Voogt still had a duty to support her daughter and cannot rely only on the money invested in the fund to support her.

The FST dismissed the application.

Dionne Nagan
Legal Counsel