



- a) That the Defendant account to the Claimant for the full benefits due and payable;
- b) For a just and correct interpretation of the relevant rules of the Pension Plan and in particular rule 8(b) (ii);
- c) That the full amount due and payable to the Claimant be determined and paid over.
- d) That interest at the commercial rate, or at 12% per annum be paid.

[2] The Claimant is the daughter of Mr. Eli Rodriques who died on the 24<sup>th</sup> August 2010. Mr. Rodriques is hereinafter referred to as “the deceased”. The deceased had, prior to his death, been an employee of Life of Jamaica Limited. On or about the 1<sup>st</sup> October 1988 he became a member of the approved Superannuation Fund with Life of Jamaica Limited (now Sagicor Life Jamaica Limited). The Defendant is a member of the Sagicor Group of Companies and the administrator of the Superannuation Fund and pension scheme. On the 31<sup>st</sup> December, 2000 the deceased terminated active service. On the 21<sup>st</sup> March 2006 he opted to receive a lump sum and reduced monthly pension in the sum of \$8,549.14, option 2(b), see Exhibit LMK-1 to the affidavit of Latoya Mayhew – Kerr dated 14<sup>th</sup> June 2018. The Claimant was named the sole beneficiary of the remaining guaranteed pension payments, in the event of death before the expiration of the pension guarantee, see Exhibit LMK-2 to the same affidavit.

[3] It is not in dispute that the Defendant was notified of the death of the deceased on or about the 9<sup>th</sup> May, 2011, see Exhibit LMK-3 to the affidavit of Latoya Mayhew – Kerr dated 14<sup>th</sup> June 2018. The Claimant was at the time a minor. The Claimant’s entitlement was calculated to be \$111,124.32. and explained in a letter dated 25<sup>th</sup> May, 2017 from the Defendant to the Claimant’s counsel, see Exhibit LMK 6 to the affidavit of Latoya Mayhew-Kerr dated 14<sup>th</sup> June 2018. In that letter

the Defendant stated “*Sheneka was eligible for a Child’s Pension, which is the equivalent of 25% of Eli Rodriques monthly pension payment at the time of his death. Mr Rodriques was receiving monthly pension payment of \$ 8638.61.*” That sum was paid to the Claimant on or about the 2<sup>nd</sup> June, 2017, see paragraph 7 of the affidavit of the Claimant dated 19<sup>th</sup> April 2019.

[4] The Claimant asserts that she was paid late and also short paid. It is her case that, on a true construction of the pension plan, she was entitled to 50% of the pension amount and not 25% which the Defendant distributed to her. The Claimant’s counsel submitted, that the sharing of the children’s entitlement only arises where there are two (2) or more children. He submitted further that the Claimant, having been deprived of the benefit during her infancy and for seven (7) years as a young adult, ought properly to be compensated for the delayed payment.

[5] The Defendant says otherwise and submits that, if the words of section 8(b)(ii) of the rules are taken to mean what syntax suggests, the plain and ordinary interpretation is that: on Mr Rodriques’ death, payments of \$8,549.14 would continue to the end of the guarantee period, which was December 1, 2010. At the end of that period 50% of the pension would be paid to the deceased’s spouse, Mrs Joan Rodriques (whom the Defendant was made aware of by Exhibit LMK-4, the death certificate of the deceased). The remaining 50% would be paid to the child/children with each child receiving 25% of the remaining 50%. This included the Claimant herein.

[6] The resolution of the issue will depend on the interpretation of the Rules of the Pension Plan for the Employees of Life of Jamaica Limited. This document is Exhibit LMK 5 to the affidavit of Latoya Mayhew- Kerr dated 14<sup>th</sup> June 2018. Section 8(b) (ii) of the plan states:

*“(ii) LEAVING A SPOUSE OR CHILD/CHILDREN*

*In the event of the death of an active Member with five (5) or more years of Pensionable Service, leaving a Spouse and/or Child/Children, there shall be payable*

*(i) SPOUSE'S PENSION*

*A pension of 50% of the deceased Member's straight monthly pension at the date of death calculated from Section 5(a) or 5(b), payable for the lifetime of the Spouse.*

*(ii) CHILD/CHILDREN'S PENSION*

*The total Children's Pension shall not exceed 50% of the straight monthly pension at the Member's date of death, with each child not receiving more than 25% of this 50%. Payment will be made to a maximum of four (4) Children.*

*The Pension will be paid to the legal guardian of a Child/children below the age of eighteen (18) years, and shall cease at the earlier of each child's attainment of age eighteen (18) or twenty-two (22) years if enrolled in full time tertiary education.*

*If the member dies leaving no Spouse but leaves a Child/Children the benefit paid will be the cash value of the calculated Spouses Pension shared equally among the children."* [7] Section 1 of the Plan states:

*"'CHILD' shall mean the unmarried, legitimate, illegitimate, or legally adopted child of a Member."*

[8] The Defendant's counsel has rightly submitted that there are no special rules for the construction of pension scheme documents. However, both counsel agree, that the provisions of a pension scheme should be construed to give reasonable and practical effect to the scheme, bearing in mind the practical consequences, see ***Scully & Another v Coley & other*** [2010] 2 LRC 736 at page 745 paragraph 30, as per Lord Collins of Mapesbury:

*"The question whether the respondents have an entitlement to an allocation under rule 12(c) is solely a question of construction of that rule in the light of the rules as a whole and the trust deed. It has been said more than once that there are no special rules for the construction of pension scheme documents. **The provisions of a pension scheme***

***should be construed to give reasonable and practical effect to the scheme, bearing in mind the practical consequences and the fact that it has to be operated against a changing commercial background [Emphasis Added].”***

Counsel for the Claimant contends that interpreting child/children’s pension under section 8(b)(ii), as the Defendant has suggested, would be unreasonable, impractical, over-restrictive, technical in practice, inhumane, discriminatory, prejudicial, contradictory and contrary to the rule of law and to common sense. Further that it is clear, from the language of the final paragraph of section 8(b)(ii), that the pension benefit should be shared equally among the children.

[9] There is no doubt that the deceased died leaving a spouse Mrs. Joan Rodriques, and as such the Trustees were under an obligation to retain the 50% of the pension that should be set aside for the spouse. The affidavit of Latoure Duhaney, dated the 26<sup>th</sup> October, 2018 at paragraphs 3, 7 and 8, explains that he conducted an investigation to locate Mrs. Rodriques. He later made contact and visited Mrs. Rodriques and she informed him that the deceased had another child named, Mr. Victor Rodriques. Mr Victor Rodriques was an adult at the time of the deceased’s death, see paragraph 3 of the further affidavit of the Claimant dated 26<sup>th</sup> November 2018.

[10] The spouse being alive at the date of death it means that, pursuant to section 8(b)(ii), the child/children are entitled to no more than 50% of the straight monthly pension. The other 50% being for the spouse. The section goes on to use the words ‘*with each child not receiving more than 25% of this 50%.*’ Those words convey to the reader that each child shall receive an equal portion of the pension with none receiving more than 25 percent. One may say that the intent of the Plan was to prevent the child of a legal union receiving a more favourable portion than a child conceived outside of the said union (see section 1 of the plan quoted at paragraph 10). Whatever the reason for the provision it means that what remains, after the widows 50%, must be divided among the children of the deceased. The question

for my determination is what is to happen if there is only one eligible child at the time of death. Is that child to receive only 25% or is he or she entitled to the remaining 50%?

[11] In considering this matter I bear in mind the words of Lady Justice Arden, in **Derek Maurice Stevens et al v George Bell [2002] EWCA Civ 672**, at paragraph 28:

*“Second, a pension scheme should be construed so as to give a reasonable and practical effect to the scheme...In other words, it is necessary to test competing permissible constructions of a pension scheme against the consequences they produce in practice. Technicality is to be avoided. If the consequences are impractical or over restrictive or technical in practice, that is an indication that some other interpretation is the appropriate one....”* (emphasis added)

I also consider and endorse the approach of The Honourable Mr Justice Sykes (now Chief Justice) in **The Trustees of the Pension Plan for the Employees of Citizens Bank Limited v FINSAC Limited** Claim No. 2005/HCV 1845, unreported Judgment delivered on July 19, 2007. In that case Sykes J referred to and, with the reservation that proposition 4 was too broadly stated, adopted Lord Hoffman’s propositions in **Investor Compensation Scheme Limited v West Bromwich Building Society Limited** [1998] 1 W.L.R 896 page 114-115. Lord Hoffman’s propositions are as follows:

(1) *“Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*

(2) *The background was famously referred to by Lord Wilberforce as the "matrix of fact, " but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*

(3) *The law excludes from the admissible background the previous negotiations of the, parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.*

(4) ***The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must for whatever reason, have used the wrong words or syntax: see Mannai Investments Co. Ltd v. Eagle Star Life Assurance Co. Ltd. [1997] A.C 749.***

(5) *The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in Antaios Cia Naviera S.A. v. Salen Rederierna A.B. 1985 A.C 191, 201:*

***'if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.'* [Emphasis Added]"**

[12] I accept the point made by counsel for the Claimant that, if the interpretation submitted by the Defendant's counsel is adopted, it would lead to an impractical, unreasonable, over-restrictive and, technical implementation of the provisions. It is also contrary to common sense. Why would it be that, if a member dies leaving no Spouse but leaves a child/children the benefit paid will be the cash value of the calculated spouses pension shared equally among the children; but if there is a

spouse and a child, but not children, then that child would only receive 25% of the children's pension. The entire purpose of the provision is fairness in distribution of the funds. Thus, the reasonable and fair conclusion is that, where there is only one eligible child, that child, is entitled to the entire children's pension. As stated above by Lord Hoffman "*the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even ...to conclude that the parties must for whatever reason, have used the wrong words or syntax*"

[13] The correct interpretation, having regard to the background of facts, is that on Mr Rodriques' death, the payments of \$8,549.14 would continue to the end of the guarantee period (December 1, 2010). At the end of that period 50% of the pension would be paid to the deceased's spouse (which is Mrs Joan Rodriques), with the remaining 50% being paid to the child or children. Section 8(b)(ii)(ii) of the Plan states that "*The Pension will be paid to the legal guardian of a Child/Children below the age of eighteen (18) years, and shall cease at the earlier of each child's attainment of age eighteen (18 years) or twenty-two (22) years if enrolled in full time territory*". I find there was only one child under the age of eighteen (or twenty-two) years at the time of Mr Rodriques' death. This was the Claimant. There being only one eligible child the words, '*with each child not receiving more than 25% of this 50%*', are immaterial and do not become operative. It seems to me, that on a true and fair construction, the word "each" signals that the 25% limitation is only to be effective if there is more than one child. The section goes on to indicate up to a maximum of 4. This may one day prove to be problematic, as the plan gives no indication which child (or children if more than 5) is to be left without a benefit, if there are more than 4 eligible children.

[14] The Claimant seeks interest "at the commercial rate or at 12% per annum". The reason has to do with the approximate 7-year delay and, I suppose, the further



delay in consequence of this application and the objection to it. The Defendant submitted that if a trustee, or any other person in a fiduciary capacity, receives notice that a fund in his possession is, or may be, claimed by another, he will be liable to that person if the trustee deals with the fund in disregard of that notice and the claim is subsequently proven to be well founded. This principle was enunciated in ***Guardian Trust and Executors Co of New Zealand Ltd v Public Trustee of New Zealand*** [1942] 1 ALL ER 598. The Defendant in an effort to explain the delay relied on an advertisement in the Sunday Gleaner dated 29<sup>th</sup> October, 2017, in which they ask Mrs. Joan Rodriques to contact their offices.

The instructions to the investigator (Mr Latoure Duhaney), to locate Mrs Joan Rodriques, were given on the 2<sup>nd</sup> August 2018. It is clear that the efforts by the Defendant, after receiving notice of death of Mr. Rodriques, were, on the evidence before me, dilatory. The Claimant was kept away from her benefit for an unreasonable period. It ought to have taken the trustee no more than 12 months, after the notification of death, to obtain the death certificate and locate the widow. This is because the investigator located her by simply visiting the address indicated on the death certificate. He there obtained information as to her whereabouts. On the other hand I cannot fault the Defendant for adopting the interpretation of the plan which it did. Therefore the withholding of that part of the benefit, which becomes due consequent on this judgment, shall not attract the higher interest assessed. This is because the section, the subject of this litigation, is ambiguous and it is a prudent trustee which obtains judicial construction prior to distribution.

[15] Suffice it to say that, on a true construction of the plan, the Claimant is entitled to 50% of the straight monthly pension at the member's date of death. On the matter of interest, I note the evidence that the fund had an annualised yield of 12.2% in the period December 2010 to March 2017. I therefore, by way of compensation for the unreasonable delay, will award interest at 12.2% for the relevant period. `

[16] It is hereby Declared and Ordered that:

1. On a true construction of section 8, of the Pension Plan the subject of this Claim, the Claimant is entitled to 50% of the straight monthly pension at the member's date of death.
2. The Defendant shall forthwith pay over to the Claimant or her legal representative the balance due and owing after account is taken of the amount already paid.
3. The Defendant shall pay to the Claimant or her legal representative interest at the rate of 12.2% per annum, on the amount of \$111,124.32, for the period 10<sup>th</sup> May 2012 (one year after notice of death was received) to the 2<sup>nd</sup> June 2017 (the date payment was made).
4. The Defendant shall, within thirty days of the date of this judgment, provide to the Claimant or her legal representative a full statement of account indicating the benefits due payable and paid.
5. Costs to the Claimant to be agreed or taxed.
6. Liberty to Apply.

**David**  
**Batts Puisne**  
**Judge**