



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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**Eskom Pension and Provident Fund v Krugel (689/2010) [2011] ZASCA 96
(31 May 2011)**

The Supreme Court of Appeal today upheld an appeal brought by Eskom Pension and Provident Fund (the Fund) against the judgment of the South Gauteng High Court which dismissed its application for the review of the Pension Adjudicator's determination ordering it to endorse its records to give effect to certain provisions of a divorce order dissolving Mrs Elizabeth Maria Krugel's marriage to Mr PJ Krugel, a former employee of Eskom and its member.

Mr Krugel resigned from Eskom on 31 January 1993 and upon his resignation elected to defer his pension benefit in the Fund in terms of Rule 30 (2) of the Fund's rules. He then divorced Mrs Krugel on 14 September 2001 and they agreed, in a settlement deed made an order of court under s 7(8) of the Divorce Act 70 of 1979, that she would be entitled to 25% of his pension interest. The fund however refused to endorse its records to give effect to this agreement. The basis for the refusal was that Krugel had become a deferred pensioner upon his resignation from Eskom and no longer had a pension interest in the Fund. Mrs Krugel's complained successfully to the Pension Adjudicator and this decision was also upheld on review by the High Court.

On appeal, the SCA found that Mrs Krugel's entitlement to Mr Krugel's pension benefits derived solely from section 7(7) and 7(8) of the Divorce Act and that the definition of 'pension interest' in that Act envisaged an award to a non-member spouse (Mrs Krugel) of any part of a pension interest or any other amount held by a pension fund in respect of a member spouse (Mr Krugel) calculated as the date of divorce but with effect from a certain date in future when the pension benefit accrues to the member spouse. The SCA held that Krugel's pension interest was determinable only at the time of his resignation and had

become payable to him in 1993 when he resigned from Eskom, long before his divorce in 2001. He could not again be deemed to become entitled to a resignation benefit and no longer had a pension interest for purposes of ss 7(7) and 7(8) of the Divorce Act, the court said. The SCA concluded that Mrs Krugel could only claim her share of Krugel's deferred pension benefit when it accrues to him upon reaching retirement age as agreed in the settlement deed.

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