

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Western Cape Case Nr. 16893/09
Constitutional Court Case Nr. CC _____

In the matter between:

MATHILDA LOUISA WIESE Applicant

and

GOVERNMENT EMPLOYEES PENSION FUND First Respondent

MINISTERS OF FINANCE Second Respondent

THE PENSION FUND ADJUDICATOR Third Respondent

CORNELIUS JOHANNES MARX Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned

PIETER RIAAN NABAL

do hereby make an oath and say that:-

Bornman & Hayward Inc
P R NABAL
Tel: (021) 943 1600
Fax: (021) 914 0091

1. I am an adult male attorney practising as such as Senior Associate at Bornman & Hayward Incorporated at 8 High Street, Rosenpark, Tygervalley, Western Cape Province.
2. The facts deposed herein are within my personal knowledge, unless the contrary is clearly stated or is clearly evident from the context hereof, and are both true and correct.
3. I am the Attorney of record on behalf of the Applicant who represented her in her application in the Western Cape High Court, Cape Town under Case Number 16893/09 for an order, inter alia, declaring the Government Employees Pension Law, proclamation 21 of 1996, as inconsistent with Section 9(1) of the Constitutional of the Republic of South Africa, Act Number 108 of 1996 and invalid and directing that certain provisions be read in thereto with the view to remedy this Constitutional invalidity.
4. On 1 July 2011, the Western Cape High Court under Case Number 16893/09 inter alia declared that the Government Law, proclamation 21 of 1996, is inconsistent with Section 9(1) of the Constitution and that certain provisions had to be read in thereto.
5. This Order of Constitutional Invalidity is however suspended for a period of 12 (twelve) months to afford Parliament time to correct the relevant defect.
6. It is essentially against this Order of Suspension that the Applicant intends to appeal.
7. In this regard, a Notice of Appeal was served on the State Attorney, whom represented the Seconde Respondent in the Western Cape High Court.
8. In this regard, the First and Second Respondents were both represented by the same council in the proceedings in the Western Cape High Court.
9. A copy of this Notice of Appeal is annexed hereto as annexure **“MW1”**.

10. This Notice of Appeal was however, due to an administrative error, not timeously filed at the Honourable Court.
11. In this regard, I received an e-mail from Advocate Johan de Waal, the council who acted for the Applicant in the Western Cape High Court, on 12 October 2011, informing me that he had just spoken to the Registrar of the Constitutional Court and that she has informed him that our Notice of Appeal was not received by them.
12. I was however in this stage involved in a Magistrate's Court trial and only obtained knowledge of this e-mail from Advocate de Waal during the afternoon of 13 October 2011.
13. I consulted my office file and found that the original Notice of Appeal, which was served at the offices of the State Attorney, was still in my office file.
14. The secretary in my office, Me. Christine Conn, who was during the relevant time responsible for attending to the administrative functions consisting of inter alia service and filing of processes has left the employ of Bornman & Hayward Incorporated on or about 16 September 2011.
15. In result I have been unable to ascertain why the Notice of Appeal was not forwarded to our correspondents in Johannesburg for filing at the Honourable Court.
16. In light of the aforesaid, I humbly submit the Applicant is not to blame for the fact that her Notice of Appeal was not timeously filed at Court.
17. The Notice was however timeously delivered to the Respondents via the State Attorney and they can therefore solely submit that in the circumstances not be any prejudice to them should this Honourable Court condone the late filing of this Appeal.
18. Wherefore the Honourable Court is humbly requested to grant the relief sort in the Notice of Motion.

