

"MW 91"

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

Appellant

and

GOVERNMENT EMPLOYEES PENSION FUND

First Respondent

MINISTER OF FINANCE

Second Respondent

THE PENSION FUND ADJUDICATOR

Third Respondent

CORNELIUS JOHANNES MARX

Fourth Respondent

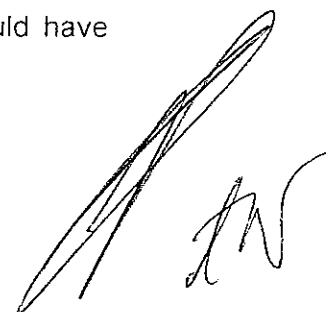
NOTICE OF APPEAL IN TERMS OF CONSTITUTIONAL COURT RULE 16

TAKE NOTICE that the above named Appellant hereby notes an appeal in terms of Constitutional Court Rule 16(2) against paragraphs 2 and 3 of the order made by His Lordship Mr Justice Bozalek in the matter of **Mathilda Louisa Wiese and the Government Employees Pension Fund and Others**, WCC Case number 16893/09, handed down on 1 July 2011. The grounds on which the appeal is brought are as follows:

1. The court *a quo* erred in suspending the declaration of invalidity for twelve months to allow Parliament to correct the defect in the law.

Instead of granting the suspension order, the court *a quo* should have

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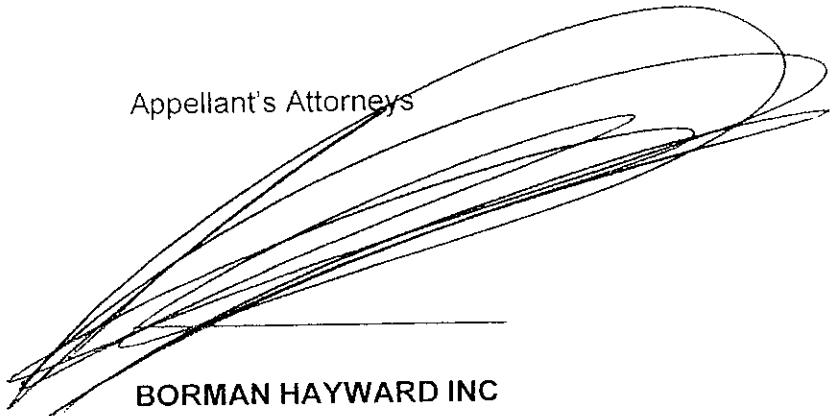
granted the reading-in order contained in paragraph 3 of the order with immediate effect.

2. The court *a quo* erred in finding (at para 37 of the judgment) that the legislature could exercise a range of choices which may be constitutionally defensible. Appellant contends that there is no material difference between the position of the Government Employees Pension Fund ("*the Fund*") and so-called "*private*" pension funds which would entitle Parliament to make different policy choices in respect of the former.
3. The court *a quo* erred in finding (at para 38 of the judgment) that the proposed reading-in could have far-reaching and unforeseen financial consequences and that the legislative process would bring to light difficulties or unintended consequences presently unforeseen by the parties or the court. The Appellant contends that the consequences for the Fund will be the same as for those pension funds which have been subjected to the general reform brought about by the Pension Fund Amendment Act 11 of 2007.
4. The court *a quo* erred in finding that the proposed reading-in is relatively complex and that this is a counter-indication to an immediate reading-in remedy. The Appellant contends that the reading-in proposed is not complex and, in any event, that this should be a factor, let alone a decisive factor, in a court withholding the reading-in remedy.
5. The court *a quo* erred in finding (at para 41 of the judgment) that it is not an appropriate case to grant interim relief to Appellant. The Appellant contends that a primary purpose of granting constitutional relief is to ensure that effective relief is granted to the Applicant and that the court *a quo* did not provide any such relief to her.

A handwritten signature in black ink, consisting of a large, stylized, sweeping stroke followed by a smaller, more intricate flourish.

Dated at CAPE TOWN on this 20th day of JULY 2011.

Appellant's Attorneys



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Per: Riaan Nabal

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TO: THE REGISTRAR
Constitutional Court
BRAAMFONTEIN

AND TO: THE REGISTRAR
High Court
CAPE TOWN

AND TO: THE STATE ATTORNEY
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