



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mathilda Louisa Wiese and Government Employees Pension Fund and Others

**Case No.: CCT 111/11
[2012] ZACC 5**

Date of Judgment: 30 March 2012

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Friday 30 March 2012 the Constitutional Court handed down judgment in combined confirmation and appeal proceedings.

The Western Cape High Court (High Court) declared certain provisions of the Government Employees Pension Law (GEPL) unconstitutional and invalid to the extent that it unjustifiably limited the right to equality. The order of invalidity was suspended to enable Parliament to correct the defect.

The GEPL regulates the Government Employees Pension Fund. Non-member spouses of the Fund's members were denied the enjoyment of their share of the pension benefit immediately upon divorce or on dissolution of a customary marriage. Instead, they had to wait until their member former spouse became entitled to his own pension benefit whereas the Pension Funds Act (PFA) entitled non-member spouses to immediate enjoyment of their pension interest in other funds, governed by the PFA, upon divorce or dissolution of a customary marriage.

The High Court's declaration of invalidity was referred to this Court for confirmation. The suspension of invalidity, however, was appealed against by the applicant.

While the proceedings in this Court were pending, Parliament amended the GEPL by enacting the Government Employees Pension Law Amendment Act (the Amendment Act) which cured the defect. The parties agreed that the Amendment Act disposed of the main issues before the Court and submitted that the matter had become moot.

The respondents agreed that the applicant was entitled to costs in the confirmation proceedings but not costs on appeal, as she had approached the High Court despite being aware that Parliament was taking steps to address the constitutionality of the GEPL.

This Court unanimously held that although the absence of a live controversy does not constitute an absolute bar to justiciability, the matter had become moot in the light of the Amendment Act. It could nonetheless consider the question of costs.

Regarding costs on appeal, the Court held that the Minister of Finance had a duty to ensure that the Amendment Act was passed without delay and consistently with the Constitution. Had the Minister given the applicant an assurance that this would be done, she might not have approached the High Court for relief. The applicant was therefore entitled to appeal against the suspension of invalidity and was entitled to costs on appeal.