

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO: 1209/2016

(Western Cape Division, Cape Town – Case No.:18775/2013)

In the matter of

**HEAD OF DEPARTMENT, WESTERN CAPE
EDUCATION DEPARTMENT**

First Appellant

**MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION IN THE WESTERN CAPE
PROVINCIAL GOVERNMENT**

Second Appellant

MINISTER OF BASIC EDUCATION

Third Appellant

and

MICHELLE SAFFER

Respondent

RESPONDENT'S NOTICE OF CROSS-APPEAL

BE PLEASED TO TAKE NOTICE THAT the Respondent hereby notes a cross-appeal to this Honourable Court against paragraph 3 of the orders of the Honourable Mr Justice L E Le Grange, handed down in the Western Cape Division of the High Court, Cape Town, on 15 September 2016, in case no. 18775/2013, and the parts of the judgment supporting paragraph 3 of the order.

TAKE NOTICE FURTHER THAT leave to cross-appeal to this Honourable Court was granted on 2 November 2016, as appears from the certified copy of the Order of

Court of that date annexed to the Appellants' notice of appeal, dated 7 November 2016.

TAKE NOTICE FURTHER THAT in the cross-appeal the Respondent seeks an order in the following terms:

1. The cross-appeal succeeds with costs, including the costs of two counsel, to be paid by the Appellants, jointly and severally.
2. Paragraph 3 of the Order of the Court *a quo* is set aside and replaced with an order in the following terms:

“3.1 Regulation 6(2) of the Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools, promulgated in GN 1052 of 18 October 2006 (“the Regulations”), is declared to be inconsistent with the Constitution and invalid;

3.2 Section 40(1) of the South African Schools Act 84 of 1996 (“SASA”) is declared to be inconsistent with the Constitution and invalid;

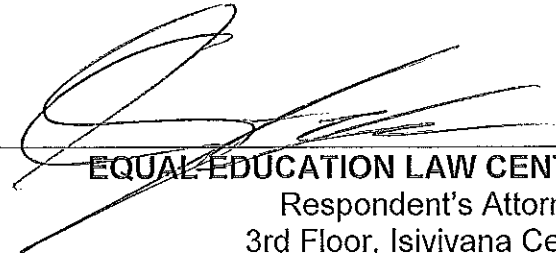
3.3 The declaration of constitutional invalidity in paragraph 3.2 is referred to the Constitutional Court for confirmation;

3.4 It is declared that:

3.4.1 *the applicant has been subjected to repeated violations of her constitutional and statutory rights in the course of the processing of her 2011, 2012 and 2013 applications for exemption from the payment of school fees; and*

3.4.2 *the first, fourth and fifth respondents have failed to comply with their constitutional and statutory obligations to ensure that fee-charging public schools in the Western Cape comply with the requirements of SASA and the Regulations in relation to fee-exemptions, as set out in paragraphs 6.2, 6.4, 6.6, 6.7 and 6.11. to 6.16 of the applicant's amended notice of motion."*

SIGNED AT CAPE TOWN ON THE 1st DAY OF DECEMBER 2016.



EQUAL EDUCATION LAW CENTRE
Respondent's Attorneys
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Khayelitsha

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(Ref: SAFF/ar/CN Stuurman)

C/O WEBBERS ATTORNEY

Webbers Building

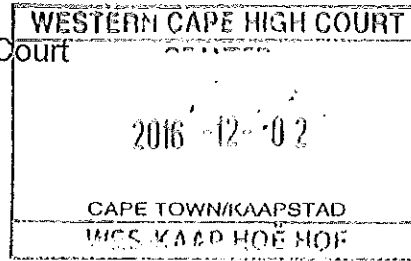
96 Charles Street

Bloemfontein
Tel: 051 430 1340
Email: Bianca@webberslaw.com
Ref: (Bianca Strydom)

TO: THE REGISTRAR OF THE ABOVE HONOURABLE
Supreme Court of Appeal
BLOEMFONTEIN

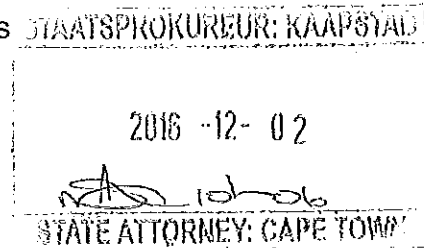
AND

TO: THE REGISTRAR
Western Cape Division of the High Court
CAPE TOWN
Western Cape Province



AND

TO: THE STATE ATTORNEY, CAPE TOWN
The First, Second and Third Appellants Attorneys
5th Floor
22 Long Street
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Ref: (4359/13/P3)
Email: amugjenkar@justice.gov.za



C/O THE STATE ATTORNEY, BLOEMFONTEIN
11th Floor
49 Charlotte Maxeke Street
BLOEMFONTEIN
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AND

TO: TRUSTEES OF THE WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae in the Court a quo

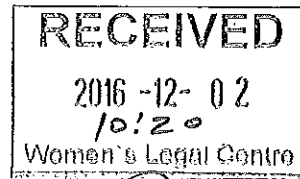
7th Floor

124 Adderley Street

CAPE TOWN

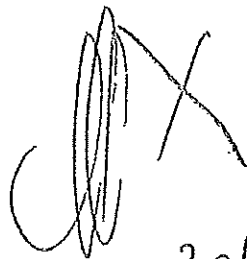
Ref: (H Fayker)

Email: hoodah@wlce.co.za



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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)


2.11.2016

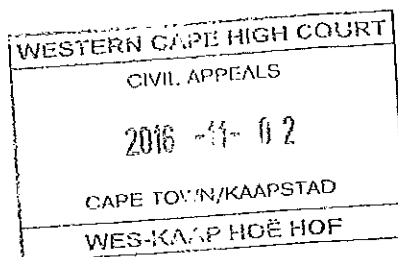
CASE NO: 18775/2013

BEFORE THE HONOURABLE MR JUSTICE LE GRANGE,
IN CHAMBERS

CAPE TOWN: Wednesday 2 November 2016

In the matter between:

MICHELLE SAFFER



Applicant

and

HEAD OF DEPARTMENT, WESTERN CAPE

EDUCATION DEPARTMENT

First Respondent

THE SCHOOL GOVERNING BODY, FISH HOEK

HIGH SCHOOL

Second Respondent

FISH HOEK HIGH SCHOOL

Third Respondent

MEMBER OF THE EXECUTIVE COUNCIL

FOR EDUCATION IN THE

WESTERN CAPE PROVINCIAL GOVERNMENT

Fourth Respondent

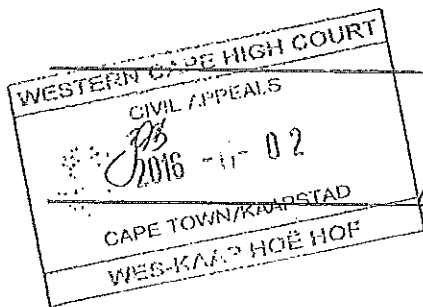
MINISTER OF BASIC EDUCATION

Fifth Respondent

MATTHEW GRAY

Sixth Respondent

TRUSTEES OF THE WOMEN'S LEGAL CENTRE TRUST *Amicus Curiae*



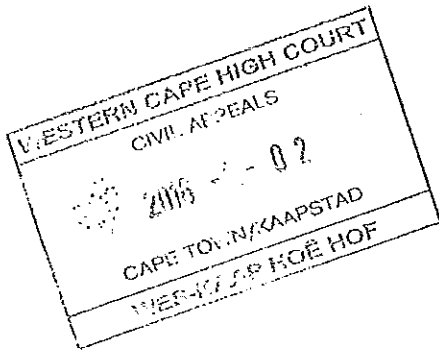
DRAFT ORDER

HAVING READ THE APPLICATION FOR LEAVE TO APPEAL BY THE FIRST, FOURTH AND FIFTH RESPONDENTS AND THE APPLICATION FOR LEAVE TO CROSS-APPEAL BY THE APPLICANT, AND HAVING CONCLUDED THAT BOTH APPLICATIONS HAVE REASONABLE PROSPECTS OF SUCCESS AND THE ISSUES RAISED INCLUDE LEGAL ISSUES WHICH MERIT THE ATTENTION OF THE SUPREME COURT OF APPEAL, IT IS HEREBY ORDERED THAT:

1. the First, Fourth and Fifth Respondents ("the Respondents") are granted leave to appeal to the Supreme Court of Appeal against paragraphs 2 and 4 of the order of this Court dated 15 September 2016 in case number 18775/13 and the parts of the judgment of this Court supporting those paragraphs, on the grounds set out in their application for leave to appeal;
2. the Applicant is granted leave to cross-appeal to the Supreme Court of Appeal against paragraph 3 of the order of this Court dated 15 September 2016 in case number 18775/13 and the parts of the judgment of this Court

supporting that paragraph, on the grounds set out in her application for leave to cross-appeal; and

3. the costs of the aforesaid applications for leave to appeal and cross-appeal will be costs in the appeal and cross-appeal.



BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "J. B. ...", written over a horizontal line.

COURT ~~SEAL~~ REGISTRAR

Equal Education Law Centre
6 Spin Street, CAPE TOWN

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