



WOMEN AND THE LAW

GENDER EQUALITY JURISPRUDENCE
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the doj & cd

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FOREWORD BY THE MINISTER



Adv. T.M. Masutha, MP

Minister for Justice and Correctional Services

The year 2017 marks the 61st anniversary of the Women's March that took place on the 9th of August 1956, a day in which almost 20,000 women marched to the Union Buildings in Pretoria to present a petition against the carrying of passes to the then Prime Minister J.G. Strijdom.

It also marks 20 years of coming into effect of the new constitutions after it was certified into law by the constitution after it was certified into

law by the constitutional court on 10th February 2017 having been signed by former president Mandela in Sharpeville on international human rights day 10 December 1996

More than twenty years since the dawn of democracy and the ushering in of the new democracy there has been a growing consciousness on matters related to equality of women in South Africa. While the country has achieved progress towards gender equality and women's empowerment including equal access to primary education for girls and boys, women and girls continue to suffer discrimination and violence every day in our society. Some challenges still persist including systemic barriers that impede women from achieving gender equality. Some of these obstacles include limited access to economic opportunities, sexual and other violence, discrimination in the private and public sectors, harmful cultural practices and limited access to sexual and reproductive health and rights.

There is also a disturbing trend towards increased violence against women and girls particularly by men who are intimate partners and family members. The government has made commendable efforts in addressing these challenges through the adoption and implementation of the National policies and legislation, and international instruments including the National Development Plan and the 2030 global Sustainable Development Goals which focus on gender equality, which the United Nations in South Africa continues to support.

In producing and publishing this booklet, government and the department in particular reaffirm its commitment to work together with citizens and civil society to achieve the Sustainable Development Goals.

This is a Second Edition of the Women in Law in South Africa (Gender Equality Jurisprudence in Landmark court decisions). This booklet is a useful reference for all stakeholders involved in the women empowerment and gender equality sectors. It is a compendium of cases that vindicate these two principles and highlights the crucial role that court decisions can make in positively changing our lives. The cases covered were adjudicated between 2008 and 2016 in the High Courts, Supreme Court of Appeal (SCA) and the Constitutional Court.

Cases documented herein broadly cover the following areas of law; Children's Rights; Customary and Muslim Marriages; Delict; Equality Law; Employment; LGBTI Rights; Nationality and Immigration; Spousal Maintenance and Divorce; Succession and Inheritance and Violence Against Women.

It is my wish that this booklet enhances the work in the women empowerment and human rights sectors for the achievement of gender equality in South Africa.

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T.M Masutha,MP (Adv)

Minister of Justice and Correctional Services

DEFINITIONS AND ABBREVIATIONS (alphabetical order)

| | Definitions |
|-----------------------|--|
| Equality | this includes the full enjoyment of equal rights and freedoms as contemplated in the Constitution of South Africa, it includes de facto and de Jure equality |
| Intestate | to die without leaving a will in place |
| Landmark case | a Court case that is studied because of its historical and legal significance, these generally have a lasting effect on the application of a certain law |
| Obiter Dictum | is an opinion made by the Court, it has persuasive value but not binding |
| Precedent | the decision of a higher Court which is binding on a Lower Court |
| Stare Decisis | the doctrine that requires Lower Courts to follow the decisions of Higher Courts in the judicial hierarchy to ensure predictability, reliability and uniformity, equality, certainty and convenience |
| Socio Economic Rights | Socio Economic Rights are basic human rights such as the right to education, right to housing, right to adequate standard of living, right to health and the right to science and culture. |

ACRONYMS (alphabetical order)

| | |
|--------|---|
| CC | Constitutional Court |
| HC | High Court |
| GBV | Gender Based Violence |
| LBTI | Lesbian Bisexual Transgender and Intersex |
| NPA | National Prosecution Authority |
| PEPUDA | Promotion of Equality and Prevention of Unfair Discrimination Act |
| SANDF | South African National Defence Force |
| SCA | Supreme Court of Appeal |
| RCMA | Recognition of Customary Marriages Act |



1.0 INTRODUCTION

Case law is one of the main sources of law in the country. Whilst statute law is important, oftentimes there may be provisions which may need to be reviewed because they do not speak to the contemporary situation and in some cases the entire piece of legislation may need to be repealed. The Courts are enjoined to adjudicate on the Constitutional validity of certain provisions of our laws.

Since the advent of democracy in the country, the Courts have played an important role in interpreting statute and common law to meet Constitutional obligations and protect human rights. Whilst the Courts do not make laws they do however interpret these through decisions on cases that are brought before them. This is of significance because the cases decided by the Courts may affect our everyday life and our individual rights. Studying some of these judgements is important to predict how past decision will apply to current issues and cases and to also understand how past judicial decisions have affected the law.

This publication seeks to document landmark and progressive judgements that have been passed by the High Courts, Supreme Court of Appeal and the Constitutional Court specifically in the area of women's rights. The compendium covers the cases that where adjudicated during the period 2007 and 2014. Human rights are given clear prominence in the Constitution in particular Chapter 2, the Bill of Rights. Section 9, the equality clause, recognises the importance of women as equal citizens and more importantly section 9 (3) which read:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

The prohibition of discrimination on the grounds of gender, sex, pregnancy and marital status is clearly intended to protect women. This section therefore affirms that unfair discrimination based on the feature of being a woman is prohibited.

South Africa is a member of the international community and has ratified, signed or acceded to many international human rights instruments pertaining to the protection and promotion of the rights of women. There are many international, continental and regional instruments that address the issue of gender equality to which South Africa is a member. These instruments have been incorporated in the Constitution and national legislation. Some of these instruments have defined discrimination and other concepts which have been incorporated in our law. These instruments require state parties to address the following issues among others: poverty eradication, women's health, economic advancement, exploitation of women, gender equality, customs and culture, religion, harmful traditional practices, discriminatory marriage laws, widow's rights, inheritance, education, environment, human rights, and gender based violence.

Historically women were under the social and legal control of their husbands; in some cases treated as minors and could not enjoy autonomy, agency and voice. An example is in customary law rule of primogeniture where in the case of *Shilubana*¹, further discussed below, the customary principle of primogeniture did not allow a woman to be appointed as a Chief; this was seen as contrary to customary practice of the principle. In a unanimous judgement, the Constitutional Court upheld the constitutional principles of gender equality in the communities' right to develop its own custom to align it with the Constitution and further emphasised that African living customary law is not bound by historical precedent and must be developed to align it with the Constitutional principles. This judgement is landmark because of its historical and legal significance to the lives of women in the country.

The selected cases are ground breaking and will positively influence the lives of women both as individuals and as a collective. It is a follow up publication to the one developed in 2006 which documents landmark cases from 1998 – 2006. It also recognises progressive judgements made by the courts which encompass the specific experiences of women. This is because even though the principle of equality is often framed as available to both men and women, women have benefitted less than men and the Court have played an important role in concretising a progressive vision.

¹ (CCT 03/07) [2008] ZACC 9; 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC) (4 June 2008).

The judgements are clustered under the following themes:

- Customary Law
- Children's rights
- Delict
- Employment Law
- Equality Law
- LGBTI Rights
- Muslim marriages
- Nationality and Immigration
- Spousal Maintenance and Divorce
- Socio-Economic Rights
- Violence Against Women

A similar framework as in the first publication is employed in this collection as follows:

Brief Summary

Impact on Women Rights

Case Overview

Important Links



2.0 CHILDRENS RIGHTS

Minister of Basic Education v Basic Education for All²

Case Summary: The case involved constitutional law particularly the right to education in terms of s 29(1) (a) of the Constitution. The Department of Basic Education had to adopt a clear national policy that each learner must be provided with a textbook for each subject before commencement of the academic year. The Court held that the Department's failure to provide textbooks to each learner infringes on their right to basic education. It further held that failure to provide textbooks to a small number of students in Limpopo amounted to unfair discrimination against them. The order of the Court a quo requiring the Department to deliver textbooks and report to the respondents accordingly was confirmed and the appeal was dismissed. In addition, in the cross-appeal the court upheld the ruling of the Lower Court and made a declaration that Department was in breach of previous court's orders concerning the delivery of textbooks.

Impact on Women's Rights

- All learners including girl learners must be treated equally and must be provided with textbooks. Failure to do so is an infringement on the right to education, which in respect of a girl child has implication and may result in those girls never benefiting from economic independence that education will bring for them.
- Failure to provide text books to even a small number of learners is a violation of the right to education

information contained in the J88 form. It held that "on a holistic evaluation of the evidence the guilt of the appellant was established beyond reasonable doubt".

Case Overview

The case related to a failure to ensure access to textbooks in some public schools in the Limpopo province by the Department of Basic Education (DBE) and LDOE (Limpopo Department of Education) ("the Appellants").

² (20793/2014) [2015] ZASCA 198 (2 December 2015)

In 2012, the Department of Basic Education (DBE) adopted a new curriculum, predicated on the new Curriculum and Assessment Policy Statements (CAPS), which was to be introduced incrementally over a three-year period across South Africa. As a result of the changes, new textbooks were required. Each provincial Department of Education was required to procure the textbooks for the upcoming academic year. In Limpopo, the procurement process for the necessary books and course materials was inefficient resulting in many children lacking access to the required textbooks. In mid-2012, a court order declared the failure of the Appellants to provide the textbooks a violation of the Constitution, and ordered them to ensure provision of the necessary text books.

The Appellants were given two weeks to provide the textbooks, however failed to adhere to the timeline. This resulted in further litigation as well as a new timeframe. While there were improvements in the textbook delivery system in 2013, some schools were still left waiting. In 2014, there was still a shortfall in textbook. This resulted in more litigation with the respondents launching further legal action, alleging a violation of the rights to education, equality and dignity. The North Gauteng High Court ruled in their favour, however refused to hold that the DBE had failed to comply with previous court orders. Both the parties appealed the judgment. Leave to appeal to the SCA was in its judgment, the court noted the racial inequality and segregation upon which the education system was originally built and the obligation to remedy this past injustice. It also acknowledged that the textbook shortages were not a problem in provinces other than Limpopo (in which the court had previously explained most of the students were poor black children). According to the DBE, approximately 97% of students had access to textbooks across the province; meaning that at least 3% of students were being treated differentially. For the Court, these students were being discriminated against and this discrimination was unjustified. Learners without access to textbooks were adversely affected.

Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another³

Case Summary: This case primarily dealt with Part 1 of Chapter 3 of the Criminal law (Sexual Offences and Related Acts) Amendment Act, 2007 which criminalises the performance of certain consensual sexual acts (by adults and children) with children who are between 12-16 years old (adolescents).³ Section 15 deals with the offence of “statutory rape”. The court confirmed the ruling by the North Gauteng High Court, Pretoria (High Court) that certain provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act² relating to the criminalisation of consensual sexual conduct with children of a certain age, are constitutionally invalid.

Impact on Women’s Rights

- A girl child is more than capable of consenting to sex as an adolescent, assuming otherwise would be an infringement on her right to dignity and privacy. The best interests of the girl child are paramount.
- Laws that criminalise consensual sexual behaviour between adolescents violate their rights to dignity and privacy and the best interest’s principle under the Constitution and are therefore invalid.

Case Overview

The applicants argued that sections 15⁴ and 16⁵ of the abovementioned Act unjustifiably infringes on children’s constitutional rights to dignity, privacy, bodily and psychological integrity, as well as the principle in section 28(2) of the Constitution that a child’s best interests must be of

3 (CCT 12/13) [2013] ZACC 35; 2013 (12) BCLR 1429 (CC); 2014 (2) SA 168 (CC); 2014 (1) SACR 327 (CC) (3 October 2013)

4 Section 15 deals with statutory rape and provides Acts of consensual sexual penetration with certain children (statutory rape)

15 (1) A person (‘A’) who commits an act of sexual penetration with a child (‘B’) is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

5 Section 16 imposes criminal liability for committing statutory sexual assault.

paramount importance in all matters concerning the child. The respondents argued that the sections do not infringe the constitutional rights of children and are rationally related to the legitimate government purpose of protecting children from the risks associated with engaging in sexual activity.

The Constitutional Court found that sections 15 and 16 of the Act are unconstitutional in so far as they infringe the rights of adolescents (12 to 16year olds) to dignity and privacy, and further violates the best-interests principle contained in section 28(2) of the Constitution.

The Court concluded that the provisions criminalise developmentally normative conduct for adolescents, and adversely affect the very children the Act seeks to protect. The effects of the provisions were not rationally related to the State's purpose of protecting children. The provisions were declared invalid only to the extent that they criminalise consensual sexual conduct between adolescents: the criminal prohibitions against non-consensual sexual conduct with children of any age and against sexual activity between adults and older children on the one hand, and adolescents on the other hand, remain in place. Further, the Court ordered a moratorium on all investigations, arrests, prosecutions and criminal proceedings (regarding adolescents) in relation to sections 15 and 16 of the Act, until Parliament has remedied the defects identified. Finally, the Minister was ordered to take the necessary steps to ensure that the details of any adolescent convicted of an offence in terms of sections 15 or 16 of the Act would not appear in the National Register for Sex Offenders and that such an adolescent will have his or her criminal record expunged.

Case Summary: The trial Court considered declaratory order in terms of section 230(3) of the Children's Act, 38 of 2005, which does not preclude a child from being adoptable where the child has a guardian and the person seeking to adopt the child is the spouse or life- partner of guardian. The court found that section 242 of the Act does not automatically terminate all parental responsibilities and rights of guardian where such adoption order is granted

Impact of Women's Rights

- Parents are not excluded from having parental rights automatically when the child is adopted by the spouse of another parent. Womens' rights as parents are protected.
- The best interest of the child principle reaffirmed

Case Overview

The Court granted an order making it clear that step-parents and life partners can adopt their stepchildren and that the adoption will not automatically terminate the rights of the child's biological parent. Specifically, an order was granted declaring that section 230(3) of the Children's Act did not preclude a child from being adoptable where the child had a guardian and the person seeking to adopt was the spouse or permanent life partner of the guardian. It also declared that section 242 of the Act did not automatically terminate all the parental responsibilities and rights of the guardian of a child when an adoption order was granted in favour of the spouse or life partner of the guardian. Finally, if the non-custodian parent/guardian had consented to the adoption of the child and had no contact with the non-custodian parent for at least three months, or the whereabouts of such a parent could not be established, the child was adoptable. The Children's Court is obliged to function in a manner that promotes the best interests of the child and should, except where there are sound reasons not to do so.

⁶ (21122/13) [2013] ZAGPPHC 305; 2014 (1) SA 468 (GNP) (30 October 2013)



3.0 CUSTOMARY AND MUSLIM LAW

Modjadji Florah Mayelane v Mphephu Maria Ngwenyama and Another ⁷

Case Summary: This case raises questions about the role that the consent of the first wife plays in a customary marriage in relation to the validity of her husband's subsequent polygynous customary marriages. It also deals with the manner in which the content of an applicable rule or norm of customary law should be ascertained and if necessary developed in a manner which gives effect to the Bill of Rights.

Impact on Women's Rights

- The Court concluded that the consent of a first wife is a necessary dignity and equality component in a case where the husband wishes to conclude another marriage.
- The decision reaffirms provisions of Recognition of Customary Marriages Act and protects the right of women.

Case Overview

This case raises questions about the role that consent of the existing wife (first wife) in a customary marriage plays in relation to the validity of her husband's subsequent polygynous customary marriages. It also deals with the manner in which the content of an applicable rule or norm of customary law should be ascertained and if necessary developed in a manner which gives effect to the Bill of Rights.

The applicant alleged that she had concluded a valid customary marriage with the now late, Dyson Moyana who passed away in 2009. The respondent similarly alleged that she married the same late, Mr Moyana in 2008. On his death both spouses were not aware of each other's respective marriages, both parties subsequently applied for their marriages to be registered in terms of the Recognition of Customary Marriages Act, 1998. This is where they learnt about each other for the first time.

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Modjadji Florah Mayelane v Mphephu Maria Ngwenyama and Another CCTR 57/12 (2013)ZACC

The applicant then applied to the High Court for an order declaring her customary marriage to be valid and that of the respondent to be null and void on the basis that she had not consented to it. Her basis for this was that in terms of Xitsonga customary law, she was required to give consent for her husband to marry another and she mentioned that she was never informed or asked by her husband to consent, nor did she provide any consent to the alleged customary marriage to the respondent. The High Court granted both orders and the respondent appealed to the Supreme Court of Appeal. The SCA confirmed the order declaring the respondents' marriage as valid however overturned the order of invalidity of the applicants' marriage; it found both these marriages to be valid. Both these courts based their decisions on Section 6 of the Recognition of the Customary Marriages Act.

In light of the above the Court had to determine two issues, both interrelated, the first being whether the consent of the first wife was necessary for the validity of her husband's marriage and secondly the consent issue should have been determined by the Supreme Court of Appeal. The judgment in this case is a wake-up call to all husbands married by customary law who wish to contract more than one marriage. It also serves as an eye-opener to all would-be prospective wives. Such prospective wives should take precautionary measures to check the marital status of their prospective husbands. The prospective husbands should also be aware that although they may have the capacity to contract further customary marriages, their capacity is limited. The RCMA section 7(6) provides that the normal requirements for the validity of a customary marriage have to be complied with, namely, the lodging of an application to change the marital regime. Without this, the resultant customary marriage is null and void irrespective of the fact that the parties thereto might have lived together as "husband and wife" for a number of years.

In dealing with the consent as provided in Xitsonga customary law which was the basis of the applicant's argument to the High Court, the Court factored in evidence brought by experts in the area of Xitsonga law and more importantly grounded its decision on the constitutional guarantees of equality and dignity recognised as the cornerstone of our democracy.

The Court recognised that the consent of a first wife is a necessary dignity and equality component which in terms of the RCMA, means that moving forward customary marriages must comply with the consent requirement, this requirement operates prospectively. Furthermore specific to the facts of this case that Xitsonga customary law even before this judgement required that the first wife be informed of her husband's impeding marriage and in this case such did not happen.

Nyumeleni Jezile v The State and Others⁸

Case Summary: This case deals with the customary practice of Ukuthwala and issues of consent to a marriage as provided for in the Recognition of Customary Marriages Act (RCMA). The appellant had initially been convicted of human trafficking, rape, assault with intent to do grievous bodily harm and was serving a sentence. He appealed against the conviction and sentence arguing that his actions were informed by the Xhosa cultural practice of Ukuthwala. The issue on appeal was whether the Courts determination on issues should have taken into account the customary practice of Ukuthwala which allows the bride to be coerced into a customary marriage. The High Court concluded that Ukuthwala in its aberrant form cannot find protection in our law and that rape and trafficking cannot be justified in this form.

Impact on Women and Girls

- The practice of Ukuthwala does not justify the rape and abduction of women and girls
- It affirms the requirement of consent for a valid customary marriage to be adhered to as provided for in the Recognition of a Customary Marriages Act
- Recognition of international and regional human rights standards promoting and protecting the rights of women and girls
- Culture evolves and must be developed to align with constitutional values.

⁸ Jezile v S and Others (A 127/2014) [2015] ZAWCHC 31; 2015 (2) SACR 452 (WCC); 2016 (2) SA 62 (WCC); [2015] 3 All SA 201 (WCC)

Case Overview

During December 2009 or early January 2010 the appellant, who was 28 years old at the time departed from his residence in Phillipi for his home village in the Eastern Cape with the specific intention of finding a girl or young woman in order to conclude a marriage in accordance with his custom. His stated requirements were that the girl or young woman should be a virgin, younger than 18 years old because if above that age, she would likely have children. The ideal age therefore according to the appellant was 16 years old. In January 2010 the appellant took notice of the complainant, a 14 year old girl who he had no previous association with nor had knowledge except that she had been sent by her uncle to buy a cigarette for him at a house where the appellant was present. The following day, the appellant sent a delegation to the complainants homestead to inform them of his intention to marry the complainant. Much against the complainant's resistance, her uncle instructed her to take off her school uniform and put on different clothes. She was then removed from her home to the appellant's residence where a number of traditional ceremonies were undertaken. Lobola was paid and the complainant proceeded to stay with the appellant in Phillipi, Cape Town where the appellant lived with his brother and wife. Prior to this trip she attempted to run from the residence of the appellant, hid in a forest and later at neighbours but was subsequently returned by her uncle.

In Cape Town the complainant was expected to stay in the house and do house chores whilst the appellant went in search for employment. Sexual intercourse took place on several occasions, much against her will. The complainant and appellant entered into an argument at some point which she got an injury in her leg, a few days later she fled from the appellant and reported to the police. The trial court adduced evidence from various witnesses and found that it corroborated the complainant's testimony; there was no evidence to suggest that she had willingly subjected herself to the marriage. Similarly her evidence of rape was corroborated by the findings of a medical examiner. The appellant was convicted to various charges, including rape, kidnapping and assault.

On appeal, one of the appellant's grounds was that the charges of trafficking and rape were misdirected and the merits should have been determined

from the premise of Ukuthwala. In arriving at its decision the court made reference to both domestic legislation and international instruments aimed at promoting and protecting the rights of women and children⁹. Further relying on expert of customary law, the court concluded that consent to Ukuthwala and sexual intercourse are necessary requirement of this custom and furthermore the requirements as set in the Recognition of Customary Marriage Act, are clear regarding the validity of a marriage. The appellant did not dispute this but contended that the complainant had consented to both. The Court however found his position as not applicable because the above act of sexual assault took place after the “customary marriage”. The appellant relied therefore on the practice of Ukuthwala in its aberrant form which gave permission for the coercion of sexual assaults. The court concluded that such aberrant practices cannot secure protection under the law, it therefore dismissed the appeal.

Ramavhovi v the President of the Republic of South Africa¹⁰

Case Summary: This case deals with the constitutionality of section 7(1) of the Recognition of Customary Marriages Act, 1998 which regulates the proprietary consequences of a polygamous customary marriage entered into before the commencement of the abovementioned Act. The court had recognised that monogamous marriages entered into before the coming into operation of the RCMA, had been catered for in the Intestate Succession Act following the Gumede judgement however the status of polygamous marriages in the case of deceased estate was left unclear .

Impact on women's rights

- Court recognised that section 7(1) was inconsistent with the Constitution in as far as it fails to offer protection for polygamous marriages in the devolution of a deceased estate whereas monogamous ones were catered for
- It recognises that section 7(1) not only affects the rights of women but also that of the children in these relationships and perpetuates their vulnerability in various forms such as evictions including experiencing difficulties in obtaining property

⁹ Reference was made by the Court to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

¹⁰ Ramuvhovi and Another v President of the Republic of South Africa and Others (412/2015) [2016] ZALMPHC 18; 2016 (6) SA 210 (LT)

Case Overview

The applicants had approached the high Court for an order declaring that section 7(1) of the RCMA was inconsistent with the Constitution and their position was that an “old¹¹ polygamous marriages produces the legal consequences of a marriage in community of property. The section as it stands provides that these types of customary marriages are automatically out of community of property as such do not enjoy secure rights in the property.

Brief facts: The applicants are biological children of the deceased, A, who passed away in January 2008. At the point he had been married customarily to three wives, who for these purposes are referred to as X, Y & Z. The deceased also entered into a civil marriage with D who is the fourth respondent in the matter. At the time of the deceased’s passing his marriage to X had been terminated by divorce. His marriage to Y had been terminated by her death and it was also submitted that Z had also passed on. The civil marriage between the deceased and D had been declared null and void by the Supreme Court of Appeal,¹² the Courts basis was that the deceased had already entered into customary marriages with X and Z and the time of marrying D.

When the deceased passed away he had left a will and had named D as one of the beneficiaries and executor to his estate. He had also recognised that his wives X and Z and D as his wife whom he married in community of property. The SCA however recognised the will of the deceased to be valid, and it terms of the will had bequeathed half the share of the joint estate to his respective wives including D and all his children. The applicant in this matter were children born of the polygamous marriages and had brought the application as a result of their dissatisfaction with the SCA decision regarding the will.

D was a registered owner of an undivided share of property and the applicants had submitted that she was only registered as a co-owner because the deceased at the point was of the impression that his marriage to D was valid and in community of property.

¹¹ Polygamous marriages entered into before the commencement of this Recognition of Customary Marriages Act. The section reads “7(1) the proprietary consequences of a customary marriage entered into before the commencement of this Act continue to be governed by customary law”.

¹² Ntshitshituka v Netshituka & Others 2011(5) SA453 (SCA).

D disputed this and stated that without her ability to provide security for the bond, he would have never acquired the property. In a nutshell the applicant's position was that because of section 7(1) their mothers were excluded from ownership of the estate acquired by the deceased, the section was therefore discriminatory.

In arriving at its decision the trial Court referred to a Constitutional Court decision, *Gumede vs the State*¹³, In this matter the court had ruled that section 7(1) of the RCMA was inconsistent with the Constitution to the extent that its provisions related only to monogamous customary marriages entered into after the commencement of the Act. The Court had ordered the removal of the sections that limited this, however left the position of polygamous marriages to a pending intervention by the legislature.

The Court found that by implication section 7(1), wives of polygamous marriages could not acquire any rights in the marital property. It also recognised that this impugned provision not only affects the rights of women but also that of the children in these relationships and perpetuates their vulnerability in various forms such as evictions including experiencing difficulties in obtaining property. The Court therefore ruled that the provision 7(1) is not only discriminatory on the basis of gender as provided in *Gumede* but also race, ethnic or social origin in so far as "old" polygamous marriages are excluded from the protection afforded to monogamous marriages¹⁴. It concluded that the impugned provision be declared invalid as a result.

The Court therefore ordered an interim remedy pending a required legislative process, to extend protection to women in polygamous marriages recognising that they suffer the burden of unfairness and discrimination. The interim remedy would ensure that women in polygamous marriages enjoy rights provided for in terms of the Bill of Rights, the Recognition of Customary Marriages Act, the Matrimonial Property Act and related legislation.

¹³ *Gumede vs the President and Others* 2009(3) SA 152(CC)

¹⁴ See paragraph 46.



4.0 DELICT

MEC for the Department of Health v De Necker¹⁵

Case Summary: This case dealt with whether a claim for damages by a doctor against the hospital where she was employed based on her being raped whilst on duty was excluded by the provisions of s 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993. The Court dealt with whether or not the rape arose out of her employment. The plaintiff argued that the rape bore no relation to her employment and as such was not incidental to such employment

Impact on Women's Rights

- Employees who are raped within the course of discharging their duties can claim compensation under COIDA. This affords female medical practitioners a measure of protection while discharging their duties.
- This decision is equally relevant for all female employees to safeguard them in similar cases.

Case Overview

The respondent, a female doctor, was raped in 2010 by an intruder who gained access to the hospital premises. The incident occurred while the doctor was on call and in the course of discharging her duties. The question before the Court was whether the Department of Health as represented by the MEC, was liable for damages sustained because of her being raped at work. The respondent instituted a claim for damages against the MEC for the injuries suffered as a result of the rape. The MEC contended (in the form of a special plea) that the respondent was not permitted to institute such a claim as per s35 (1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).

The High Court considered s35 COIDA as well as other authorities and concluded that the rape did not arise out of and in the course of the respondent's employment with the Department of Health. Consequently, the rape was not an accident contemplated by s35 of the Act.

¹⁵ (924/2013) [2014] ZASCA 167 (8 October 2014)

The Court held that the attack on the doctor had no relationship to her employment. As such, the appellant's special plea was dismissed with costs. On appeal the question before the SCA was whether the Court made a correct finding in dismissing the appeal. In its judgment, the Court noted that the Act provides a source of compensation for employees who suffer employment related injuries.

The Act also provides for compensation without the employee having to prove negligence. However, negligence may result in greater compensation. The Court highlighted that the aim of the Act is to benefit employees and did so by effectively restricting the employee's common law remedies in order to allow easy access to compensation. This does not mean that compensation for any and every kind of harm suffered by employees at work has to be pursued through that statutory channel. However, if the injury was caused by an accident that arose out of an employee's employment, then the latter is restricted to a claim under the Act. In order for the Act to be applicable in this case, the Court had to consider whether or not the respondent met with an accident arising out of and in the scope of her employment.

The Court in its judgment held that it was unable to see how a rape perpetrated by an outsider on a doctor on duty at a hospital arises out of the doctor's employment. This is due to the fact that it is inconceivable for the risk of rape to be incidental to such employment. The Court highlighted that "there is no more egregious invasion of a woman's physical integrity and indeed of her mental wellbeing than rape". As such, a matter of policy alone an action based on rape should not, except in circumstances in which the risk is inherent, be excluded and compensation then be restricted to a claim for compensation in terms of COIDA. The appeal was dismissed and the respondents' common law claim for damages was held not to be barred by section 35 of COIDA.

The Minister of Justice and Constitutional Development v X¹⁶

Case Summary: The case involved a delictual claim, the duty of prosecutor at bail hearing and a failure to place all relevant information before a Court. The Court found that the violent crime of sexual nature committed by accused if released should have been foreseen. Negligence was established and the defence based on s 42 of the National Prosecuting Authority Act 32 of 1998 was rejected. The case was an appeal against an order of the Western Cape High Court. The Court found that the appellant was liable to the respondent for damages arising out of the abduction and rape of her five-year-old daughter. The claim was brought by the respondent as mother and natural guardian of her minor child and secondly in her personal capacity. The Court held the appellant liable by virtue of the negligent conduct of a public prosecutor in regard to a bail application hearing in Ladysmith Magistrate Court.

Impact on Women's Rights

- Prosecutors must apply a higher degree of diligence and care in the execution of their duties, given the sensitive nature of rape cases. Failure to do so may result in the employer being held vicariously liable for the negligence of the employee (prosecutor).
- The prosecution plays a vital role in ensuring justice for rape victims and therefore have to execute that duty with diligence.

Schedule 6 offence in terms of s 60(11) (a) of the Criminal Procedure Act 51 of 1977, Mr S had the onus to prove that there are exceptional circumstances justifying his release on bail in the best interests of justice. Mr S was represented and the investigating officer in the case on behalf of the state gave evidence opposing the application. Bail was granted but Mr S was remanded until he provided the Court with proof of address. On the return date, Mr S was not able to provide the information and was further remanded in custody. After a month of being unable to furnish the address to the Court, Mr S finally submitted an address in Ladysmith where he could reside upon his release from custody. The Magistrate found it to be acceptable and released Mr S on his own recognisance.

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(196/13) [2014] ZASCA 129 (23 September 2014)

A month later, Mr S abducted the respondent's five-year-old daughter from her home and raped her twice. In the trial that followed, Mr S was found guilty and received two life

Sentence for the rape of a minor child and five years' imprisonment for her abduction. Mr S also received four life sentences for the rape of his own daughter.

The respondent alleged that the combined negligent acts committed by members of the South African Police Service and the National Prosecuting Authority resulted in the release of Mr S on his own recognisance, thereby allowing him the opportunity to abduct and rape her minor daughter. She issued summons against the Minister of Safety and Security (as the first defendant) and the appellant (as the second defendant), for the payment of damages suffered as a consequence of the abduction and raping of her minor daughter.

The trial Court found after hearing the evidence that the defendants were liable, jointly and severally, for payment of damages as the respondent may prove that she has suffered in her personal and representative capacity. The appellant contended that the fault lay with the magistrate who erred in accepting the address as suitable. The SCA found that the prosecutor's negligent failure to place all relevant information before the magistrate resulted in Mr S being released from custody, thereby giving him an opportunity to abduct and rape the minor child. It also found that the respondent did establish the existence of a psychological injury or emotional shock for purposes of the merits of her claim in her personal capacity.

Case Overview

The first applicant in this matter was AB, a woman unable to medically fall pregnant. The applicant was unable to fall pregnant using her own gametes or donated gametes through invitro fertilisation (IVF). In the period 2001-2011 AB underwent 18 IVF cycles which were all



5.0 EQUALITY LAW

Da Silva v Road Accident Fund and Another¹⁷

Case Summary: The Constitutional Court handed down a judgment confirming the order of the Free State High Court in Bloemfontein, declaring section 19(b)(ii) of the Road Accident Fund Act, 1996 (old Act) to be unconstitutional and invalid. The section excluded the liability of the Road Accident Fund when the claimant is a passenger in a vehicle driven by a member of that claimant's household or when the claimant is responsible in law for the maintenance of the driver. The unanimous Court, agreed with the High Court that the restriction in section 19(b)(ii) of the old Act is unconstitutional in that it discriminates unfairly between categories of people, namely those who have a close familial relationship with the driver and those who do not. In particular, because it is more likely to impact the children or spouses of drivers, the provision was found to discriminate against claimants on the basis of their age and marital status.

Impact on Women's rights

- Court recognised that the impugned section unfairly discriminated on spouses (marital status) and children (age) on the basis of them being excluded from lodging a claim in terms of the section.
- Women (as spouses) and children can be claimants in terms of the above Act

Case Overview

The court dealt with the constitutionality of section 19 (1) (b) (ii) of the Road Accident Fund Act, 1996 (old Act) which precludes claims for compensation, where the claimant being a passenger, was a member of the drivers household or owed the driver a duty of support. Members who are not of the driver's household can however claim compensation. The applicant in this matter therefore sought confirmation by the Constitutional Court of an order made by the Free State High Court declaring the section unconstitutional.

¹⁷ Da Silva v Road Accident Fund and Another (CCT 29/14) [2014] ZACC 21; 2014 (8) BCLR 917 (CC); 2014 (5) SA 573 (CC) (19 June 2014)

Brief Facts: Ms Da Silva was involved in a car accident where she was badly injured, her husband was driving the vehicle and there was no dispute that he was at fault. In terms of the above referred provision, she was precluded from claiming compensation from the RAF as a spouse.

Franzman J for the majority agreed with the High Court's finding that the section was unconstitutional, furthermore that it discriminated against familial relations with spouses and children more likely to be excluded from the Act's protection. The respondents' rationale for the development of this section was that it was meant to prevent fraudulent claims resulting from collusion by members of a household. The order was therefore confirmed.



6.0 EMPLOYMENT LAW

Singh V Minister of Justice and Constitutional Development and Others¹⁸

Case Summary: The matter dealt with whether the Magistrate Commission in its recruitment and appointment of magistrates unfairly discriminated on potential candidates on the basis of their disability. The applicant had been an acting magistrate and when the posts were advertised, the applicant applied to be considered for 11 advertised posts for magistrates. One of the prerequisites as stipulated in the advert was that the candidate must be in possession of a drivers licence. The applicant had further contended she was discriminated on the basis of race because she had hoped to be appointed for a post in urban area in Kwa-Zulu Natal and being Indian was informed by the appointment board that “there were too many Indians holding similar posts in that jurisdiction.

Impact on Women’s rights

- Disability and gender must be considered as grounds for the appointment of judicial officers - intersectionality in the recruitment of magistrate posts is important.

Moreover the grounds listed in section 9 of the Constitution must be considered in the appointment of magistrates

Case Overview

This matter had been brought before this Court previously and similar issues had been raised in the recruitment and appointment of magistrates. The Equality Court had granted an interim order at the point directing amongst other issues, that the respondents revise the criterion for the shortlisting and appointment of magistrates so that it reflects the provisions of section 174(2)¹⁹ read with section 9 of the Constitution.

Brief Facts: The complainant had applied for position of magistrate in 11 centres, what prompted her to institute the application with the Court was

¹⁸ Singh v Minister of Justice and Constitutional Development and Others (57331/2011) [2013] ZAEQC 1; 2013 (3) SA 66 (EqC); (2013) 34 ILJ 2807 (EqC) (23 January 2013)

¹⁹ This section provides the need to take into account gender and racial composition in the appointment of judicial officers - the honourable judge in this matter recognises that this is not an exhaustive list

the Magistrate Commission released a shortlist of candidates despite an interdict for the same Court ordering them to halt the process until the matter was finalised. The complainant was not shortlisted for any of the vacant posts. She then filed a notice of motion alleging that she had been discriminated against on the basis that she was not in possession of a drivers licence which was a prerequisite – this she contended unfairly discriminates against people with disabilities. She further added that the criterion for selection discriminated on the basis of race and gender as it did not take into account any candidates with disability. The respondent contends that in the advertisement section 174(2) was taken into account as the advert expressly states these provisions. In interpreting this provision the learned judge relied on Satchwell J in *Bresier*²⁰ and Another and a lecture delivered by the then Chief Justice Ngcobo which provided that the rationale for diversity was to improve legitimacy and reflect the population of the country and even though the aforementioned section speaks to race and gender, it is not an exhaustive list of factors. The narrow interpretation therefore of this section by the respondent unfairly discriminates on disability.

In light of this, the Court found that the respondent had not considered disability in its appointment and that it has a duty to advance the rights of persons with the disability. It further added that disability does not entitle the applicant to be shortlisted but is an important imperative of the Constitution. This, the Court recognised must be clearly reflected in the Magistracy policy.

²⁰ Satchwell v Bresier & Another 2002(4)SA 524 (C)

Case Summary: The case involved the Labour Relations Act 66 of 1995 particularly, s 187(1)(f). In this case, the departmental dress code prohibited the wearing of dreadlocks by male correctional officers. The Court had to consider whether the dismissal of Rastafari and Xhosa respondents for refusing to cut their dreadlocks worn in observance of sincerely held religious and cultural beliefs was discriminatory and automatically unfair on grounds of religion, culture and gender. The Court also considered the meaning of s 187(2) (a)

Impact on Women's rights

- Reaffirmation of the importance of respecting and upholding religious and cultural rights in employment settings; women make a significant composition of the working class and should receive protection in this area.
- Employers must be cautious in the drafting of their policies to ensure the rights of employees are not violated –a policy is not justified if it restricts a practice of religion or cultural belief that does not affect the employee's ability to perform at work.

Case Overview

The respondents had been employed by the applicant, who had a dress code policy that precluded the wearing of dreadlocks. Various employees including the respondents continued to wear dreadlocks; this however became an issue when one of them was appointed area commissioner. The Commissioner then made immediate changes and one of them was the wearing of dreadlocks, he states that employees must adhere to the dress code policy failing which reasons must be advanced. Some employees then shaved their dreadlocks, the respondents however did not. The Commissioner then later wrote to the respondents requesting that they advance reasons for their failure to adhere to policy, in response religious and cultural beliefs were cited.

²¹ Department of Correctional Services & another v POPCRU & others (107/12) [2013] ZASCA 40 (28 March 2013)

The Commissioner insisted that they comply; the respondents failure to comply led to a disciplinary hearing which none attended on the basis that the Commissioner would not be objective to their reasoning. The result of non-attendance led to the respondent's dismissal from work.

The respondents approached the Labour Court seeking a declaratory order alleging that the dismissal was automatically unfair on the basis that that they were being unfairly discriminated either indirectly or directly on the basis of religion, conscience ,culture ,gender as stipulated in section 187(7)(f) . The Commissioner's defence was that this was a way to instil discipline and security in the prison environment. Whilst the Labour Court acknowledged that the reasons advanced by the respondent were cultural and religious, they however failed to draw their beliefs to the Commissioners attention thereby showing a causal link between the prohibited grounds for dismissal and circumstances surrounding this. The Court did however find there to be discrimination on the basis of gender, the rationale for the decision was that the applicants failure to show that the biological differences between men and women justified discrimination. The Court therefore concluded that the appellants had failed to rebut the presumption of the unfairness of the Commissioner's instruction.

On appeal to the Labour Appeal Court, the Court dismissed the appeal and held the dismissal to be automatically unfair on the basis on culture, religion and gender (note that the respondents had made a cross appeal for the inclusion of the grounds of culture and religion) however the Court found this to be unnecessary because they accepted the order of the Labour Court and required confirmation of additional grounds.

On appeal to the SCA, the appellants took the position that the discrimination was fair on the basis that it sought to "eliminate the risk of placing officers who subscribe to religion or culture that promotes criminality (the use of dagga) - in a quasi- military institution such as a prison.

In light of the above the Court found that the applicant failed to show that the dress code, in particular the dreadlocks issue was an inherent requirement of the job, moreover the justification of the policy initially was to entrench uniformity and regardless of the change in argument - the applicants had failed to show the rational connection between the

discrimination and measures taken. The Court further noted that a policy is not justified if it restricts a practice of religion or cultural belief that does not affect the employee's ability to perform.

Dwenga & Others v The South African Military Health Service²²

Case Summary: In a previous judgement the High Court had declared the SANDF blanket policy of excluding anyone living with HIV from recruitment and external deployment to unconstitutional and infringement of the rights of HIV positive person. The SANDF continued to ventilate its employment practice to new recruits. The North Gauteng High Court made a powerful statement in this case re-asserting that people living with HIV have rights in every sphere of life and work including in the military.

Impact of Women's Rights

- Court affirmed that employment policies should not unfairly discriminate against people living with HIV
- Reaffirmed the dignity of people living with HIV, this is also applicable to women.

Case Overview

This matter relates to the a recruitment policy of the South African National Defence Force (SANDF) regarding the recruitment of certain individuals who due to health reasons were classified in particular category that excluded them from being employed for certain position. A High Court in previous proceedings had already declared that blanket exclusion of anyone living with HIV from recruitment, deployment and promotion to be unconstitutional. The issue to be decided by the Court in this matter was whether the SANDF should be permitted again to ventilate the issue of the constitutionality of its employment practice.

Brief facts: The SANDF takes new recruits through a Military skills development system for two years where they are trained and later prepared to be deployed in various posts within the SANDF. They may be deployed to serve in the Core Service System (CCS) or the Reserve Force for five years.

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Dwenga & Others vs. South African Military Service

The conclusion of the CCS contract is dependent on the availability of posts and meeting a particular health classification. The Health Classification policy specifically adds that “all assessmentand health classification of and deployability of SANDF members must be applied according to constitutional imperatives, the only requirement was that they must be fit persons. Though this policy did not exclude HIV positive persons, the requirement to be deployed for CCS was for the SANDF Recruit to meet a G1K1 classification which for HIV positive persons or people with chronic illnesses they could not meet. The first and second applicants had completed their MSDS service and CSS posts were available, these sought to be employed at that level. Both applicants were HIV positive and as result fell under the G1K1 classification which meant they could not be offered CCS contract.

The applicants therefore brought an application to the High Court to decide on the issue of whether the respondent should be allowed to continue to ventilate the constitutionality of its employment practice. The respondents in their answering affidavit acknowledged that the G1K1 classification as a prerequisite for CCS discriminated against people living with HIV or had a chronic illness however they contended that the SANDF for the past 6 years had been oversubscribed and they had to choose the best candidates and to that they had to eliminate and their starting point was a health examination. They therefore contended that the discrimination was justifiable.

Considering that this issue had already been decided by a court previously, the learned judge in this matter declared that in the interest and fairness and equity, it was vexatious and frivolous for the respondent to re-litigate on the same issues despite the fact that the applicants in this matter were different. The Court also found the contention for oversubscription of recruits was not substantiated by the respondents rather that there was no evidence adduced that the requisite health cannot be achieved by a person who lives with HIV. Referring to the Hoffman judgement²³, with similar facts where the Constitutional Court ruled that the refusal by SAA to employ the appellant constituted unfair discrimination.

Similarly the learned judge in this case declared that the SANDF policy denies HIV positive persons entry into CCS ,a fact not denied by the respondents, constituted “an assault on their dignity ”and further violated the right to equality.

The Court also ordered that the respondents “redress the wrong the first and second applicants suffered and, as far as possible, be placed in the same position they would have enjoyed but for the unfair discrimination against them”.



7.0 LGBTI RIGHTS

Laubscher N.O. v Duplan and Another²⁴

Case Summary: The Constitutional Court handed down judgement in a matter concerning the continued recognition of intestate inheritance rights for same sex partners in light of the Civil Unions Act, 2006. The applicant in this case had brought an application to the Constitutional Court, claiming to be the lawful heir of his deceased brother's estate as the respondent who had been in a same sex partnership with his late brother had not been in a registered union as stipulated in the above referred Act. The respondent claimed that the Civil Union Act had the effect of replacing the definition of spouse as provided in the Gory matter. *Gory v Kolver* extended the definition of spouse in the Intestate Succession Act to include permanent sex partners.

The Court saw no reason to deviate from this judgement and rather held that the Civil Union Act did not have the effect of specifically amending the revised definition of spouse in the Intestate Succession Act but rather created a new category of beneficiaries, same sex partners who had entered into registered civil unions. In light of this the Court ordered that respondent is entitled to inherit from the estate of the deceased partner.

Impact on Women's Rights

- The Court recognised the reciprocal duty of support between same sex partners who are not married and held that they remain entitled to inherit intestate
- Court concluded that civil union marriages ought to be interpreted in a manner that best conforms to and least infringes the fundamental right to equality
- Obiter dictum – the court noted that reading-in led to discrimination against unmarried heterosexual spouses – and recognised that there are many forms of cohabitation.

²⁴ (CCT234/15) [2016] ZACC 44 (30 November 2016)

Case Overview

Laubsher v Duplan & Another the matter concerned with the intestate succession rights of unmarried same sex partners in a permanent same sex relationship where the partners had undertaken a reciprocal duty of support. In particular, the Court had to make a determination whether Dr Erasmus Laubscher, the applicant, in his personal capacity or whether Mr Duplan, the respondent who had lived with Mr Daniel Laubscher, now deceased, and was in a permanent sex partnership with the latter was entitled to inherit from the intestate estate of the deceased. It also entails the reading in of Gory v Kolver²⁵ into Section 1 of the Intestate Succession Act.

Brief Background

The respondent and the deceased had lived together since 2003 during which period had undertaken a reciprocal duty of support. Their partnership was neither solemnised nor registered in terms of the Civil Union Act, on 13 February 2015 the deceased died intestate leaving behind no descendants or adoptive children. The deceased parents had also predeceased him. The applicant who is the brother of the deceased and the only surviving child of their parents, at the point of bringing the application is the executor of the estate. The dispute was on whether the respondent is entitled to inherit the estate besides the fact that their relationship was not solemnised and neither was it registered.

The matter had initially been brought before the High Court and similarly the issue was whether the respondent was entitled to inherit the intestate estate of the deceased. The respondent relied on Gory contending that despite the non-solemnisation and non-registration of their partnership in terms of the Civil Union Act, he was entitled to inherit.

25 Gory v Kolver NO [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC). The order in this case declared that with effect from the 27th of April the omission in section 1(1) of the Intestate Succession Act 81 of 1987 after the word 'spouse', wherever it appears in the section, of the words 'or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support' is unconstitutional and invalid.

2. It is declared that, with effect from 27 April 1994, section 1(1) of the Intestate Succession Act is to be read as though the following words appear therein after the word 'spouse', wherever it appears in the section: 'or partner in a permanent same sex life partnership in which the partners have undertaken reciprocal duties of support.'" Note that prior to this as a result of the omission same sex partners who has undertaken a reciprocal duty of support could not inherit intestate.

The applicant on the other hand opposed the respondents position stating that the implication of the Civil Union Act was that only same sex partners who had solemnised and registered their marriage in terms of this Act qualified to inherit the intestate estate of a partner – his argument therefore was that the respondent is not a spouse as determined by the Intestate Act and therefore disentitled to inherit.

Relying on Gory where the Court had held that section 1(1) of the ISA was unconstitutional and invalid to the extent that the words “or partner in a permanent same sex partnership where the partners had undertaken a reciprocal duty of support “ were excluded after the word spouse. The Court also recognised that in line with the doctrine of stare decisis it could not deviate from the decision of the Constitutional Court, as a higher Court in such matters.

The Court then granted an order declaring the respondent to be the only intestate heir of the deceased estate. The applicant therefore sought leave to appeal to the Constitutional Court bypassing the Supreme Court of Appeal submitting that the dispute concerned an interplay between a judgement of a Court and enacted legislation and secondly that the High Court had relied on the principle of stare decisis to find in favour of the respondent and there was a likelihood that on appeal to the SCA a similar challenge may be faced. The Constitutional Court therefore granted this leave to appeal as it saw it to be in the interests of justice.

The Constitutional Court, in light of the arguments brought by the two parties, concluded that the enactments of the Civil Union Act did not specifically amend section 1(1) of the ISA as was required in the Gory matter. It rather constituted a new category of beneficiaries distinguishable from same sex permanent life partnerships. The majority judgement similarly noted that an inequality may exist, in that heterosexual partners currently do not benefit under the Intestate Succession Act, and held that it was for the legislature to afford heterosexual partners the same rights.

Other important Linkages:

Volks NO v Robinson [[2005\] ZACC 2; 2005 \(5\) BCLR 446 \(CC\)](#)
Paixão v Road Accident Fund [[2012\] ZASCA 130; 2012 \(6\) SA 377 \(SCA\)](#).



8.0 NATIONALITY AND IMMIGRATION

Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others²⁶

Key words: Constitutional law – rights of refugees and asylum seekers

Case Summary: The Court dealt with Asylum seekers and refugees' entitlement to apply for licences to trade in spaza and tuck-shops, the argument by the applicant was that there is no blanket prohibition against self-employment either in terms of the Constitution or applicable legislation. The court affirmed the right to dignity section 10 and right to trade and occupation section 22 of the Constitution and it also added that the vulnerable position of asylum seekers and refugees must be considered and South Africa's international obligations noted.

Impact on Women's Rights

- Court clarified the legal position and confirmed that the constitutional rights to dignity and work are key in the protection of the rights of refugees and asylum seekers in the country. This also benefits refugee women and those who are asylum seekers.
- The unlawful practice of preventing refugees and asylum seekers from trading was declared to be a violation of key constitutional rights.

Case Overview

The case was centred around the unlawful practice preventing refugees and asylum-seekers from trading and operating businesses within Limpopo. The applicants sought to ensure the powers of the police, local municipalities and the other respondents are exercised lawfully and with due regard for the rights of refugees and asylum-seekers because the individual's rights were being negatively affected by the actions of the respondents. Consequently, the traders in question were deprived of their only means of financial support and were left destitute. Many refugees and asylum-seekers in South Africa are unable to find employment aside from informal trading.

²⁶ (48/2014)[2014] ZASCA 143; 2015 (1) SA 151 (SCA); [2014] 4 All SA 600 (SCA) (26 September 2014)

These traders provide accessible, convenient access to goods including essential every day food items and cellular phone airtime. The applicant's argued that the infringements were being carried out in two ways: by the Limpopo Department of Economic Development, Environment and Tourism refusing to accept applications for trading licenses; and through a crackdown on illegal businesses, known as 'Operation Hardstick', that was used by the police to unfairly target refugees and asylum-seekers.

In the High Court, it was held that refugees and asylums seekers, although legally present in South Africa, did not have the right to trade while awaiting permanent residence. The applicants argued that they have the right to equal treatment and should be permitted to apply for and be granted trading licences. They also argued that they are entitled to the constitutional right to dignity and that the result of preventing them from earning a living would leave them destitute and are, therefore, tantamount to depriving them of the right to dignity. The respondents argued that refugees and asylum seekers do not have the same rights as South African citizens. They further argued that a differentiation based on their status is allowed by the Constitution, and that the right to self-employment is reserved for South African citizens. The High Court was of the view that s22 dealt specifically with the right to trade, and that limiting the right to trade to citizens has not only been internationally recognised, but has also been previously confirmed by the High Court and the Constitutional Court. Additionally, the High Court was not willing to extend the principle that "refugees have the right to employment when their dignity is affected" to self-employment. On appeal, the SCA handed down judgment in favour of asylum seekers and refugees lawfully present in South Africa, allowing them to be self-employed with the consequential right to trade and earn a living in the informal sector. The Court criticised the High Court decision by stating that there is no blanket prohibition against asylum seekers and refugees seeking employment, as there is no restrictive legislation in force that prohibits them from being granted licence. Further, where a person has no other means to support himself or herself the right to dignity is relevant. If an asylum seeker or refugee is unable to attain wage-earning employment, and is on the verge of starvation, which results in humiliation and degradation and can only sustain him or herself by trading, they ought

to be able to rely on the right to dignity so as to advance the granting of a licence to trade. Furthermore, the SCA decided that the High Court's attitude reflects an unjustifiably narrow approach to the Constitution and diminishes the status of asylum seekers and refugees. While a regulatory framework is still necessary in the industry, the SCA judgement clarifies the legal position of foreigners who wish to trade in the sector



9.0 SOCIO-ECONOMIC RIGHTS

Klaase & Another v Jozia Van Der Merwe N.O and Others ²⁷

Case Summary: This matter deals with the rights of occupiers in terms of the Extension of Security of Tenure Act (ESTA) no.62 of 1997. The applicant sought leave to appeal against two judgements made by the Land Claims Court based in Cape Town. The Court confirmed an eviction order granted against the applicant however in an application by the wife to be joined into the proceedings, the Court made a distinction between two classes of persons who occupy property in terms of the ESTA; the Court ruled that Ms Klaase does not fall under the category of occupier resulting in her application being dismissed.

The Constitutional Court dismissed the appeal by the first applicant Mr Klaase and with regards to Mrs Klaase appeal the Court had to consider whether the Land Claims Court made a mistake in not joining her to the proceedings. The Court held that the eviction of an individual on the basis of the conduct of the spouse or partner has significant implications of the security of Mrs Klaase and those who fell in a similar category – largely women. In substantiating this, the Court recognised that respondent knew of Mrs Klaase occupancy and at no point objected to it and therefore recognise her as an occupier as defined by the ESTA.

Impact on Women's Rights

- The recognition that women in similar situation are afforded the same protection as “occupiers” as provided for in ESTA.
- Women in their own rights can be occupiers in terms of the ESTA so long as the owner of the land has consented to their occupation

Case Overview

Brief Facts: The second applicant, Mr Klaase started working in the farm in 1972 as a general worker. He then entered into a romantic relationship with Mrs Klaase who fell pregnant with their first child. Mr Klaase's father who also worked and lived on the farm then built a cottage for Mr Klaase to live in on the same farm. They later married in 1998 and continued to live on the farm up until 2014 when an order for eviction was granted against Mr Klaase.

²⁷ Klaase and Another v van der Merwe N.O. and Others (CCT 23/15) [2016] ZACC 17; 2016 (9) BCLR 1187 (CC); 2016 (6) SA 131 (CC)

This arose as a result of the Mr Klaase being dismissed from work in 2010 following a charge for absconding and being absent from work. Mr Klaase through representation from union took the matter to the CCMA alleging constructive dismissal due to abusive conduct by the management of the farm. The parties eventually settled, Mr Klaase agreed to a financial settlement of 15000ZAR following which he would vacate the premises. He however did not do so. Later the respondent sent him a letter demanding that he leave the premises which he did not. In a few months the respondent applied for an eviction order against the applicant and the persons occupying under him. Following a report from the probation officer the Court ordered that Mr Klaase remain in the farm until alternative accommodation had been made available, Mr Klaase indicated that he was prepared to pay 60 ZAR a week for rent, he however did not stick to this agreement and continued to stay the farm whilst he had obtained alternative employment. The municipality was engaged for possible alternative accommodation but stated that due to housing shortages there were no possibilities of him getting alternative accommodation.

In 2014, the respondent applied to the magistrate Court for an eviction order against the applicant, and the trial Court ruled that the respondent had followed process as stipulated in the ESTA. This order was subject to review by the Land Claims Court. At this point Mrs Klaase applied for joinder to the application as a second respondent taking the position of an occupier as stipulated in the ESTA. The Land Claims Court dismissed the application with the view that Mrs Klaase had not made a case to be joined as a party and therefore did not have substantial and direct interest in the matter. The Court also confirmed the eviction order against Mr Klaase.

Not satisfied with the decision of the Land Claims Court, both Mr and Mrs Klaase petitioned the Supreme Court of Appeal, Mr Klaase appealing the confirmation of the eviction order and Mrs Klaase for the refusal of the Joinder, the SCA dismissed this application. The applicant then applied for leave to appeal at the Constitutional Court. The respondents opposed this application submitting that the matter did not raise a constitutional issue. The Constitutional Court issued directions that written argument be brought by both parties and for further submission to be made on Mrs Klaase right under the ESTA and the potential prejudice those women who

under the ESTA find themselves in the same positions. Amongst the issues that the Court had to decide on were whether Mrs Klaase qualified as an occupier in her own right under the ESTA and whether her eviction was just and equitable including whether the execution should be suspended pending the determination of her rights. The Court granted Mrs Klaase leave to appeal stating that her application raises constitutional issues of equality and human dignity. With regards to Mr Klaase appeal the Court found that decision by the Land Claims Court to confirm his eviction could not be faulted, therefore his appeal was denied.

The Court found that, in the instance of Mrs Klaase she had a substantial interest in the matter as she had been living in the farm for the past 30 years together with the children and grandchildren, as such the Land Claims Court should have considered her a joinder. It further stated that her right to housing would be substantially affected as such the Court erred in dismissing her application to joinder. Referring to *Goedgelegen*²⁸ the Court held that the ESTA is remedial legislation, “umbilically linked to the Constitution” and therefore its interpretation must afford occupiers the fullest possible protection of their rights.²⁹ Furthermore relying on the definition of consent in the ESTA the Court held that the respondent knew about Mrs Klaase living in the farm and did not object to it, meaning the respondent tacitly consented to it. The Court therefor ruled that Ms Klaase is an occupier and was entitled to the same protections set out in the ESTA. It further added that the narrow construction by the Land Claims Court that Mrs Klaase occupied the premises under her husband perpetuates the indignity suffered by women in similarly positions. The Court therefore granted her leave to appeal.

²⁸ Department of Land Affairs v Goedgelegen Tropical Fruits (PTY) LTD (2007) ZACC 12;2007 (6) SA 199 (cc);2007 BCLR 1027(cc).

²⁹ Paragraph 51 of the judgement.

Case Summary : Decision on an application for a declaratory order confirming that the respondents' conduct was unlawful and violated certain constitutional rights and duties, including the rights to access adequate housing, a healthy environment, human dignity, privacy and children's rights. The Court found that the City's decision to install unenclosed toilets lacked reasonableness and fairness; the decision was unlawful and violated constitutional rights. It further added that the legal obligation to reasonably engage the local community in matters relating to the provision of access to adequate housing which includes reasonable access to toilet facilities in order to treat residents "with respect and care for their dignity" was not taken into account when the City decided to install the unenclosed toilet.

Impact on Women's Rights

- The Court grounded the importance of meaningful consultation and participation, a key constitutional principle. It recognises that the circumstances of each community is unique and must be afforded the necessary importance.
- Provision of adequate toilet facilities for women is very crucial as women are most vulnerable when seeking to utilise these all hours of the day and night and as such become exposed to various vulnerabilities such as sexual abuse in utilising the toilet in the middle of the night.

Case Overview

The case involves the residents of an informal settlement at Makhaza, which is part of the Silvertown Project in Cape Town. The City of Cape Town (the City) decided to upgrade the informal settlement under the Upgrading of Informal Settlements Programme (UISP). The judgement provides clarity on the provision of basic services in the context of a situation upgrading of informal settlements and attempts to give substantive and normative content to this process by situating it within a broader constitutional, legislative, policy, and jurisprudential framework.

30 [2011] ZAWCHC 97.

The Court reiterated that the requirements of privacy, protection against the elements, and adequate sanitary facilities are central features of the development of adequate housing in South African informal settlements. Furthermore, the judgement stresses the importance of community participation as outlined in the UISP, as well as the concept of “meaningful engagement”, as provided for in the Constitution and the National Housing Code.

An agreement was entered into between the City and some individual members of the community in respect of the provision of 1316 toilets for the Silvertown Project. The application to the High Court was regarding 55 unenclosed toilets in the settlement. The applicants argued that the provision of open toilets violated several of their constitutional rights. In its response, the City justified its conduct by asserting that the residents had agreed to enclose the toilets themselves, provided that the City provided one toilet per household. Following this agreement, most of the installed toilets had indeed been enclosed by the residents themselves. However, the enclosures were inadequate due to a lack of financial means. An official complaint was lodged with the South African Human Rights Commission, which found that the City had violated the residents’ right to human dignity. On review of the case, the High Court issued an interim order requiring the City to enclose the toilets referenced in the application but also, upon written request, to enclose the toilets that had been enclosed by residents themselves. The High Court found that the agreement failed to meet minimum guidelines for agreements with communities with the aim of realising socio-economic rights, and the City’s action therefore did not meet the reasonableness requirement of the Constitution.

In addition to this, the court found that the agreement was in violation of the right to human dignity, freedom and security of the person, privacy, environment, housing, and health. The Court also found that the unenclosed toilets violated the National Standards and Measures to Conserve Water. In its final order, the Court ruled that the City must enclose all 1316 toilets in accordance with the UISP. In mid-2011, the executive mayor of Cape Town indicated that an agreement had been reached between the City of Cape Town and the Makhaza residents on the model of enclosure for the toilets, in compliance with the Cape High Court ruling.

The City enclosed toilets with concrete and the construction of the toilet enclosures commenced in July 2011. All toilets were enclosed by March 2012.



10.0 SPOUSAL MAINTENANCE AND DIVORCE

DE v RH³¹

Case Summary: The Court had to consider whether in a case where the act of adultery by one spouse gives rise results to an action in delict against a third party for injury or insult to self-esteem (contumelia) and loss of comfort and society (consortium) of her spouse. The Court ruled that in the development of common law of delict based on public policy, there must be considerations of constitutional values. It further declared that the continued existence of a claim for adultery in South African law violates the right to dignity and privacy; therefore the legal consequences of adultery no longer apply in our law

Impact on women's rights

- Previously in law spouses tended to be blamed for adultery however this decision recognises the element of wrongfulness for a delictual claim in such matters should no longer be part of our law.
- Relying on national and comparative law, the Court recognised that society is changing and softening to these issues hence public policy must be reflective of these changes.
- Public policy in itself is also open to constitutional scrutiny hence it cannot be devoid of underlying principles.
- Recognised that South Africa as a society reflected its views in amongst examples in the Divorce Act in which the no fault divorce principles applies.

Case Overview

Prior to this application, the Supreme Court of Appeal made a pronouncement stating that the time had come to remove this action as part of a claim in our legal system.

Brief Facts: The Applicant had been married to Ms H and according to the facts their marriage had begun deteriorating. She did not dispute that her and the respondent became involved in a romantic relationship but however claimed that they only got intimate after the marriage relationship had irretrievably broken down. There was no dispute however as to whether adultery occurred.

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DE vs RH (2015)ZACC18

The applicant had successfully sued the respondent for damages arising from adultery that occurred between respondent and his wife at the time. On appeal, the Supreme Court in its own accord dealt with the question whether such a claim should continue to exist in our law. The SCA concluded that though the applicant may have a claim for contumelia it added that "in light of changing mores in our society, the delictual action based on adultery ...had become out dated and can no longer be sustained and that the time for its abolition had come"³².

The applicant then sought leave to Constitutional Court contending that the question whether the delictual claim based on adultery should continue to exist is an arguable point of law of general public importance. Delving into this question, the Court recognised the importance of developing common law in a manner that promotes the spirit, purport and object of the Bill of Rights³³. Moreover it held that an analysis of morals of our society must include an assessment of constitutional norms - referring to *Barkhuizen*, public policy is now steeped in the Constitution and its value system. *Madlanga J* also reviewed comparative law however, stated that this must be done with caution as the South African context is specific; the analysis found that delictual claim for adultery arose from English Law and many jurisdictions including England had long abolished this claim and where such claims still existed society perceptions had softened over time. He continued to add that this claim as noted in previous judgements was founded on patriarchy as only men could be claimants against other men, over time various judgements in the Appellate Division overturned this as discriminatory and ruled that women should be allowed to institute a similar claim.

However the central question as noted earlier was whether such a claim should continue to exist in our legal system. The honourable judge found that the constitutional rights to freedom and security of a person, privacy and freedom of association were of relevance in this matter; and more importantly that the delictual claim is particularly invasive of the right to privacy. He substantiated this by making examples of how the respondent and wife of the applicant "were made to suffer the indignity of having their personal lives put under microscope".

³²

³³ See paragraph 16 of the judgement. Also see section 39(2) of the Constitution

The Court ruled that the act of adultery lacks wrongfulness for purposes of a delictual claim. The concurring judge, Mogoeng CJ added that the law cannot sustain an otherwise ailing marriage – the primary responsibility lies between both parties and therefore held that “a claim for damages for adultery by the innocent spouse added nothing to the lifeblood of a solid marriage.

R v R³⁴

Case Summary: The Court had to deal with two questions of law: Firstly, whether the Islamic marriage entered into between the plaintiff and the defendant was validly concluded notwithstanding the existence of a prior marriage in terms of the provisions of the Marriage Act. Secondly, whether the first defendant’s prior existing civil marriage would “act as a bar” to the plaintiff being entitled to claim certain relief in respect of the proprietary consequences of her Islamic marriage to the first defendant. In this ground-breaking judgement the Court recognised that men do enter into other marriages simultaneously and those marriages are no less worthy than civil or customary marriages and should not prejudice spouses to the union. The Court ruled therefore that the existence of the prior civil marriage did not bar the plaintiff from claiming maintenance and a share of her former husband’s pension.

Impact on Women’s Rights

- Women in polygamous Islamic marriages are entitled to the same benefits stemming from the proprietary consequences as provided in the Divorce Act upon the dissolution of the marriage

Case Overview

The issue before the Court related to the validity of marriage constituted in terms of Muslim law notwithstanding that a previous marriage existed. Secondly, whether the first defendant prior to the existence of a civil marriage would as a bar for the plaintiff claiming relief in terms of the proprietary consequences of the marriage.

³⁴ R v R and Others (14770/2011) [2015] ZAWCHC 6; [2015] 2 All SA 352 (WCC) (29 January 2015)

Brief Facts: The applicant had been married to the first respondent in 1998 through Islamic Law however the latter had also been married in 1975 to X and their marriage was dissolved through divorce in 1998. This means that when the applicant married the first respondent who was already married to X and therefore was in two unions at the same time. In 2009 however the marriage between the respondent and applicant was dissolved through the Muslim Judicial Council. It is important to note that at this point South Africa does not recognise Muslim Marriages as part of the law.

The plaintiff sought benefits in terms of the proprietary consequences of the marriage; in light of this the Court had to deal with the two issues of law mentioned above. The Court in deciding on the first issue expressed the view that for purposes of the applicants claim delving into whether the marriage existed or not did not apply however the relevant legislation for the relief sought by the applicant was the Divorce Act, 1979 which in the absence of a definition of marriage in the Act, did not preclude Muslim Marriages. Relying on the Hassam³⁵ judgement by Daniels J, the Court held a similar view that the definition of “spouse” for this purposes of this action includes “a spouse whose marriage was concluded under the tenets of Islamic Law”.

The learned judge was also of the view that the position of Muslim marriages had been decided by previous judgements and was of the view that a position had been taken on monogamous Muslim marriages; it would be unfair discrimination if a distinction was made between monogamous and polygamous marriages within the Muslim setting as is the case in matter.

To further support this position, the Court referred to Constitutional Court judgement, National Coalition for Gay and Lesbian Equality v the Minister of Home Affairs³⁶ where the judge expressed a position that parties to a Muslim marriage were to be considered “spouse” because they are married to each other even though the marriage was not solemnised in terms of the Marriage Act and not recognised under South African Law.

In light of this the learned judge ruled that the existence of a prior union did not bar the plaintiff from the proprietary consequences provided in section 7(9) of the Divorce Act, 1979³⁷.

³⁵ 2009 (5) SA 572(CC)

³⁶ [1999] ZACC 17; 2000 (2) SA 1(CC)

³⁷ The relevant section in the Divorce Act is section 7(9) provides that “When a court grants a decree of divorce in respect of a marriage the patrimonial consequences of which are according to the rules of the South African private

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11.0 SUCCESSION AND INHERITANCE LAW

Shilubana and others v Nwamitwa³⁸

Case Summary: This matter dealt with the appointment of a woman to a chieftaincy position for which she had been previously disqualified by virtue of her gender. The Court had to decide whether the community had the authority to restore the position of traditional leadership to the house from which it had been removed as a result of gender discrimination, even though the discrimination came into place before the coming into operation of the Constitution. In arriving at its decision the Court recognised the importance of respecting the community's ability to change its customary practices to be in line with constitutional values.

Impact on Women's Rights

- Courts recognise that customary law is living and therefore is constantly changing and adapts to the contemporary context
- Customary principles must be aligned to constitutional values
- Communities in their accord can change the principles to align with constitutional values - as seen in this a women can acquire Chieftainship
- Reaffirmed that the customary rule of primogeniture violates constitutional rights

Case Overview

The dispute relates to the right to succeed Chieftaincy of a tribe - more specifically whether the Court should uphold the community's wish for a woman to take up the position of as a chief.

Brief Facts: The applicant ,Ms Shilubana daughter of Hosi Fofeza and Mr Mwamitwa, son to Hosi Richard. In 1968 Hosi Fofeza died and because he had no son according to the customary rule of primogeniture, his younger brother succeeded him. In 1996, during Hosi Richards reign the Royal Family of Valoyi tribe unanimously decided to confer Chieftainship on Ms Shilubana. This decision was made in light of the constitutional principle that recognises equality and affords females an opportunity to be chiefs if

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(CCT 03/07) [2008] ZACC 9; 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC) (4 June 2008)

they qualify according to the rules of the community. A letter was sent to the Commission for Traditional Leaders in the Northern Province confirming this resolution. Ms Shilubana at the point did not want Hosi Richard to step down until she completed her term as Member of Parliament. However in 1999, Hosi Richard wrote a letter withdrawing his support for Ms Shilubana to take over the Chieftaincy. In October 2001, Hosi Richard died and the following this, in November of the same year, the Royal Family met and resolved to confer the Chieftainship to Ms Shilubana. Late in that month the Royal Family, tribal Council and, representative of Local Government met and also confirmed Ms Shilubana as Chief. There was however a group of community members who wanted Mr Mwamitwa (son to the late Hosi Richard) to succeed. In an inauguration scheduled for Ms Shilubana to be conferred as chief, the respondent interdicted this process following which he instituted proceedings in the Pretoria High Court seeking a declaratory order that he is the rightful heir to succeed Hosi Richard and the other 6 applicants withdraw their letters of support for Ms Shilubana. The High Court had to address four questions which related to whether Tsonga/Shangaan traditions allowed for a female to be appointed chief; whether Hosi Richard was appointed as acting and whether in the appointment the Valoyi Tribe acted in terms of custom and tradition and lastly whether the Executive Councils appointment of Ms Shilubana in accordance with custom of tribe within the meaning of the Constitution. The High Court found in favour of the respondent in the above regard. Similarly the SCA affirmed the decision of the High Court.

The applicant then applied for leave to appeal to the Constitutional Court, to decide on two issues, the proper approach to determine a customary law and the existence of Mr Mwamitwas claims that they traditionally acted unconstitutionally by appointing Ms Shilubana to the Chieftaincy. In response to the first question, Van Der Westhuizen J , relied on the Bhe³⁹ judgement concluded that customary law is protected subject to the Constitution however recognising that where there is a dispute under customary law both the traditions and present practice of the community must be considered .

³⁹ Bhe and Others v Magistrate, Khayelisha and Other (Commission for Gender Equality as Amicus Curiae) 2005 (1) SA 563 (CC); 2005 (BCLR) 1 (CC).

Furthermore the learned judge remarked that where the development happens in the community, the Court must give effect to that development⁴⁰. Westhuizen J further declared that the Royal Family intended to affirm constitutional values in traditional leadership, in this case undoing gender discrimination, and had the authority to do so; as such the respondent has no vested right in the chieftainship.

M and another V M and Another (63462/12) [2014] Zaggphc 1026 ⁴¹

Case Summary: This matter deal with the customary law principle of male primogeniture as relates to customary law of succession. The trial court had to deal with whether customary law must be developed to align with constitutional values in cases for the children born of a polygamous marriage. The Court ruled in this case that the principle of primogeniture under customary law was in conflict with the Constitution particularly because it perpetuated discrimination against female children, children born out extra marital relationships and adopted children.

Impact on Women's Rights

- This decision affirmed the right to equality by stating that women in polygamous marriage have the right to inherit property.
- Recognised the equal status of children irrespective of whether they are born of a polygamous marriage or not or born in an extra marital relationship or in the marriage
- Reaffirmed that the customary law rule of primogeniture unfairly discriminates on the basis of gender and birth and thus is inconsistent with the Constitution.

Case Overview

This matter deals with the customary law principle of primogeniture and whether such custom should be developed to treat children of the deceased equally; including whether the eldest son who is an heir in accordance with Venda custom inherit the property in terms of western ownership.

⁴⁰ Paragraph 49 of the Judgement

⁴¹ M and Another v M and Another (63462/12) [2014] ZAGPPHC 1026 (10 December 2014)

Brief Facts: In this case the applicant and respondents were children of the deceased who was in a polygamous marriage with two wives. He had bought two farms and allotted one to each of the wives to make use of the land. Upon his death and in accordance with Venda custom, the Bantu Affairs Commissioner appointed the first respondent as the heir of the deceased estate given that he was the eldest born son of the deceased. The applicants submitted in this Court that the respondent had not become the owner of the farm in the Western way and furthermore that according to Venda Custom, the rule of primogeniture should apply which means that the respondent steps into the shoes of the deceased and takes care of both families, he basically becomes the custodian of both. Relying on Bhe the applicants position was that the farm initially allotted to wife number two by the deceased must be returned to the second wife and shared by her children – as recognised on this case it was contended that the problem with the rule is that it precludes widows from inheriting as intestate including younger sons, children born extra marital. Furthermore the applicants argued that the declaration of invalidity of the property must be made retrospectively. The Court recognised in this case that the principle of primogeniture places a right to inherit the entire estate on the eldest son to the exclusion of female children and younger children, therefore purely on the basis of gender and birth order. In making its decision the Court also recognised that the Reform of the Customary Law of Succession which came into operation in 2012 introduced a new era of succession which harmonises customary laws of intestate succession and common law. Women and children are specifically included as descendants⁴² in this Act.

The Court therefore recognised that the principle of primogeniture was applied in this case and furthermore the deceased had not owned tribal land but rather bought the farms with the intention of use by the wives; in light of this the Court ruled that the winding up of the deceased estate should have been done in terms of the Intestate Succession Act and to be consistent with the Bhe judgement. The Court ordered that the respondent register the second property in the names of the applicants who were children of the deceased second wife, who also at the time the matter was heard was deceased.

⁴² See section 1 of the Reform of Customary Law of Succession Act - it defines a descendant as a person who is a descendant in terms of the Intestate Act, and includes a) a person who is not a descendant in terms of the Intestate Succession Act, but who during the lifetime of the deceased, was accepted by the deceased person in accordance with the customary as his or her child b) a woman referred to in section 2(2)(b) or (c)



12.0 VIOLENCE AGAINST WOMEN

Mhlongo v the State⁴³

Case Summary: The case involved a plaintiff who was charged on one count of rape. The charge sheet erroneously referred to Part 2 of Schedule 2 and not Part 1 of Schedule 2 to s 51(1) of the Criminal Law Amendment Act 105 of 1997. As such, a sentence of life imprisonment was imposed. The question before the Court was whether this irregularity vitiated the sentence proceedings in terms of s 276B of the Criminal Procedure Act 51 of 1977. Also, it considered the importance and permanent infusion of the Victim Impact Statement at the sentencing stage. Court ruled that it is the duty of the prosecution to place all information before the Court. It further ordered that comprehensive guidelines protocol and model Victim Impact Statements instruments must be drafted by the National Director of Public Prosecutions; the matter was remitted to the Court a quo.

Impact on Women's Rights

- The Court established that it will not depart from the minimum sentence for an offence as serious rape, and declared that a life imprisonment is appropriate where no compelling circumstances exist to depart.
- Defects on a charge sheet are not material to the extent that a case will be affected
- A victim impact statement is crucial in the sentencing stage and as such, the National Director of Public Prosecutions was directed to draft comprehensive guidelines, protocol and model Victim Impact Statements instruments.

Case Overview

In 2009, the appellant was charged with and convicted by the Regional Court in Empangeni on one count of rape. Subsequently, he was sentenced to life imprisonment. In 2011, he applied for leave to appeal and was granted against his conviction and sentence to a full bench of the KwaZulu-Natal Division in Pietermaritzburg.

43

(140/16) [2016] ZASCA 152 (3 October 2016)

The full bench dismissed the appeal against the conviction but upheld the appeal against the sentence of life imprisonment. It substituted the original sentence with a sentence of 18 years' imprisonment. In addition, to this, the Court imposed a fixed a non- parole period of 12 years in terms of s 276B of the Criminal Procedure Act 51 of 1977 (the Act). The appellant appealed to the Supreme Court of Appeal against the sentence imposed and the fixing of the non-parole period. He also contended that the invocation of s 51(1) of Part I of Schedule 2 of the Criminal Law Amendment Act⁴⁴ by the regional Court was a material misdirection in so far as imposing the sentence of life imprisonment was concerned because the s 51(1) was not specified in the charge sheet. Appellant conceded that the charge sheet had a defect which was never rectified in terms of s 86(1) of the CPA and did not vitiate the sentencing proceedings. The complainant in the matter from which this case arose, was a 27 year old young woman.

The complainant testified that in 2006, she was lured by the appellant and a man she presumed to be his uncle. On that day, it was raining and the buses were on strike so transport was scarce. The appellant gave her a lift and then after dropping off the older man, the appellant drove in the opposite direction to her home towards his own home. When they arrived, he demanded to have sexual intercourse with her. When she refused, the appellant assaulted her and threatened to kill her. Eventually, he overpowered and raped her repeatedly throughout the night. He released her the following day. The complainant went directly to a clinic and reported the rape to the nurse. During the trial, the complainant testified that at the time of the rape that she was still a virgin. Additionally, she testified that she was subsequently diagnosed with HIV. By the time the trial ended, the state submitted to the Court that the HIV progressed to AIDS and the complainant succumbed to it. However, the state was unable to provide evidence that the complainant contracted HIV from the appellant.

On appeal, the life sentence was overturned and a more lenient sentence of 18 years was imposed. However, the SCA overturned the appeal. During sentencing, the Regional Court found that no substantial and compelling circumstances existed which justified a departure from the minimum

44 Act 105 of 1997

sentence of life imprisonment (where the complainant was raped more than once by the same person) as specified in Part 1 of Schedule 2 of the Criminal Law Amendment Act 51 of the Criminal Law Amendment Act (the Act) by a regional court. He entered a plea of guilty in terms of section 112(2) of the Act. However, there was a defect in charge sheet. The Court found that the defect did not render the proceedings invalid as such, the sentence of life imprisonment was considered appropriate. The appeal to the SCA was dismissed.

Dube v the State⁴⁵

Case Summary: The matter involved a 16-year-old girl being repeatedly raped on two separate occasions on the same day by her biological father (the appellant). She fell pregnant as a result of the rape and the appellant supported the child. During the trial, the complainant stated that she had not consented to have sexual intercourse with the appellant but he threatened her, so she had no choice. The appellant was charged on two counts of rape in terms of the section. Court ruled that defect in charge sheet did not render the proceedings invalid and a sentence of life imprisonment was appropriate.

Impact on Women's Rights

- The Court will not readily deviate from minimum sentencing when the victim of a rape is a child, acknowledged victims' rights in sexual offence matters.
- The fact that the appellant supported the child conceived from the rape does not amount to compelling circumstances which can result in a deviation from the minimum sentence.
- Consent is immaterial in matters involving statutory rape

Case Overview

The charge sheet for the two counts of rape stated that the provisions of s 51 of the Criminal Law (Sexual Offences) Amendment Act no 32 of 2007 were applicable to both counts. However, the defect was that the charge sheet did not state exactly which provisions of s51 were applicable. The appellant pleaded guilty to both charges and was convicted.

45

(89/16)[2016] ZASCA 123 (22 September 2016)

The matter was referred to a local division for sentencing. The High Court was satisfied that the appellant had been correctly convicted as such; it considered both counts together and imposed a life sentence. It then granted leave to appeal the sentence. The appeal was dismissed by a full bench and the appellant sought special leave to appeal to the SCA.

In the SCA the appellant argued that the sentence was disproportionate to the circumstances of the offence, the interests of society and the personal circumstances of the appellant. They also argued that the High Court should have found substantial and compelling circumstances to have existed justifying it deviating from the prescribed sentence. In addition to this, they argued that the High Court erred by sentencing the appellant to life in prison because there were no allegations in the charge sheet with regards to s51 (1) read with part 1 of schedule 2 of the Act. The SCA decided that the High Court correctly found that there were no substantial and compelling circumstances that justified a deviation from the prescribed sentence.

Kwinda v the State⁴⁶

Case Summary: The case involved a father who was a police inspector, raping his daughters. The youngest of the daughters (one of the complainants) fell pregnant. However, the pregnancy was terminated. The Court found that the evidence of the complainants was clear and satisfactory and as such, the Court rejected the appellant's version. It imposed a sentence of life imprisonment and directed that both counts would run concurrently. The Court was of the view that rape is horrendous enough to justify the imposition of the ultimate penalty. The SCA dismissed the appeal against the conviction and the sentence.

Impact on Women's Rights

- Reconfirmation that evidence given by a child is admissible
- The Court in this case also considered the severity of rape and did not depart from the minimum, ultimate sentence of life imprisonment
- Recognition by the Courts of the impact of rape to the victims and in the society at large.

46

(076/14) [2014] ZASCA 136 (25 September 2014)

Case Overview

The SCA found that the appellant was correctly convicted of raping his two daughters over a considerable period of time. The Court found that the appellant's denial and his allegations that the complainants were influenced by his wife to falsely incriminate him did not amount to substantial and compelling circumstances that would justify a lesser sentence. One of the complainants rejected the claims that she had been influenced by her mother to incriminate the appellant. The complainant testified that the reason she did not tell her mother about what the appellant had been doing was that he threatened to kill her. In addition to this, on several occasions the appellant had assaulted her when she refused his advances. She admitted that the appellant paid her university fees as a way to ensure her silence. Despite this admission, her testimony did not change. During the trial, the other complainant corroborated the evidence of her sister about the rapes that took place in her presence. The appellant continued to rape her until she stopped menstruating. At this point, the appellant was informed and he said that he would take her to the doctor, medico-legal evidence was collected (J88 completed to that effect) with an annotation by the doctor that the nature of the complainants' injuries is consistent with sexual assault. When confronted, she then told her mother that the appellant had raped her. The pregnancy was terminated shortly thereafter. She also disputed the allegation that she had been influenced by her mother to incriminate the appellant. She told the Court that the appellant had threatened to kill her if she told anybody about the rapes.

The Court found that the evidence of the appellant was inconsistent and improbable in many ways. The appellant denied raping the complainants. He denied arranging for his younger daughter to have her pregnancy terminated despite the evidence against him. The appeal against the sentence was on the basis that the Court applied the provisions of the Act without prior warning to the appellant. As such the Court erred in applying the provisions of the Act. It was also on the basis that the trial Court should have found that substantial and compelling circumstances existed to justify a departure from the Act and therefore impose a lesser sentence. The Court also found that the sentence originally imposed was fitting of the crimes committed by the appellant. It stated that the "most aggravating feature of this matter is that the appellant raped his own children over a

long period of time. He knew that his actions were wrong and dastardly. Even when he was afforded an opportunity by his wife to make amends, he again attempted to rape one of the [complainants]”.

Minister of Safety and Security v Katise⁴⁷

Case Summary: In this matter, the Court found that where a Peace Officer without warrant arrests a person on the reasonable suspicion that he is committing acts of domestic violence, the arrest will not be unlawful on the basis of the absence of a protection order.

Impact on Women's Rights

- Protection orders have built in warrants of arrest meaning that should a person whom a protection order was issued against contravene the provisions of the order, he or she can be arrested without a separate warrant being issued.
- In a country with high rates of violence against women, this affords more protection to women in terms of the Domestic Violence Act, 1998
- Reaffirms the contents of section 3 of the Domestic Violence Act, 1998

Case Overview

The respondent was arrested by police officers in 2009 without a warrant for his arrest. The respondent was charged with contravention of a protection order issued in terms of the Domestic Violence Act 116 of 1998. As a result of the arrest a Magistrate ordered that the respondent be detained for 10 days before being released on bail. Due to there not having been a warrant when he was arrested, the respondent instituted an action in the Eastern Cape High Court against the Minister of Safety and Security for damages for wrongful arrest and detention. The Court upheld the claim and awarded R200 000 in damages to the respondent. The Minister appealed in the SCA against that order.

On the advice of the police, the respondent's wife applied for a protection order on terms of the Domestic Violence Act, 1998. The respondent admitted that he had been arrested on several occasions due to his violent behaviour.

⁴⁷ (328/12) [2013] ZASCA 111 (16 September 2013)

Neither the respondent nor his wife appeared in Court on the return date prescribed in the interim order. At the time of the arrest, it was not clear whether there had been a final order granted. The Court found that this was of no consequence. It found that the Domestic Violence Act, 1998 adds to the protection offered to a victim of an offence like assault by the common law and the Criminal Procedure Act. It does not detract from it, which would be the effect of not permitting an arrest without warrant where the complainant has once sought protection under that Act. The existence or otherwise of the interim protection order could not mean that in a clear case of violent abuse of a complainant the police could not arrest the perpetrator in order to protect her or him. As such, the Court found that the arrest of the respondent was based on a reasonable suspicion that he had committed acts of domestic violence against his wife and in light of that it was lawful. In addition to this, the respondent's detention was authorised by a magistrate, as such it was also lawful. The respondent's claim was dismissed with costs.



WHERE TO GO FOR HELP?

If you need any help with regards to any of the above topics that the publication has dealt with, you can contact the following institutions:

The nearest Courts which have the following functions:

| Name of the Court | Court Mandate / Role |
|--------------------------------|---|
| Constitutional Court | <ul style="list-style-type: none">• Highest Court in all Constitutional matters• May decide on the Constitutionality of any amendment to the Constitution or any parliamentary or Provincial Bill• Makes final decisions on whether an Act of Parliament, a Provincial Act or the conduct of the President is constitutional |
| Supreme Court of Appeal | <ul style="list-style-type: none">• Highest court in respect of all matters other than constitutional ones• Has jurisdiction to hear and determine an appeal against any decision of a High court• Decisions of the Supreme Court of Appeal are binding on all courts of a lower order, and the decisions of high courts are binding on magistrates' courts within the respective areas of jurisdiction of the division |
| High Courts | <ul style="list-style-type: none">• Has jurisdiction in its own area over all persons residing or present in that area.• These courts hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or to impose a penalty.• Except where a minimum or maximum sentence is prescribed by law, their penal jurisdiction is unlimited and includes handing down a sentence of life imprisonment in certain specified cases. |

| Name of the Court | Court Mandate / Role |
|---------------------------|---|
| Regional Courts | <ul style="list-style-type: none"> • By virtue of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008) [PDF], adjudicate civil disputes • The divorce courts are also subsumed under the regional courts divisions |
| Magistrate Courts | <ul style="list-style-type: none"> • This is where most ordinary people come into contact with the justice system Jurisdiction in civil claims up to 300 000 ZAR • Hear criminal matters however jurisdiction is dependent on whether the Court is a regional magistrate or ordinary magistrate court • Small Claims Court Small Claims Courts are a quick and inexpensive form of legal alternative to the bigger courts. An amount up to R15 000 can be claimed and matters that can be taken to Small Claims Court are, i.e. claiming monies owed, claiming damages, claim based on credit agreements • Every Magistrate Court has division of Small Claims Court within its jurisdiction. |
| Equality Court | <ul style="list-style-type: none"> • The Equality Courts are free of charge and this means that the complainant does not have to pay any Court fees. A Complainant does not necessarily need a legal representation to lodge a case. However, you are allowed to seek legal representation. • In terms of Equality Act, all High courts and Magistrates courts are designated as equality Courts for their area of jurisdiction |
| Small Claims Court | <ul style="list-style-type: none"> • Small Claims Courts are a quick and inexpensive form of legal alternative to the bigger courts. An amount up to R15 000 can be claimed and matters that can be taken to Small Claims Court are, i.e. claiming monies owed, claiming damages, claim based on credit agreements • Every Magistrate Court has division of Small Claims Court within its jurisdiction. |

OTHER INSTITUTIONS

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| The Legal Aid South Africa | <p>Established by the Legal Aid Board no 39 of 2014, Provides legal Representation both in civil and criminal matters to indigent persons within its financial means</p> <p>Those who cannot afford the costs of legal representation can approach the Legal Aid Board for assistance</p> |
| Chapter 9 institutions e.g. South African Human Rights Commission, Commission for Gender Equality and Public Protector | <p>Established by Chapter 9 of the Constitution of South Africa to strengthen democracy</p> <p>These are independent institutions from the state and are subject to the Constitution and the law</p> <p>Designed to ensure that government does its work and conducts itself in line with the Constitution of the country.</p> |
| Law Clinics at Universities | <p>Most universities have law clinics which provide legal representation in various areas of law such as the family law and other socio economic rights .Most provide services for free to people who cannot afford the cost of legal representation in south Africa.</p> |
| Non - Governmental Organisations | <p>Non- governmental organisations work mostly in the area of human rights, in particular engaging in advocacy and awareness raising efforts in the promotion and protection of these rights in the country .Some provide legal advice and representation on various human rights issues</p> |
| The National Prosecuting Authority | <p>As a key partner in the criminal justice system, the NPA plays a critical role in ensuring that perpetrators of crime are charged and held responsible for their criminal actions.</p> <p>While the core work of the NPA will remain prosecutions and being a lawyer of the people, their strategy seeks to ensure that the organization becomes more pro-active so as to:</p> <ul style="list-style-type: none"> • contribute to growth of the South African economy; • contribute to freedom from crime; • contribute to social development; • promote a culture of civic morality; • reduce crime; and • ensure public confidence in the Criminal Justice System. |

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| Department of Health | <p>The Department of Health (DoH) provides leadership and coordination of health services to promote the health of all people in South Africa through an accessible, caring and high quality health system based on the primary healthcare (PHC) approach.</p> <p>The department contributes directly to achieving the government's goal for a long and healthy life for all South Africans.</p> |
| Department of Basic Education | <p>The Department of Basic Education (DBE) is one of the departments of the South African government. It oversees primary and secondary education in South Africa.</p> <p>The DBE develops, maintains and supports a South African school education system for the 21st century in which all citizens have access to lifelong learning, as well as education and training, which will, in turn, contribute towards improving quality of life and building a peaceful, prosperous and democratic South Africa.</p> |
| Department of Home Affairs | <p>Firstly, the DHA is custodian, protector and verifier of the identity and status of citizens and other persons resident in South Africa. This makes it possible for people to realize their rights and access benefits and opportunities in both the public and private domains. By expanding these services to marginalized communities, the department plays a key enabler in deepening democracy and social justice.</p> <p>Secondly, the DHA controls, regulates and facilitates immigration and the movement of persons through ports of entry. It also provides civics and immigration services at foreign missions; and determines the status of asylum seekers and refugees in accordance with international obligations. The department thus makes a significant contribution to ensuring national security, enabling economic development and promoting good international relations.</p> |

South African Police Services

The South African Police Service is bound to provide an impartial, professional policing service to all the people of South Africa. The South African Police Service operates as an arm of the government of the day, with the powers which, through the democratic process, are allocated to it by the citizenry. The police are, therefore, not the servants of any particular political party or group.

The South African Police Service is the main stakeholder as far as the prevention of crime is concerned. It is, however, not the only responsible party and needs the co-operation of other State Institutions and society as a whole.

Department of Correctional Services

The mandate of the Department of Correctional Services is derived from the Correctional Services Act, 1998, as amended; the Criminal Procedure Act (CPA), 1977 (Act 51 of 1977); the 2005 White Paper on Corrections; and the 2014 White Paper on Remand Detention Management in South Africa.

The legislation requires the department to contribute to maintaining and promoting a just, peaceful and safe society by correcting offending behaviour in a safe, secure and humane environment, thus facilitating optimal rehabilitation and reduced repeat offending.

CONTACT DETAILS OF GOVERNMENT DEPARTMENTS AND OTHER INSTITUTIONS

GAUTENG

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| Department of Justice and Constitutional Development | Telephone No: 011 3329067/9000 Physical Address: C/o Pritchard and Kruis streets, Schreiner Chambers, Johannesburg (Opposite the South Gauteng High Court) |
| Legal Aid South Africa Justice Centre | Telephone No: (011) 870 1480 Physical Address: 70 Fox Street, Marshalltown, Johannesburg, 2000 |
| Commission for Gender Equality | Telephone No: (011) 403 71822 Physical Address: Kotze Street, Women's Jail, East Wing, Constitution Hill Braamfontein, 2017 |
| South African Human Rights Commission | Telephone No: 011 877 3600 Physical Address: Braampark Forum 3, 33 Hoofd St, Johannesburg, 2017 |
| Wits Law Clinic | Telephone No: 011 717 8562 Physical Address: 1 Jan Smuts Avenue Braamfontein 2000, Johannesburg, South Africa |
| University of Pretoria Law Clinic | Telephone No: 012 420 4155UP Physical Address: 1107 South Street Hatfield, Pretoria 0002 |
| Legal Resources Centre | Telephone No: 011 836 9831 Physical Address: 15th and 16th Floor, Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg |
| Tshwaranang Legal Advocacy Centre to end violence Against Women | Telephone No: 011 403 4267 Physical Address: No 112 Main Street Johannesburg |

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| Centre for the Study of Violence and Reconciliation | Telephone No: 011 403 565033 Physical Address: Hoofd Street, Braampark Forum 5, 3rd Floor Johannesburg, 2001, South Africa |
| People Opposing Women Abuse (POWA) | Telephone No: 011 642 4345 Physical Address: P O Box 1346 Yeoville |
| Women's Legal Centre (Johannesburg Office) | Telephone No: 011 339 1099 Physical Address: 9th Floor, no 112 Main Street, Johannesburg Centre for Applied Legal Studies (CALS) |
| Office of the Public Protector | Telephone No: 011 717 8600 Physical Address: First Floor, DJ du Plessis Building, West Campus University of the Witwatersrand Braamfontein, 2000 |
| Lara's Place | Telephone No: 011 492 2807 Physical Address: 187 Bree Street Corner Bree and Rissik Street Johannesburg, 2000 |

WESTERN CAPE

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|---|---|
| Department of Justice and Constitutional Development | Telephone No: (021) 462 5471 Physical Address: 11th Floor, Plain Park Building, Plein Street, Cape Town |
| Women's Legal centre (Head Offices) | Telephone No: (0) 21 424 5660 Physical Address: 7th Floor, Constitution House, 124 Adderley Str. (Cnr of Church Str.), Cape Town |
| Commission for Gender Equality | Telephone No: (021) 426 4080 Physical Address: 132 Adderley Street, 5th Floor, ABSA Building, Cape Town, 8001 |
| South African Human Rights Commission | Telephone No: (021) 426 2277 Physical Address: 7th Floor ABSA building, 132 Adderley Street, Cape Town |

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| Rape Crises Cape Town | Telephone No: (021) 447 1467 Physical Address: 23 Trill Rd, Observatory, Cape Town, 7925 |
| Legal Aid South Africa | Telephone No: (021) 861 3000 Physical Address: Shiraz House, Brandwacht Office Park, Trumali Street, Stellenbosch, 7600 |
| Office of the Public Protector | Telephone No: (021) 423 8644 Physical Address: 4th Floor, 51 Wale Street/Bree Street , Cape Town |

NORTHERN CAPE

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|---|---|
| Department of Justice and Constitutional Development | Telephone No: (053) 802 1300 Physical Address: Cnr Stead & Knight Streets, New Public building (8th Floor) |
| Legal Aid South Africa (Kimberley Justice Centre) | Telephone No: (053) 832 2348 Physical Address: 43 Sidney St, Kimberley, 8301 |
| South African Human Rights Commission | Telephone No: (054) 332 3993/4 Physical Address: 45 Mark and Scot Road, Ancorley Building, Upington |
| Commission for Gender Equality | Telephone No: (053) 832-0477 Physical Address: 143 Du Toitspan Road, Kimberley, 8300 |
| Office of the Public Protector | Telephone No: (053) 831 7766/8325381/2 Physical Address: 4 Sydney Street Pretmax Building 2nd & 3rd Floor Kimberley, 8300 |

NORTH WEST

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| Department of Justice and Constitutional Development | Telephone No: (018) 397 7000/7014 Physical Address: Ayob Building, 22 Molopo Road, Mafikeng |
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| Legal Aid South Africa Justice Centre | Telephone No: (018) 464 30221 Physical Address: 9 Bram Fischer Streets, Klerksdorp, 2570 |
| | Telephone No: (051) 447 1130 Physical Address: 18 Keller Street, Bloemfontein |
| South African Human Rights Commission | Telephone No: (014) 592 0694 Physical Address: 25 Heystek Street, Rustenburg |
| Commission for Gender Equality | Telephone No: (018) 381 1505 Physical Address: 38 Molopo Road, Mafikeng, 2745 |
| Office of the Public Protector | Telephone No: (018) 381 1060/1/2 Physical Address: Public Protector's Chambers, C/o Martin & Robinson Streets, Mafikeng |

FREE STATE

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| Department of Justice and Constitutional Development | Telephone No: (051) 407 1800 Physical Address: 53 Charlotte Maxeke Street, Colonial Building, Bloemfontein |
| Legal Aid South Africa | Telephone No: (051) 447 9915 Physical Address: 2nd Floor St Andrews Centre, St Andrew Street, Bloemfontein , 9301 |
| South Africa Human Rights Commission | Telephone No: (051) 447 1130 Physical Address: 18 Keller Street, Bloemfontein |
| Commission for Gender Equality | Telephone No: (051) 430 9348 Physical Address: 49 Charlotte Maxeke Street, 2nd Floor, Fedsure Building |
| Office of the Public Protector | Telephone No: (051) 448 6185 Physical Address: 169A Engen House Nelson Mandela Drive, Bloemfontein |

KWA-ZULU- NATAL

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| Department of Justice and Constitutional Development | Telephone No: 031 372 3000 Physical Address: 53 Charlotte Maxeke Street, Colonial Building |
| Legal Aid South Africa | Telephone No: (031) 304 3290 Physical Address: 330 Smith Street Durban, NL 4001, South Africa |
| South Africa Human Rights Commission | Telephone No: (031) 304 7323/4/5 Physical Address: First Floor, 136 Margaret Mngadi, Durban |
| Commission for Gender Equality | Telephone No: (031) 305 2105 Physical Address: 40 Dr A.B Xuma Road Suite 1219, Commercial City, Durban |
| Office of the Public Protector | Telephone No: (031) 307 5300/5250/5251 Physical Address: 22nd Floor Suite 2114, Commercial City Building Durban |

MPUMALANGA

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|---|---|
| Department of Justice and Constitutional Development | Telephone No: (013) 753 9300 Physical Address: 24 Brown Street, Nedbank Centre 4th Floor |
| Legal Aid South Africa | Telephone No: (013) 755 5019 Physical Address: Room 806, 8th Floor, 30 Brown Street, Nedbank Building, Nelspruit |
| Commission for Gender Equality | Telephone No: (013) 755 2428 Physical Address: 32 Belle Street Office 212-230. Nelspruit |
| South African Human Rights Commission | Telephone No: (013) 752 8292 Physical Address: 4th Floor Carltex Building, 32 Bell Street, Nelspruit |

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| Office of the Public Protector | Telephone No: (013) 752 8543 Physical Address: Pinnacle Building Suite 101, 1 Parkin Street, Nelspruit |
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LIMPOPO

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| Department of Justice and Constitutional Development | Telephone No: (015) 287 2000/5577 Physical Address: 92 Bok Street, Polokwane 0700 |
| Legal Aid South Africa | Telephone No: (015) 296 0117 Physical Address: Number 3 Cormar Park, Rhodes Drift Avenue, Bendor Polokwane |
| Commission for Gender Equality | Telephone No: (015) 291 3070 Physical Address: Cnr. Grobler & Schoeman Streets, 1st Floor, 106 Library Gardens Squire Polokwane |
| South Africa Human Rights Commission | Telephone No: (015) 291 3500 Physical Address: First Floor, Office 102, Library Garden Square, Corner of Schoeman and Grobler Streets, Polokwane |
| Office of the Public Protector | Telephone No: (015) 295 5712 Physical Address: 18A Landros Mare street, Polokwane |

EASTERN CAPE

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| Department of Justice and Constitutional Development | Telephone No: (043) 702 7000 Physical Address: 3 Phillip Frame Road, Waverley Park, Chiselhurst |
| Legal Aid South Africa Eastern Cape | Telephone No: (041) 363 8863 Physical Address: 5 Mangold Street, Newtown Park, Port Elizabeth |

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|--|--|
| South African Human Rights Commission | Telephone No: (043) 722 7828/21/25 Physical Address: 4th Floor Oxford house, 86 Oxford Street, East London |
| Commission of Gender Equality | Telephone No: (043) 722 3489 Physical Address: 333 Phillip Frame Road, Waverly Park, Chiselhurst, East London |
| Office of the Public Protector | Telephone No: (040) 635 1287 Physical Address: Unathi House Independent Avenue, Bisho (Behind Pick'n Pay) |

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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This image shows a single sheet of white paper with horizontal blue or grey ruling lines. A vertical margin line is positioned on the right side, creating a narrow column. The top right corner of the page is folded over, revealing a yellowish-orange underside. The paper appears to be part of a notebook or binder.



Department of Justice and Constitutional Development
Momentum Centre: 329 Pretorius Street
(c/o Pretorius & Sisulu St), Pretoria, Private Bag X81, Pretoria, 0001,
Tel: 012 315 1111 / www.justice.gov.za
SALU Building: 316 Andries* Street (c/o Thabo Sehume &
Francis Baard Streets) Pretoria, Tel: 012 406 4600