

Short notes on:

CONSTITUTIONAL COURT RULING ON MUSLIM MARRIAGES.

On 28 June 2022, The Constitutional Court confirmed a Supreme Court of Appeal (SCA) ruling for Women's Legal Centre Trust v President of the Republic of South Africa and Others¹, which legally recognises Muslim marriages and declares certain sections of the Marriage Act and Divorce Act unconstitutional.

Overview

The Woman's Legal Trust Centre brought the application, which began at the Western Cape High Court. This was after Muslim women, who were married in terms of Sharia Law, complained that they had been discriminated against because they had no legal protection.

Muslim married women are vulnerable when dealing with divorce and inheritance, as when having to claim from a spouse's pension fund. Muslim women in South Africa do not receive the complete protection they should have without first having to litigate.

Numerous cases before the courts have highlighted the impact on Muslim marriages as a result of being excluded from complete legal protection.

¹ Women's Legal Centre Trust v President of the Republic of South Africa and Others (CCT 24/21) [2022] ZACC 23 (28 June 2022)

In casu the Constitutional Court confirmed that the Marriage Act and the Divorce Act are both unconstitutional in both failing to recognize Muslim marriages, which are not registered as civil marriages.

Furthermore, both acts infringe on the constitutional rights to equality, dignity and court access. They also conceded that children's rights are also infringed in this regard.

For these reasons, the court confirmed that the Marriage Act and the Divorce act are inconsistent with sections 9, 10, 28 and 34 of the Constitution, as they do not afford Muslim marriage recognition and that the court has no justification for the continuing non-recognition of Muslim marriages.

The SCA Acting Justice Pule Tlaetsi, stated: "Women in Muslim marriages must be fully included in the South African community so they can enjoy the fruits of the struggle for human dignity, equality and democracy."

Conclusion

In conclusion, the court suspended the declarations of invalidity for 24 months to allow for the legislation to be amended. It ruled that pending this, the provisions of the Divorce Act shall apply to all marriages from 15 December 2014 as if they are out of community of property.

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