

WHAT YOU NEED TO KNOW ABOUT THE RECOGNITION OF CUSTOMARY MARRIAGES AMENDMENT BILL

The long-awaited Recognition of Customary Marriages Amendment Bill (the “Amended Bill”) has finally been passed by Parliament and it is anticipated that it will be signed into Law by the President of the Republic of South Africa soon.

The Amended Bill is as a consequence of two Constitutional Court judgments, *Gumede* and *Ramuhovi*, which found that certain sections of the Recognition of Customary Marriages Act (“the Act”) were unconstitutional and discriminated unfairly against people based on gender, culture and race.

In the *Gumede* case, the Constitutional Court dealt with the issue that customary marriages entered into **before** the commencement of the Act (15 November 2000), which marriages were governed by customary law, the result of which is that such individuals are regarded as being married **out of community of property with the exclusion of the accrual system** (Section 7(2) of the Act).

The Court held that this provision was unconstitutional as it unjustly deprived women in customary marriages of property rights which were available to other married women. The ultimate ruling of the Court was that all monogamous marriages entered into under the Act, **regardless of the date of marriage**, are deemed to be **in community of property**, unless an Antenuptial Contract was entered into. Once signed into law by the President Section 7(2) of the Amended Bill will ensure that the judgment of the Court has been enshrined in statute.

The *Gumede* case only dealt with monogamous customary marriages and as such, all **polygamous** marriages entered into before the commencement of the Act, were still regarded as being subject to customary law.

In the *Ramuhovi* case the Constitutional Court expanded on the judgment granted in the *Gumede* case and held that women in polygamous marriages, entered into prior to the commencement of the Act, were also being unfairly deprived of property. As a result of this Judgment, section 7(1) of the Act is, in terms of the Amended Bill, to be changed so as to provide, *inter alia*, that the proprietary consequences of a polygamous customary marriage, entered into before the commencement of the Act, are that the spouses will have joint and equal ownership, management and control rights over marital property.

As can be seen above the Amended Bill is a positive move for woman who entered into customary marriages before the commencement of the Act, as it grants them property rights equal to those of other married women. Should such a woman wish to change her matrimonial property regime and enter into a Postnuptial Contract, she will be entitled to make Application to the High Court for leave to do so and use the change of law, as the basis for such Application.

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