

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No 1646/01

In the matter between

JULEIGA DANIELS

Applicant

and

**ROBIN GRIEVE CAMPBELL N.O.
MELISSA FOURIE N.O.
SORAYA DANIELS
ADELAH JAKOET
SHAHIEDA MANUEL
MOGAMAT SHARIEF MANUEL
SARAH DANIELS
MINISTER OF JUSTICE
REGISTRAR OF DEEDS
MASTER OF THE HIGH COURT**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent
Tenth Respondent

**FIRST AND SECOND RESPONDENTS' SUPPLEMENTARY
HEADS OF ARGUMENT**

1. At the hearing of this matter on 6 March 2003 the parties were requested to furnish supplementary heads dealing with the interaction between the Recognition of Customary Marriages Act, 120 of 1998 ("the Recognition Act"), on the one hand, and the Intestate Succession Act, 81 of 1987 ("the ISA") and the Maintenance of Surviving Spouses Act, 27 of 1990 ("the Maintenance Act"), on the other.
2. We have been furnished with the Applicant's supplementary heads on these issues, with which, generally speaking, we respectfully agree. We would only add the following regarding the interaction between the Recognition Act and the ISA and the anomaly created by the commencement of the Recognition Act on 15 November 2000.
3. As to the interaction between the Recognition Act and the ISA:
 - 3.1 Section 23(1) and (2) of the Black Administration Act, 38 of 1927 ("the Black Administration Act"), which contain mandatory rules for the devolution of the property of "Blacks", apply only to limited classes of such property.
 - 3.2 No other existing provision of section 23 of the Black Administration Act deals expressly with the devolution of the estates of "Blacks" who die intestate.

- 3.3 However, there are at least two indications in section 23 of the Black Administration Act that the section applies generally to such estates.
- 3.3.1 Section 23(7)(a) of the Black Administration Act, prior to its declaration as unconstitutional and invalid by the Constitutional Court in Moseneke and Others v The Master and Another 2001 (2) SA 18 (CC), provided a mechanism for the administration and distribution of “the estate of any Black who died intestate”. Section 23(7)(a) was valid at the time when the ISA was enacted.
- 3.3.2 Section 23(10)(a) provides for regulations “prescribing the manner in which the estates of deceased Blacks shall be administered and distributed”. This provision is not limited to the estates of Blacks who died testate, nor was it so construed by the “Governor General” and his successors-in-law, the State President and the President. See the Regulations in Government Notice R200 of 6 February 1987, as amended.
- 3.4 It follows that section 23 of the Black Administration Act applies not only to the estates of “Blacks” who die having made a will (section 23(3)), but also to the estates of “Blacks” who die intestate. Accordingly, section 1(4)(b) of the ISA excludes from the operation of that Act the estates of “Blacks” who die intestate.
4. As to the anomaly referred to above, we respectfully submit that the propositions in paragraphs 12.1 and 13.1 of the Applicant’s supplementary heads are overbroad in that section 7(2) of the Recognition Act applies only to monogamous customary marriages concluded after 20 November 2000. The proprietary consequences of polygamous customary marriage concluded after that date are regulated by the written contract required by section 7(6), which is an antenuptial contract because section 7(6) is clearly prospective in its operation. See the reference in section 7(6) to the “future matrimonial property system of his marriages” and the reference in section 7(8) to “his prospective spouse”.

A M BREITENBACH

N BAWA
Chambers
Cape Town
14 March 2003