

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO.

In the matter between:

JULEIGA DANIELS

Applicant

and

ROBIN GRIEVE CAMPBELL N.O.

First Respondent

MELISSA FOURIE N.O.

Second Respondent

SORAYA DANIELS

Third Respondent

ADELAH JAKOET

Fourth Respondent

SHAHIEDA MANUEL

Fifth Respondent

MOGAMAT SHARIEF MANUEL

Sixth Respondent

SARAH DANIELS

Seventh Respondent

MINISTER OF JUSTICE

Eighth Respondent

REGISTRAR OF DEEDS

Ninth Respondent

MASTER OF THE HIGH COURT

Tenth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the Applicant intends applying to the above Honourable Court in terms of Section 172(2)(c) of the Constitution of the Republic Act 108 of 1996 for an Order in the following terms:

1. For confirmation of the Order of Justice Van Heerden in the High Court of South Africa, Cape of Good Hope Provincial Division on 24 June 2003 under case number 1646/01 as follows;

“The Order:

I make the following orders;

1. *The omission from Section 1(4) of the Intestate Succession Act 81 of 1987 of the following definition is declared to be unconstitutional and invalid: “ ‘spouse’ shall include a husband or wife married in accordance with Muslim rites in a *de facto* monogamous union”.*
2. *Section 1(4) of the Intestate Succession Act 81 of 1987 is to be read as though it included the following paragraph after paragraph (f):*
*“(g) ‘spouse’ shall include a husband or wife married in accordance with Muslim rites in a *de facto* monogamous union.”*
3. *The Orders in paragraphs 1 and 2 above shall have no effect on the validity of any acts performed in respect of the administration of an intestate estate that has been finally wound up by the date of this Order.*

4. *The omission from the definition of “survivor” in Section 1 of the Maintenance of Surviving Spouses Act 27 of 1990 of the words “and includes the surviving husband or wife of a de facto monogamous union solemnised in accordance with Muslim rites” at the end of the existing definition, is declared to be unconstitutional and invalid.*

5. *The definition of “survivor” in Section 1 of the Maintenance of Surviving Spouses Act 27 of 1990 is to be read as if it included the following words after the words “dissolved by death”:
“and includes the surviving husband or wife of a de facto monogamous union solemnised in accordance with Muslim rites.” “*

Alternatively, and in the event that this Honourable Court declines to confirm the above Order, the applicant applies in terms of Constitutional Court Rule 18 for conditional leave to appeal against the failure of Her Ladyship Justice Van Heerden in the High Court of South Africa, Cape of Good Hope Provincial Division on 24 June 2003 under case number 1646/01, to grant the Applicant the Declaratory Orders which she sought in prayers 1 and 3 of her Notice of Motion, namely:

- “1. *Declaring that the Applicant was, for the purposes of the Intestate Succession Act, 81 of 1987, the spouse of*

Mogamat Amien Daniels at the time of his death and is an heir in the Estate of the Late Mogamat Amien Daniels.

3. *Declaring that the Applicant is, for the purposes of the Maintenance of Surviving Spouses Act, 27 of 1990, the survivor of Mogamat Amien Daniels and is entitled to lodge a claim for maintenance in the Estate of the Late Mogamat Amien Daniels and to have such claim determined by the First Respondent.”*
2. Condoning Applicant’s late filing of the Application for confirmation of the Order, alternatively giving directions in terms of Rule 15(5).
3. Granting the Applicant further and/or alternative relief.
4. Costs in the event of this application being opposed.

TAKE NOTICE FURTHER that the Affidavit of **MICHELLE ANNE O’SULLIVAN** and the annexures thereto will be used in support of the application.

TAKE NOTICE FURTHER that the Applicant has appointed the offices of her attorney of record set out below as the address at which she will accept notice and service of all documents in these proceedings.

DATED at **CAPE TOWN** on this day of **SEPTEMBER 2003**

WOMEN'S LEGAL CENTRE

PER:

M O'SULLIVAN

Applicant's attorney

1st Floor Glaston House

63 Church Street

CAPE TOWN

Tel: 424-0870

C/O **CHEADLE THOMPSON &**
HAYSOM, Braamfontein Centre

23 Jorissen Street

BRAAMFONTEIN

Ref: J Bednar

TO: THE REGISTRAR
Constitutional Court
JOHANNESBURG

AND TO: THE REGISTRAR
Cape High Court

AND TO: SONNENBERG HOFFMANN & GALOMBIK
First and Second Respondents attorneys
9th Floor Norwich on St Georges
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CAPE TOWN