

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

CC case no:

DCLD case no: 4225/2006

In the matter between:

**ELIZABETH GUMEDE (BORN SHANGE)**

Applicant

and

**PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA**

First Respondent

**MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT**

Second Respondent

**PREMIER OF KWAZULU-NATAL**

Third Respondent

**KWAZULU-NATAL MEC FOR TRADITIONAL  
AND LOCAL GOVERNMENT AFFAIRS**

Fourth Respondent

**AMOS GUMEDE**

Fifth Respondent

**MINISTER OF HOME AFFAIRS**

Sixth Respondent

**WOMEN'S LEGAL CENTRE TRUST**

Intervening as *Amicus Curiae*

---

**AFFIDAVIT: SHARITA SAMUEL**

---

I, the undersigned,

**SHARITA SAMUEL**

hereby make oath and say:

1. I am a practising attorney employed at the Legal Resources Centre, Durban. I am the attorney for the Applicant in this matter.
2. The facts stated herein are to the best of my knowledge true and correct. They are within my personal knowledge, save where the context indicates otherwise.
3. I am duly authorised to make this application and this affidavit on behalf of the Applicant.
4. The Applicant and the Fifth Respondent entered into a customary marriage on 29 May 1968. The marriage relationship has irretrievably broken down, and a divorce action is pending in the North Eastern Divorce Court. That action has been stayed, pending the determination of this application.
5. The issue in this application is the proprietary consequences of the customary marriage, and particularly in the context of the pending divorce action.
6. The Applicant's primary complaint is that the matrimonial property regime to which she is subject, discriminates against her because she is a woman, and because she is an African. Her secondary complaint is that while the Recognition of Customary Marriages Act 120 of 1998 recognises the discriminatory consequence of the relevant provisions of the customary law, and rectifies the position in respect of customary

marriages entered into after the commencement of that Act (15 November 2000), it perpetuates this discrimination in other customary marriages. In other words, it is under-inclusive.

7. The application was opposed by the National Government (the First, Second and Sixth Respondents).
8. The application was heard in the Durban and Coast Local Division of the High Court on 6 December 2007. On 13 June 2008 Theron J handed down judgment, a copy of which is attached as “**A**”.
9. In that judgment, Theron J declared inconsistent with the Constitution and invalid, certain provisions of:
  - 9.1 the Recognition of Customary Marriages Act 120 of 1998;
  - 9.2 the KwaZulu Act on the Code of Zulu Law 16 of 1995;
  - 9.3 the Natal Code of Zulu Law Proclamation R151 of 1987.
10. The Court ordered, in terms of section 172(2)(a) of the Constitution, that its order was referred to this Court for confirmation.
11. The Applicant now applies for confirmation of the order made by the High Court. The Applicant also seeks the costs of this application.

12. The Applicant requests that the Chief Justice issue directions as to the further proceedings in this case.

---

**SHARITA SAMUEL**

I certify that the above affidavit was signed and sworn to at Durban before me on this the    day of **JUNE 2008** by the deponent after she declared that she knew and understood the contents of this affidavit, that she had no objection to taking the prescribed oath which he regarded as binding on her conscience, and after she uttered the words: *“I swear that the contents of this affidavit are true, so help me God”*.

---

**COMMISSIONER OF OATHS**