



## CONSTITUTIONAL COURT OF SOUTH AFRICA

*Speaker of the National Assembly and Another v Women's Legal Centre Trust and Others*

**CCT 24/21**

**Date of judgment: 18 September 2024**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 18 September 2024, the Constitutional Court handed down judgment in an urgent application for an extension of the period of suspension of the declaration of invalidity, following its decision in *Women's Legal Centre Trust v President of the Republic of South Africa*.

On 28 June 2022, the Constitutional Court handed down an order that declared the Marriage Act and the Divorce Act inconsistent with sections 9, 10, 28 and 34 of the Constitution, in that they fail to recognise marriages solemnised in accordance with *Sharia* law (Muslim marriages). The declaration of constitutional invalidity of 28 June 2022 was suspended for a period of 24 months to allow Parliament to correct the defect and was due to expire on 27 June 2024. On Wednesday, 26 June 2024, the Constitutional Court made an order, further suspending a declaration of invalidity from 27 June 2024 to 27 June 2026. The matter was decided without hearing.

Parliament (comprising of the Speaker of the National Assembly and the Chairperson of the National Council of Provinces) filed its submissions, the Women's Legal Centre Trust and President of the Republic of South Africa filed notices to abide. The other parties did not participate in these proceedings. Parliament submitted that the reason for the extension sought is to ensure that there is meaningful public engagement in respect of the Marriage Bill and that 5 months is insufficient to achieve this purpose since the Bill was only introduced on 13 December 2023. Parliament also submitted that the Divorce Amendment Act was assented to on 6 May 2024 and, therefore, the defects in the Divorce Act identified by the Constitutional Court are not the subject of the application for extension, but only those defects that the Marriage Bill is intended to cure. Parliament further submitted that

extension is necessary due to the complexity of the Bill and therefore, requires multi-disciplinary research into the impact of the policy development by all affected communities (Muslim, Hindu and Jewish faith). Parliament submitted that this matter met all the urgency requirements, and should this order not be granted, it will not be able to correct the defects in the Marriage Act and would have defied this Court's order. Parliament further submitted that no prejudice would be suffered as necessary steps, which includes registering Muslim marriages, have already taken place. However, prejudice would be suffered if the relief sought is not granted because there will be no binding legislation to regulate affected marriages.

In a unanimous judgment penned by Mathopo J (Maya CJ, Gamble AJ, Kollapen J, Majiedt J, Mhlantla J, Rogers J, Theron J and Tshiqi J concurring) the Constitutional Court agreed that this matter was urgent. On Merits, the Constitutional Court, held that Parliament had sufficiently indicated the steps that had been taken, and the timelines could not be faulted. The Constitutional Court also held that an extension is necessary so as to provide a meaningful platform for public participation. The Constitutional Court also took judicial notice of the delay that would be occasioned due to the 2024 elections. The Constitutional Court held that in the new term, Parliament will comprise new members. Some of them will require time to familiarise themselves with Parliamentary rules and procedures governing the law-making processes as well as with the subject matter of the Bill, taking into account its complexity in as far as the laws governing various traditional and religious faiths are concerned.

The Constitutional Court concluded that it was just and equitable, and in the interests of justice, for the extension to be granted.