

START

THE NON-RECOGNITION OF MUSLIM MARRIAGES

TWO DECADE

Long Law Reform Process

1994

Democracy

1

1993/96 THE CONSTITUTION

2

The Constitution provides for the right to Equality, Dignity, freedom of Religion, Belief and Opinion, and the right to own Property

1996

RECOGNITION OF MUSLIM MARRIAGES LAW REFORM PROCESS BEGINS

3

the Muslim Personal Law Board was established in 1994 with the general brief to legally recognise the MPL law system. Due to ideological differences relating to the compatibility of Shariah (MPL) with the Constitution, the Board disbanded in the same year.

1997 RYLAND V EDROS

4

The court recognised a marriage solemnised in accordance with Muslim rites as a valid contract, and the court can be approached to enforce the terms of the agreement.

1999 AMOD V MULTILATERAL MOTOR VEHICLE ACCIDENTS FUND

5

The applicant claimed damages in the High Court for loss of support arising out of the death of her husband in a motor vehicle collision in 1998. The Court recognised that parties to a de facto monogamous Muslim marriage should be awarded the same damages as parties to a civil marriage³.

1999 PROJECT COMMITTEE OF THE SOUTH AFRICAN LAW REFORM COMMISSION (SALRC) FORMED.

6

The project committee was tasked to investigate Islamic marriages and related matters with effect from 1 March 1999 for the duration of the investigation having a more specific brief than to examine the MPL system overall by only looking at the recognition of Muslim marriages.

2000 PUBLICATION BY THE SALRC PROJECT COMMITTEE OF AN ISSUE PAPER.

7

This marked the commencement of an extensive and inclusive public participation process.

2003 THE DRAFT OF THE DISCUSSION

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The draft of the Discussion Paper culminated in the draft Muslim Marriage Bill in 2003 after extensive public comment.

2004 DANIELS V CAMPBELL NO AND OTHERS

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The WLC ensured that Ms Daniels could inherit in terms of the law of intestate succession, as a spouse in a Muslim marriage, and bring a maintenance claim against the deceased husband's estate.

2005 KHAN V KAHN

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The Court held that where a wife married in accordance with Muslim rites under a monogamous or polygynous marriage was entitled to maintenance during their marriage and as such it fell within the ambit of the Maintenance Act.

2005 THE RECOGNITION OF MUSLIM MARRIAGES BILL

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As a consequence of receiving numerous concerns relating to the SALRC Bill, which revolved around both constitutionality issues generally and the women's right to equality in particular, the parliamentary office of the South African Commission for Gender Equality drafted an alternative bill in October 2005 called the Recognition of Religious Marriages Bill. This Bill was of general application and provided for the recognition of all religious marriages.

2008 MAHOMED V MAHOMED

12

An interim application for maintenance in terms of Rule 43, Judge Revelas recognised that an increased tendency had developed in our courts to enforce maintenance and other rights to spouses married in terms of Islamic law. The application was granted the Respondent was ordered to pay maintenance.

2009 WLC LAUNCHES MATTER

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The Women's Legal Centre launched an application for direct access to the Constitutional Court – the matter was referred back to the High Court for adjudication.

2009 HASSAM V JACOBS NO AND OTHERS

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Constitutional Court held that where a deceased has more than one wife, which he has married in terms of Islamic law, the wives will be entitled to inherit in terms of the Intestate Succession Act, and to claim maintenance in terms of the Maintenance of Surviving Spouses Act. WLC was amicus in the matter.

2009 HOOSAIN V DANGOR

15

In an application in terms of Rule 43 of the uniform rules of court Ms Hoosain sought interim maintenance for herself and a contribution towards costs in the main divorce action. The court found that interim maintenance arose from the general duty of a husband to support his wife and he is not precluded from doing so because they are married in terms of Muslim rites.

2010 SUBMITTED TO CABINET

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MMB submitted to cabinet and approved for public comment

2011 PUBLISHED FOR SUBMISSION

17

Bill published for submission and was intended to be introduced to Parliament.

2012 DEPARTMENT TABLED BIL

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Department tabled bill as part of its annual performance plan and stated it was of high importance. Bill was again intended to be introduced to parliament.

2014 ROSE V ROSE

19

The Western Cape High Court held that wife of 20 years, could claim for maintenance and a share of her former husband's pension.

2014 THE WLC MAKES AN APPLICATION TO THE WESTERN CAPE HIGH COURT

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The application has been brought in the public interest due to the failure of the national executive and the legislature to prepare and initiate legislation to provide for the recognition of all Muslim Marriages as valid in terms of South African law.

END



Between 1994 to date, the courts have removed some of the unconstitutional consequences against Muslim women on a piecemeal and limited basis. However, the default position remains one of exclusion and marginalisation. The law currently affords only limited recognition to spouses in Muslim marriages. There is a critical need for legislative recognition, as Muslim women remain marginalised and are treated unfairly because their religious marriages are not legally recognised.