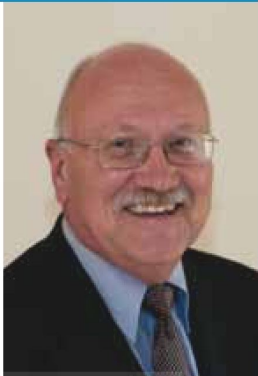


WELCOME DEVELOPMENT TOWARDS

REGULATION OF MUSLIM MARRIAGES STILL NOT ENOUGH?



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Muslim marriages, not solemnised by registered marriage officers in terms of current marriage law, are not recognised by civil law; and as such they are not regulated by the Divorce Act, denying separating spouses their rights contained in and protection afforded by the act.

A decision delivered by the Western Cape High Court in the case *Faro vs Bingham NO and Others* (4466/2013) [2013] ZAWCHC 159 on 25 October 2013 confirmed some of the progress made since 2004 in respect of recognising surviving partner(s) in monogamous and polygamous Muslim marriages respectively as a 'spouse' in terms of the Intestate Succession Act and as a 'survivor' of the Maintenance of Surviving Spouses Act, thus permitting claims as beneficiary against a deceased estate.

In this particular case, the initial ruling by the Master of the High Court, finding the applicant to not have been married to the deceased at the time of his death, was set aside by the court and the replacement executor instructed to provide for her claim as spouse and survivor in the liquidation and distribution account. This was good news, at last, for a widow left destitute in a case typified by the presiding judge as highlighting "the vulnerability of women in Muslim marriages". However, it is clear that not only is the statutory situation regarding the issues of

Muslim marriages still far from satisfactory, but is in fact aggravated by yet more statutory limitations. Some of these issues and limitations are briefly examined in this article.

Lack of statutory provisions dealing with marriages by Islamic rites

Muslim marriages, not solemnised by registered marriage officers in terms of current marriage law, are not recognised by civil law; and as such they are not regulated by the Divorce Act, denying separating spouses their rights contained in and protection afforded by the act. Conversely, surviving spouses of unrecognised Muslim marriages dissolved in terms of Islamic rites are denied recognition as (no longer being) a surviving spouse for purposes of the Intestate Succession Act and the Maintenance of Surviving Spouses Act, leaving them clearly vulnerable. The court further ruled that the vulnerability of women