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Juayela i Justice



REGULATORY UPDATES - MASTER OF THE HIGH COURT

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the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



PRESENTATION OUTLINE



- 1) Deceased Estates on line registration launched
- 2) Utilisation of the QR code
- 3) Bwayan's case implications and application
- 4) Amendments to Section 7 of the Divorce Act
- 5) Status of Muslim Marriages



1.Deceased Estates on line registration launched



- The Minister of Justice and Correctional Services Ronald Lamola officially launched the Masters' Deceased Estate Online Registration System on 10 October 2023.
- The Office of the Chief Master has worked with stakeholders to run successful pilots where the functionality and ease of use of the system were thoroughly tested. The pilots were conducted in March, April and August. The system is now rolled out to the Johannesburg, Durban, Cape Town, Pretoria and Thohoyandou Masters' offices. It will further be gradually rolled out in a progressive manner to other parts of the country.

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ADVANTAGES OF THE DECEASED ONLINE REGISTRATION SYSTEM



Enhanced Access to Justice: The online deceased estates system aims to bring services closer and speedily to clients across the country thereby enhancing access to justice.

Modernisation of the Department: The Online Deceased Estate Registration system is part of the Department's strategy to introduce online service channels to improve access to justice and improve the efficiency with which services are provided.

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- **Greater Convenience for the public:** The objective of the online system is to enable South Africans to transact with the Masters' offices from anywhere, anytime and in a cost-effective manner with quicker turn-around times.

- **Public will save on travel costs:** There will be no need for people to travel long distances to access Masters Services. The online system will allow members of the public to register deceased estates either in the comfort of their homes, offices or anywhere in the world without having to visit a Masters office (except with the lodgement of original wills).

- **Improved Customer Satisfaction:** The Department anticipates that the implementation of the online system will significantly reduce the volume of complaints received by Masters Offices.



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- Reduction of Queues:** It is expected that the online system will significantly cut the long queues at Masters Offices as there will be no need for customers to physically visit Masters' offices and service points.

- Quicker Registration process:** Online registrations will speed up the registration process and ensure quicker availability of the details/particulars of the beneficiaries and trustees.

- Electronic Booking of appointments:** Where a client needs to physically visit a Masters Office, they will choose a suitable date and time slot for their appointment. The system will display the available slots, allowing them to pick one that aligns with their schedule. Clients will also be able to receive status updates of their applications via SMS or email depending on their chosen method of communication.

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Rollout of Service Kiosks: Self-service and staff assisted kiosks will be set up at all Masters Offices to enable clients to report estates online with or without the assistance of legally trained personnel. These will be used by those who do not have access to technologies such as smart phones, computers or data. Staff assisted kiosks will also enable the elderly and any members of the public who may not be tech savvy to receive service from the Masters.





2. THE QR CODE



The QR or quick response code provides for the minimisation of human intervention and the mitigation of foraged signatures on letters of appointment.

All estate information is accessible on scanning of the QR code.



3. Bwayan's case implications and application

Before the Constitutional Court, the applicant contended that section 1(1) of the Intestate Succession Act discriminates against her and women similarly placed on the grounds of gender, sexual orientation and marital status. This constituted unfair discrimination. It also violated their rights to dignity and equality. The applicant also argued that the Intestate Succession Act treats surviving opposite-sex life partners differently to surviving same-sex life partners and affords same-sex life partners greater rights than opposite-sex life partners, despite both having the ability to marry.



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The applicant urged the Constitutional to confirm the High Court's declaration of constitutional invalidity of section 1(1) of the Intestate Succession Act. Regarding section 1 of the Maintenance of Surviving Spouses Act, the applicant argued that the Constitution requires the extension of maintenance under this Act to survivors in other forms of relationships, including permanent heterosexual life partnerships, where partners have undertaken reciprocal duties of support. The applicant argued that the exclusion of this category deprives her and those similarly placed of their right to equal protection and benefit of the law, constituted unfair discrimination on the grounds relied upon in relation to the succession claim and violated their right to dignity.



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The majority judgment stressed that permanent life partnerships are a legitimate family structure and are deserving of respect and, given recent developments of the common law, entitled to legal protection. The judgment held that the definition of “survivor” in section 1 of the Maintenance of Surviving Spouses Act is unconstitutional and invalid insofar as it omits the words “and includes the surviving partner of a permanent life partnership terminated by the death of one partner in which the partners undertook reciprocal duties of support and in circumstances where the surviving partner has not received an equitable share in the deceased partner’s estate”.



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- The judgment ordered that these words be read into the definition. “Spouse” and “marriage” are also declared to include a person in a permanent life partnership. The declaration of invalidity was suspended for 18 months to afford Parliament an opportunity to cure the constitutional defect.

- Additionally, the majority judgment confirmed the declaration of invalidity of section 1(1) of the Intestate Succession Act made by the High Court. Likewise, this declaration of invalidity was suspended for 18 months for the same reason as above.



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- The office of the Chief Master is of the opinion that the same procedures can be followed as with the proof of same sex permanent life partnership, as per CMD 2 of 2015 (par 7.2), as this is exactly what the Bwanya-case challenged – the fact the same-sex life partnership receives more benefits than hetro-sexual permanent life partnership – they need to be treated the same.
- Where a permanent life partnership, where they undertook a reciprocal duty to support each other, is alleged in the death notice, and the estate is to devolve intestate, an affidavit (form MBU 19) should be requested as confirmation of the alleged partnership. This is one of the amendments made.





4. Amendments to Section 7 of the Divorce Act



Ordinarily, an individual married out of community of property without accrual can't claim from their spouse's estate if they divorce. This has left many stay-at-home wives at risk of financial ruin should they divorce.

Ordinarily, an individual married out of community of property without accrual can't claim from their spouse's estate if they divorce. Section 7(3) of the act allows the courts to divvy up the assets in a more fair and equitable way if that individual can show they made a significant non-financial contribution to the marriage.

But this only applies if they were married pre-1984, when the option of marriage out of community of property with accrual was introduced in South Africa.



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The Constitutional Court has upheld a previous ruling from the High Court in Pretoria that found the section in question was unconstitutional. Finding further that it amounts to unfair and unjustifiable indirect discrimination on the basis of gender, because of the way women are disproportionately affected.

It's given Parliament 24 months to remedy the defect.

In the meantime, though, it's removed the cut-off date from the section in question.

It's important to note, though, that the ruling won't affect cases that have already been finalised.

On the back of a different case - which was heard at the same time - the apex court also found that the section in question should apply when marriages end as a result of death as opposed to divorce.





5. Status of Muslim Marriages

The application of section 9 to Muslim marriages will aim to eradicate possible inequalities found within Muslim marriages by allowing Muslim women to approach the Court for an order of forfeiture; especially where they have left their jobs or studies to become a homemaker, either at the request of their spouse or a personal decision which has rendered them financially dependent on the working spouse, which arrangement may oftentimes give rise to financial and/or other forms of abuse within a marriage.

Furthermore, the Court declared that from the date of the Court order, section 12(2) of the Children's Act 38 of 2005 would be applicable to all prospective spouses in a Muslim marriage which was concluded after the date of the order.

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Section 12(2) of the Children's Act states that a child,

- Who is below the minimum age set by law for a valid marriage may not be given out in marriage or engagement;
- Who is above the minimum age may not be given out in marriage or engagement without his or her consent.

This formal recognition is of great importance given the various practical implications we will see as a result of working toward regulating future Muslim marriages in South Africa.



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Child brides remain a social ill which plagues our communities as families are desperate to make ends meet. As such, parents often enter into negotiations to have their teenage daughters married off to a potential partner who will be able to provide for and take care of their child financially. Thus, the application of section 12(2) of the Children's Act now gives the Courts the authority to step in and make a legal order to prevent a cultural or religious practice which could potentially be prejudicial and prevent young girls from pursuing possible tertiary education as well as their constitutional rights to sexual and reproductive health.

The judgment applies to all Muslim marriages entered into after 15 December 2014 and ensures the recognition and regulation of Muslim marriages as valid for all legal purposes in South Africa



THE END



THANK YOU!!!

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