IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Juleiga Daniels v Robin Grieve Campbell NO and Others

Case CCT 40/03

Decided on 11 March 2004

Media Summary

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.

The Constitutional Court decided today that persons married according to Muslim rites are spouses for the purposes of inheriting or claiming from estates where the deceased died without leaving a will.

The applicant, Mrs Daniels, was married to her now deceased husband according to Muslim rites in 1977. The marriage was not solemnised under the civil law by a marriage officer. When her husband died intestate in 1994, the modest, low-income house in which they lived was transferred to the deceased estate. The applicant, who sold goods from the front of her house to supplement her income as a domestic worker, had contributed substantially towards the house, including its purchase price.

The respondents are the executors of the estate, and some interested family members. The applicant was told that she could not inherit from the estate because, her marriage not being recognised as valid in terms of the law, she did not qualify as a "surviving spouse". With the help of the Women's Legal Centre she approached the Cape High Court. The High Court held that "spouse" could only be applied to persons married according South African law. The High Court found that this interpretation violated the applicant's rights to practise her religious and cultural beliefs, and ordered that words be "read-in" to the Intestate Succession Act and the Maintenance of Surviving Spouses Act to give her the relief she sought.

On appeal, Sachs J held that the word “spouse” in its ordinary meaning includes parties to a Muslim marriage. Accordingly, it was not necessary to read-in words into the Acts. The constitutional values of equality, tolerance and respect for diversity point strongly in favour of giving “spouse” a broad and inclusive construction, especially when it corresponds with the ordinary meaning of the word. The value of non-sexism is foundational to our Constitution and requires a hard look at the reality of the lives that women have been compelled to lead by law and legally-backed social practices. The objective of the Acts was to ensure that widows would receive at least a child’s share instead of their being precariously dependent on family benevolence. There seems to be no reason why the equitable principles underlying the statutes should not apply as tellingly in the case of Muslim widows as they do to widows whose marriages have been formally solemnised under the Marriage Act.

In a concurring judgment, Ngcobo J dealt with two questions; first the proper approach to interpretation of legislation under our constitutional democracy and second whether previous Constitutional Court decisions that dealt with the interpretation of the word “spouse” prevent the Court from upholding the appeal. He held that the proper approach to legislative interpretation is to be consistent with the interpretation that legislation must be read in a manner that gives effect to the values of our constitutional democracy in terms of section 39(2) of the Constitution. Ngcobo J held that legislation should be seen through the prism of the Constitution.

Ngcobo J noted that old order legislation was previously construed in the context of a legal order that did not respect human dignity and equality and freedom of all people. Ngcobo J discussed previous cases that were decided during the old order that refused to recognize a marriage by Muslim rites. He held that the new constitutional order rejects the values upon which these decisions were based and affirms equal worth and equality of all South Africans. Ngcobo J held that the Constitution demands a change in the legal norms and the values of our society. This change is reflected in a number of statutes which now expressly recognize Muslim marriages for the purposes of the rights they vest in spouses. In his view, the word “spouse” in the statutes under consideration must be construed to reflect this change.

On the question whether previous decisions of the Court prevented it from upholding the appeal, Ngcobo J held that these cases are distinguishable from the present case as they are concerned with couples who did not claim to be married under any law. He held that in the present case the Court is concerned with a claim that the applicant is married by Muslim rites and she is therefore a spouse within the meaning of that word as used in the statutes in question. Thus, the previous decisions did not prevent the adoption of a construction of the word "spouse" to include parties to a Muslim marriage.

All the members of the Court, except for Moseneke and Madala JJ, concurred in the judgments of Sachs and Ngcobo JJ respectively.

Moseneke J held, with Madala J concurring, that the word "spouse" has a specific and settled meaning in our law, and must refer to a party married in accordance with the provisions of the Marriage Act. This precludes parties who have not complied with the formalities of that Act from being regarded as spouses in the context of other legislation. He found support for this reasoning in the cases of Coalition for Gay and Lesbian Equality and Satchwell, which, although decided during the constitutional era, give "spouse" a narrow meaning.

He held further that the exclusion of people married under Muslim rites from the protection of the Acts in question is clearly a remnant from the apartheid era, and unjustifiably discriminatory. He therefore found this to be unconstitutional, and suggests a remedy of reading appropriate words into the Acts.