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Press Release

**Limpopo High Court rules that women in polygynous marriages have equal rights and that the Customary Marriages Act discriminates against these women.**

The High Court in Thohoyandou, Limpopo province, yesterday handed down judgment in the Ramuhovhi matter, where the core issue raised in the case is the constitutional validity of section 7(1) of the Recognition of Customary Marriages Act 120 of 1998 (*'the Recognition Act'*) which regulates the proprietary consequences of polygamous marriages entered into before the commencement of the Recognition Act, being 15 November 2000.

*The section states: "The proprietary consequences of a customary marriage entered into before the commencement of this Act continue to be governed by customary law." By implication the section imports customary law rules that preclude women from owning and controlling property equally with men in the marriages to which it applies.*

In the case before the Court a husband, was married to four wives according to customary law and one according to civil law. The parties are all deceased. The children of the deceased have made an application to Court to challenge their right to inherit from their deceased's father estate. The applicant's parents were married before the Recognition Act in terms of which their polygamous marriage was considered to be governed by customary law and therefore the wives did not have any right to their husband's property.

The Women's Legal Centre intervened as a friend of the court in the matter on the point of the constitutionality of the provision. The women affected by the provisions of section 7(1) of the Recognition Act tend to be older women in both urban and rural areas, all Africans and many probably poor. In the absence of control over secure rights in property, this class of women affected suffer hardship in a multiplicity of ways. The rules of customary law made applicable to polygamous marriages in terms of section 7(1) violate the Constitution because they infringe on the rights to equality and dignity. The provision discriminates unfairly against women in polygamous customary marriages which were entered into prior to the commencement of the Recognition Act and offends their dignity, in that customary marriages are regulated out of community and property whereas marriages after the commencement of the Act are in community of property.

Acting Judge Lamminga ordered inter alia that:

*Section 7(1) of the Recognition of Customary Marriages Act 120 of 1998 is declared inconsistent with the Constitution and invalid; and held that until such time that legislation is passed to govern the proprietary consequences of customary polygamous marriages that occurred before the Recognition Act was passed, the wives who are parties to such marriages shall have joint and equal rights of management and control over and in the marital property of their husbands.*

The Court drew on the submissions made by the Women's Legal Centre based and appreciated the valuable contribution made by the centre in terms of the detail and research contained in its submission. The premise of its submission was for better protection.

The Women's Legal Centre submitted that:

*Save for vested property rights that operate in favour of women, the interim position should be regulated by the following further principles: women in polygamous marriages should have equal rights in and control over marital property of their husbands and other wives; with respect to House property, these rights are to be held and exercised jointly by the husband and wife concerned; with respect to Estate property, the rights should be held and exercised jointly between the husband and all wives; and personal property should remain personal property; In order to ensure that any practical problem arising may be addressed properly, it could be appropriate for the Court to direct that any affected party may approach the Court for an order to regulate their marital property regime on a just and equitable basis.*

The Court held that Section 7(1) of the Recognition of Customary Marriages Act discriminates against women in polygamous marriages on the basis of gender, race, and ethnic or social origin; and is therefore inconsistent with the Constitution.

Says lead attorney for Woman's Legal Centre Hoodah Abrahams-Fayker, "We are delighted with the outcome and believe that this takes us one step closer to reducing discrimination against women in our society. This is a good start to the month known as Women's Month."

The effect of the judgment is that it acknowledges the rights of a specific group of women who are particularly vulnerable and marginalised, who stand alone in not receiving the protections of the Constitution compared with other women in monogamous customary law marriages who are protected by matrimonial property regimes that have been put in place to protect them, whether these were concluded before or after the commencement of the Recognition Act and for women in polygamous customary law marriages entered into after the commencement of the Recognition Act.

**Distributed on behalf of the Women Legal Centre by the Press Office**

For more information or media interviews contact:

Angie Richardson, 083 397 2512 or [angie@thepressoffice.net](mailto:angie@thepressoffice.net)