

PRESS RELEASE: JEZILE V THE STATE

Cape Town High Court Rejects Manipulated “Customary” Practice of *Ukuthwala*

Tuesday 24 March 2015 - After months of deliberation, Justice Cloete of the Cape Town High Court handed down judgment in the Jezile matter. The full court decided unanimously to affirm Mr. Jezile’s convictions of human trafficking and rape, but set aside his convictions for assault and simple assault. The court declined to accept Mr. Jezile’s argument that he was in a customary marriage through *Ukuthwala*.

The Women’s Legal Centre, along with the National House of Traditional Leaders, Centre for Child law, and the Legal Resources Centre, intervened as a friend of the court.

Mr. Jezile was convicted of one count of assault, one count of simple assault, one count of human trafficking and three counts of rape of a fourteen year old girl on November 7, 2013. He appealed his conviction on all counts, arguing that this is a customary marriage of *Ukuthwala*.

The WLC submitted that *Ukuthwala* originated as a way to encourage the parents of a bride to begin marriage negotiations through the staged kidnapping of the girl. In its original form, *Ukuthwala* was completely consensual, involved no violence, and the woman remained with the bridegroom’s female family members until after the marriage ceremony.

The facts of this case do not conform to a traditional custom. The interpretation of *Ukuthwala* presented in this matter is a harmful cultural practice that involves the forced abduction of women or girls. Those abducted girls are subjected to rape, violence, and non-consensual marriage. The consequences of this practice are immense, including girl-children being required to fulfill the duties of a wife that are not age-appropriate, childhood pregnancy, and transmission of sexually transmitted diseases including HIV and AIDS. Women and girls are also subjected to continual physical and mental abuse as kidnapped brides.

The WLC emphasized that this version of *Ukuthwala* contravenes several provisions of the Constitution of South Africa. Additionally the cultural practice violates several of South Africa’s civil and criminal statutes. This form of *Ukuthwala* violates the Criminal Law (Sexual Offences and Related Matters) Amendment Act as it involves the rape of women and children. It also involves the trafficking of persons, a violation of the Prevention and Combating of Trafficking in Persons Act.

This is an important ruling because the court balanced its Constitutional duty to respect and give effect to customary law while remaining sensitive and mindful to the vulnerability of the girl child. This form of *Ukuthwala* cannot be granted protection under South African law.

The court found that Mr. Jezile relied on an aberrant form of *Ukuthwala* that involved unlawful sexual coercion to subdue an underage girl who did not consent to the marriage. Mr. Jezile’s belief that he lawfully concluded a customary marriage under the practice of *Ukuthwala* was determined insufficient grounds to reverse his conviction of human trafficking and rape of a child.

The court relied on submissions to determine that Mr. Jezile conducted a misapplied version of the *Ukuthwala* custom.

The order recognizes that men cannot interpret customary law to abduct and rape young women and girls. We acknowledge that customary law is part of our law and can be aligned with our constitutional framework.

“We are pleased with the outcome of this matter and believe that, while customary marriages should be respected, allowing women and girls to be abused through deviant customs contributes to the discrimination against women in our society.”

Distributed by FTI Consulting on behalf of Women’s Legal Centre:

Media spokesperson

Hoodah Abrahams-Fayker

Attorney

Women's Legal Centre

Tel: 021 424 5660

Email: Hoodah@wlce.co.za