



## WOMEN'S RIGHTS IN Muslim Marriages IN SOUTH AFRICA

### INTRODUCTION

The Women's Legal Centre ('the Centre') is an African feminist public interest law clinic which seeks to advance substantive equality for women in South Africa. The Centre applies an intersectional feminist approach in its strategic litigation, advocacy, education, training and legal advice methodologies of work. The Centre has a dedicated focus area which speaks to equality in relationships, and which seeks to ensure that all relationships and families in South Africa in their diversity are legally recognised, respected, and the rights of women in those relationships are protected.

### IMPORTANT INFORMATION FOR MARRIED MUSLIM WOMEN OR MUSLIM WOMEN CONSIDERING ENTERING INTO A MUSLIM MARRIAGE.

*The Women's Legal Centre Trust v President of the Republic of South Africa and Others 2022 (5) SA 323 (CC)* has confirmed the discrimination faced by Muslim women because of the lack of legal recognition and legal certainty. Pending the relevant legislation being passed by the state to recognise Muslim marriages, the following is what you need to know about your rights and protections:

#### 1. IS MY MARRIAGE NOW LEGALLY RECOGNISED?

- If you are married under *Sharia* law, your marriage is now legally recognised in South Africa for purposes like *inheritance* and *divorce*. However, there is still no specific law that regulates how a Muslim marriage should be legally concluded, what the legal consequences are (such as property rights), how the marital property should be managed, or how the marriage should be registered. These gaps mean that Muslim marriages in South Africa do not have full legal recognition and regulation.
- The Court found that you are entitled to the same legal protections as other married women, including *rights in divorce, inheritance, and financial support*.
- If you were married but your divorce has not been finalised by 14 December 2014, you may approach the Court to institute proceedings in terms of the *Divorce Amendment Act* to legally terminate the marriage through Court proceedings.
- It is important for you to note that the *Constitutional Court* has determined that Muslim marriages are considered out of community of property. This means that the provisions of the *Divorce Act* and the *Matrimonial Property Act* must still be followed when the marriage ends.
- In terms of the *Divorce Act* and the *Matrimonial Property Act*, the Court can determine what is an equitable distribution of the marital assets or a forfeiture of benefits in terms of section 7(3) read with section 7(4) and section 9(1) of the *Divorce Act*.
- If your husband has passed away, you have a legal right to *claim inheritance and financial support* from his estate as a spouse.

#### 2. YOUR RIGHTS IN DIVORCE

- If your marriage breaks down and there is no prospect of restoration as a result, you have the right to seek legal protection and have a Court determine the legal termination of the marriage, as well as the fair settlement of the affairs of the marriage, including any distribution of property and benefits.

- The Court can ensure a *fair division of assets and property* that were accumulated during the marriage.
- You have the right to apply for financial support in the form of maintenance pending the outcome of the divorce proceedings, as well as part of the final divorce order to be made. This includes financial support for *yourself* and any *children* you share with your spouse.
- Courts have an obligation to protect your rights and also the rights of any children ensuring proper care and contact including custody and financial support to which any child is entitled to. The office of the *Family Advocate* is also required to ensure that the best interest of any children in the relationship is protected.
- If your husband has ended the marriage through a religious process, you still have the right to approach the Court to obtain a legal divorce. This allows for your assets and property to be divided in a just, equitable and lawful way.

### 3. **YOUR RIGHTS TO FINANCIAL SUPPORT (MAINTENANCE):**

- If your husband leaves or ends the marriage through a religious process, he may be legally required to provide *financial support for you and your children*.
- You can apply for spousal maintenance (support payments) either as part of your divorce proceedings through the Court or separately through the *Maintenance Court*.
- Child maintenance is *legally enforceable*, and fathers must provide for their children regardless of marital status. This right and obligation can be enforced through divorce proceedings in the terms of the *Divorce Act* as well as through an application in the *Maintenance Court* in terms of the *Maintenance Act*.
- If you are financially dependent on your husband, you can seek a fair financial contribution towards your living expenses given the change that divorce will have on your lifestyle and your ability to maintain and care for yourself.

### 4. **YOUR RIGHTS IN INHERITANCE**

- If your marriage was not registered as a civil marriage, you and your children may still have a legal rights to inherit from your husband's estate *as an alternative for legal protection and regulation*.
- If your husband passed away without a will, you are considered a spouse in terms of the *Intestate Succession Act* and will need to be treated in the same manner as any other spouse in respect of what you are entitled to inherit.
- If there is a dispute in respect to your right to inheritance, you can approach a *High Court* to determine your rights as a spouse.
- Our law now protects widows and children in Muslim marriages, ensuring they are not left without financial security at the death of a spouse or parent.
- Where your spouse has a will, the estate will be dealt with in terms of the *Administration of Estates Act*. Our law recognises that an individual has the right to dispose of their assets through a will based on their wishes.
- It is common practice for Muslims that *Sharia / Islamic* wills are made in South Africa which sets out the wishes and intentions of the deceased in terms of their religious believes. It is important in such cases to ensure that the will complies with the provisions of the *Wills Act* as well as the provisions of the Constitution in respect of discrimination on the basis of gender in particular.

### 5. **WHAT HAPPENS NEXT?**

- The South African government has been instructed by the *Constitutional Court* to adopt and sign into law a legislation that recognises and regulates Muslim marriages in the same or a similar manner as other marriages and unions. The state has until **27 June 2026** to fully recognise and regulate Muslim marriages.
- While we wait for the new law to be passed, Courts can still address challenges and discrimination faced by Muslim women due to the lack of formal legislation. If you are

experiencing such discrimination, you have the right to approach the Court to determine protect your rights.

- This means, you can go to Court now - *even before the new law is passed, to claim your legal rights* in matters of divorce, financial support, or inheritance.

## 6. **WHAT YOU CAN DO TO PROTECT YOURSELF?**

- Keep all documents related to your marriage, including:
  - Your Nikah certificate (Islamic marriage contract)
  - Proof of shared assets, financial contributions, and properties
  - Birth certificates for your children
  - Any documents showing financial support from your husband
  - Documents related to the purchase of property and any other assets
- Negotiate, discuss and agree that any property purchased during the marriage is registered in both your names. This helps protect your rights and makes it easier to prove ownership should anything happen later on in the marriage.
- If you are facing divorce, abandonment, or financial struggles, seek legal assistance immediately.
- If you are unsure about your rights, consult a lawyer or a women's rights organisation that has experience in Muslim personal law.
- If your husband has passed away, speak to a legal expert about your inheritance rights.
- Stay informed about new laws that may be introduced to further protect your rights.

## 7. ***Essential* DOCUMENTS (DIVORCE):**

- **Marriage Certificate:** A certified copy of the marriage certificate is crucial.
- **Identity Documents:** Certified copies of both spouses' identity documents are required.
- **Children's Birth Certificates (if applicable):** If there are children involved, their birth certificates are needed.
- **Ante-Nuptial Contract (if applicable):** If the marriage was out of community of property, a copy of the ante-nuptial contract must be provided.

## 8. **WHERE TO GET HELP?**

If you need legal advice or assistance, contact the following organisations:

### Legal Support Services:

✦ Women's Legal Centre: 2nd Floor, 5 St Georges, St Georges Mall Cape Town  
PHONE: 021 424 5660  
HELPDESK QUERIES: [info@wlce.co.za](mailto:info@wlce.co.za)

### Government Resources:

✦ Legal Aid South Africa, to find offices in your area follow the following link below:  
<https://legal-aid.co.za/find-us/>

✦ Family Courts: You can visit your nearest family court to seek legal help in divorce and maintenance (spousal and child)

✦ Master of the High Court: You can visit your nearest Master's office to seek assistance with deceased estates.

## **FINAL MESSAGE: YOU ARE NOT ALONE**

- The law is now on your side. You have the right to a fair and just legal process.
  - Do not hesitate to seek help if you are facing challenges in your marriage, divorce, or financial security.
  - Stay informed, know your rights, and take action when necessary.
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