
Women's Legal Centre welcomes Constitutional Court judgment affirming protections in customary marriages

In a landmark judgment handed down on 21 January 2026, the Constitutional Court declined to confirm an order by the High Court which had previously declared section 10(2) of the Recognition of Customary Marriages Act (RCMA) unconstitutional. The majority judgment, penned by Justice Majiedt, reinforces the protective framework for spouses in customary marriages and affirms the necessity of judicial oversight when altering matrimonial property regimes.

What the case was about:

The case, *VVC v JRM and Others*, centered on a couple married under customary law in community of property in 2011, who later sought to conclude a civil marriage with an antenuptial contract (ANC) in 2019. The applicant contended that section 10(2) of the RCMA was unconstitutional because it permitted spouses to change their matrimonial property system from in community of property to out of community of property without court supervision, potentially depriving vulnerable spouses, often women, of property rights.

The majority judgment further held that the ANC concluded after the customary marriage was invalid, as it attempted to change the matrimonial property regime without complying with section 21 of the Matrimonial Property Act, which requires judicial oversight. The parties before the Court therefore remain married in community of property.

What does the judgment mean?

The majority found that section 10(2) of the RCMA does not authorise spouses to change their matrimonial property system without court approval. Instead, it importantly clarifies that the proprietary consequences of the customary marriage continue into the civil marriage unless altered through a proper judicial process. This process is necessary to ensure that any changes are just and equitable and that all parties are protected when decisions are made to alter matrimonial property regimes.

The judgment affirms that customary marriage is treated and afforded the same status and dignity as other marriages, and protects spouses, particularly women, from being denied access to housing, land and property accumulated during the marriage as a result of the matrimonial

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property regime owned by both parties. The Court emphasised that judicial oversight is essential to prevent exploitation and ensure fairness.

We welcome the decision, which safeguards women in customary marriages, who are often economically disadvantaged and historically marginalised. The insistence on judicial oversight reinforces the protective intent of the RCMA and prevents partners from using legal technicalities to disempower vulnerable spouses.

While the minority's concern for contractual certainty is noted, it overlooks the real-world power dynamics that expose women, especially Black women in customary marriages, to economic harm. The majority rightly places protection over procedural convenience.

We welcome an approach that centers the lived reality of Black women in its reasoning rejects interpretations that would perpetuate historical inequalities.

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