

## THE EXISTENCE AND PROOF OF CUSTOMARY MARRIAGES FOR PURPOSES OF ROAD ACCIDENT FUND CLAIMS

### 1 The death of a breadwinner: claims from the Road Accident Fund by widows of a customary marriage

The enactment of section 31 of the Black Laws Amendment Act 76 of 1963 has been hailed as an important milestone in law reform (see Dlamini "Claim by Widow of a Customary Union for Loss of Support" 1984 *SALJ* 346). The main aim behind the enactment was to grant the widow of a customary marriage the right to "claim damages for loss of support from any person who unlawfully causes the death of her husband or is legally liable in respect thereof; provided that, at the time of his death, neither of them was a party to a subsisting civil marriage and that the customary marriage was also subsisting at that time" (Bekker *Seymour's Customary Law in Southern Africa* 1989 379; and see also *Pasela v Rondalia Versekeringskorporasie van SA Bpk* 1967 1 SA 339 (W)).

At the time of the enactment, a customary marriage was not regarded by South African law as bringing about a legal duty of maintenance or support *inter partes* (*Mokoena v Laub* 1943 WLD 63). This was because it was not regarded or recognised as a valid marriage by South African law and the claim for loss of support by a widow was held to disclose no cause of action (*Zulu v Minister of Justice* 1952 2 SA 128 (N); and *SANTAM v Fondo* 1960 2 SA 467 (A)).

Because of the limited recognition that was granted to a customary marriage, this legislative measure prescribed the circumstances under which a widow of a customary marriage could claim damages for loss of support. These circumstances are that:

- 1 1 the claimant or such other party (the deceased) was not, at the time of death, a party to a subsisting marriage;
- 1 2 the claimant produces a certificate stating her name as a party to a customary marriage or in the case of a customary marriage with more than one spouse, the names of all the spouses with whom the deceased was married; and
- 1 3 the customary marriage must have been in existence at the time of the death of the deceased.

At that time a subsequent civil marriage with another woman had the effect of dissolving the subsisting customary marriage (*Nkambula v Linda*

1951 1 SA 377 (A)). A man who was married by civil rites was expressly prohibited from marrying another woman by customary rites. (See, *inter alia*, Mqeke "Protection of the Customary Union Spouse" 1980 *De Rebus* 597; Mafubelu "Civil Marriage and Customary Union – To be (Valid) or not to be (Valid) that is the Question" 1981 *De Rebus* 573; and the repealed s 22 of the Black Administration Act of 1927.) A person could not therefore be a spouse to a civil marriage and a customary marriage at the same time. As a customary marriage was dissolved or superseded by a civil marriage, the rights of its widow and children were safeguarded at the death of its male spouse (s 22(7) of Act 38 of 1927; and see also Peart "Civil or Christian Marriage and Customary Unions: The Legal Position of the Discarded Spouse and Children" 1983 *CILSA* 39). This was the position until 2 December 1988 when the Marriage and Matrimonial Property Law Amendment Act (3 of 1988) came into operation. The effect was that a customary marriage, if it was the first marriage contracted, was no longer dissolved by a subsequent civil marriage (Sinclair *The Law of Marriage Vol 1* (1996) 219-220; and Bekker 263).

The position outlined above applied to the whole of South Africa, including the former KwaZulu and Natal where the two codes operated (KwaZulu Act on the Code of Zulu Law 16 of 1985 and Natal Code of Zulu Law, Proclamation R151 of 1987). The position in the then Transkei was different in that a man was allowed to marry one wife by civil rites and another or others by customary rites. The civil marriage, however, had to be out of community of property and of profit and loss (s 3 of the Marriage Act 21 of 1978; see also Van Loggerenberg "The Transkei Marriage Act of 1978: A new Blend of Family Law" 1980 *Obiter* 1; Maithufi "Marriage and Succession in South Africa, Bophuthatswana and Transkei: A Legal Pot-pourri" 1994 *TSAR* 262; and *Thembisile v Thembisile* 2002 2 SA 209 (T)).

Customary marriages were given full recognition on 15 November 2000 when the Recognition of Customary Marriages Act (20 of 1998) came into operation. As may be gathered from the title of this Act, customary marriages are given full recognition for all intents and purposes of South African law. These are customary marriages contracted in accordance with the provisions of this Act as well as valid customary marriages which existed at its date of commencement (s 2 of Act 120 of 1998). The Act further provides that:

"(2) Save as provided in section 10(1), no spouse in a customary marriage shall be competent to enter into a marriage under the Marriage Act, 1961 (Act No 25 of 1961), during the subsistence of such customary marriage"; and

"(1) A man and a woman between whom a customary marriage subsists are competent to contract a marriage with each other under the Marriage Act, 1961 (Act No 25 of 1961), if neither of them is a spouse in a subsisting customary marriage with any other person" (ss 3(2) and 10(1)).

The above-mentioned provisions are self-explanatory. They preclude a spouse married by customary rites from contracting a civil marriage with another person during the subsistence of the customary marriage. Unlike the position before 2 December 1988, that is, before the coming into operation of the Marriage and Matrimonial Property Law Amendment Act of 1988, a

civil marriage does not have the effect of dissolving or superseding an existing or previous customary marriage. The result is that a civil marriage contracted during the subsistence of a customary marriage is null and void *ab initio*. The same holds for a customary marriage contracted during the existence of a civil marriage. It is also clear that a spouse to a civil marriage (in terms of the Marriage Act 25 of 1961) is precluded from contracting a customary marriage with another person during the subsistence of the civil marriage (s 10(4) of Act 120 1998). Polygamy, in the same manner as before 2 December 1988, is only allowed in respect of customary marriages.

## **2 The current status and application of section 31 of the Black Laws Amendment Act of 1963**

Present claims by customary law widows were pertinently raised in a case that had its origin in the Durban and Coast Local Division of the High Court, namely *Nontobeko Virginia Gaza v Road Accident Fund* (unreported Case No 314/04).

The main issue for determination in this case was whether a widow of a customary marriage whose husband was, at the time of his death, a spouse to a civil marriage with another woman, was owed a duty of support or maintenance by her deceased husband. The second issue was, were it to be found that such legal duty existed, whether this legal duty or right to support was worthy of protection by current South African law.

The deceased, David Siponono Gaza, was killed in a motor vehicle accident on 21 February 2000. At the time of his death, he was married to the plaintiff, Nontobeko Virginia Gaza, by customary rites. This customary marriage was registered at the office of the Commissioner of the District of Durban in terms of the Natal Code of Zulu Law (Proclamation R151 of 1987) on 15 July 1987. The deceased was also married by civil rites to one Makhosasana Lillian Gaza. This civil marriage was contracted before the conclusion of the customary marriage with plaintiff. Both women claimed for loss of support or maintenance as a result of the negligent death of their husband.

The Durban and Coast Local Division granted the wife married by civil rites compensation for loss of support as a result of the negligent death of her husband. Compensation for loss of support was not granted to the plaintiff (wife by customary rites) on the basis that this was excluded by the proviso to section 31 of the Black Laws Amendment Act of 1963 to the effect that "such partner or such other partner is not, at the time of such death, a party to a subsisting marriage".

It was argued on behalf of the plaintiff that although the above-mentioned section has not been expressly repealed by the Recognition of Customary Marriages Act of 1998, it was impliedly repealed by later legislation and the correct approach to be adopted in determining whether plaintiff was owed a duty of support worthy of protection by South African law was laid down in

*Amod v Multilateral Motor Vehicle Accident Fund* (1999 4 SA 1319 (SCA)) and not in section 31 of the Black Laws Amendment Act of 1963.

The Durban and Coast Local Division rejected this argument and held that:

“It seems to me that counsel for the defendant’s argument is plainly correct that the legislature intended to preserve section 31 inasmuch as it created the right on the part of an African person married by customary law to claim in terms of the Road Accident legislation. However, it was clear that the legislature did not intend to open the floodgates and give all partners to a customary union this right if there was a valid subsisting marriage in existence at the time of the death of the deceased and counsel for the defendant has referred to section 10 of the 1998 Act ... Now, it seems to me that the legislature was plainly aware of the situation and it did not intend to afford a person such as the present plaintiff a right to claim for loss of support” (*Nontobeko Virginia Gaza v Road Accident Fund* (*supra* 18-19)).

### **3 Application to Durban and Coast Local Division for leave to appeal to Supreme Court of Appeal**

The Durban and Coast Local Division granted absolution from the instance on the basis that the legislature “did not intend to afford a person such as the present plaintiff a right to claim for loss of support” (*Nontobeko Virginia Gaza v Road Accident Fund* (*supra* 18-19)). Thereupon an application for leave to appeal to the Supreme Court of Appeal was lodged. It was contended that there was a reasonable prospect of the Appeal Court finding that the court erred in holding that the plaintiff was non-suited in a dependant’s action.

The main ground of appeal was that the court erred in not finding that the deceased had a legally enforceable duty to support the plaintiff; that this duty arose from a solemn marriage, namely a customary marriage, which was recognised as such and this duty deserved recognition and protection for the purposes of the dependant’s action. In amplifying this ground of appeal, it was argued that the court erred in, *inter alia*, holding that:

- 3 1 the issue for determination was to be simply decided upon the terms of section 31 of the Black Laws Amendment Act of 1963 without considering that the defendant had admitted that the plaintiff was married to the deceased according to customary law in terms of the Recognition of Customary Marriages Act of 1998 and that the marriage was registered at Durban on 15 July 1987;
- 3 2 section 31 was applicable when it simply did not have any application upon a proper construction of that Act despite the agreement by the parties that the customary marriage was binding between the parties to the marriage *inter se*;
- 3 3 section 31 was not permissive but exclusionary in agreement with the decision in *SANTAM v Fondo* (*supra*) which is no longer good law in the light of the present constitutional order; and
- 3 4 *SANTAM v Fondo* was applicable contrary to the legal principle enunciated in *Amod v Multilateral Motor Vehicle Accident Fund* (*supra*)

to the effect that the issue for determination is whether or not a legal right which a plaintiff had to support from the deceased during the subsistence of the marriage deserves recognition and protection for the purposes of the dependant's action.

The application for leave to appeal was refused. In refusing this application Levinsohn DJP held that the provisions of section 31 were not applicable to the matter before him as the deceased was married to another woman by civil rites before he married the plaintiff by custom. In essence, the court held that the customary marriage contracted by the deceased with the plaintiff was invalid.

On the question of whether or not a correct approach, as enunciated in *Amod v Multilateral Motor Vehicle Accident Fund (supra)*, was followed, the court found the present matter distinguishable from the situation postulated in that case in the sense that the deceased had contracted a valid civil marriage which was in existence at the time of his death before the customary marriage with the plaintiff was concluded.

In refusing the application for leave to appeal, the court concluded:

"I am not satisfied that there are reasonable prospects of the Supreme Court of Appeal holding that our public policy has developed to the extent that we should recognise not only a deceased man's duty of support to a woman he has lawfully married but also the concurrent duty of support owed to survivors of other conjugal relationships entered into by that man during the currency of his said civil marriage. It seems to me that if changes need to be made these are matters which should enjoy the attention of the legislature. It is difficult to see how the principles in *Union Government v Warneke* 1911 AD 65 can be extended to accommodate the situation *in casu*" (*Nontobeko Virginia Gaza v Road Accident Fund supra* 4).

#### **4 Application for leave to appeal to Supreme Court of Appeal**

Leave to appeal was sought from the Supreme Court of Appeal, which was granted on 29 September 2006 (Appeal Court Case Number 419/2006). On 19 November 2007, the Supreme Court of Appeal in *Nontobeko Virginia Gaza v Road Accident Fund (supra)*, without dealing with the legal issues between the parties, ordered that:

- 4 1 the judgment of the Durban and Coast Local Division absolving the defendant from the instance in a claim for loss of support by a widow of a customary marriage entered into in terms of the Natal Code of Zulu Law and which was contracted during the subsistence of a valid civil marriage be abandoned by the defendant (Road Accident Fund) and set aside;
- 4 2 any claimant who falls into the category of a spouse of a customary marriage where one of the spouses was, at the time of death, a spouse to a civil marriage, be compensated for loss of support by the Road Accident Fund; and

4 3 the Minister of Justice and Constitutional Development review, within a period of eighteen months of the date of the order, the relevance of the continued existence of section 31 of the Black Laws Amendment Act in view of its exclusion from its operation of women whose marriages are valid at customary law albeit that a civil marriage subsists and in view of its genesis in racially discriminatory legal regime.

According to the agreement reached, all persons who are “spouses” to a customary marriage which was contracted during the subsistence of a civil marriage are entitled to compensation for damages suffered as a result of the negligent death of their “husbands”. The effect is that these relationships are regarded as valid customary marriages which bring about a legal duty of support *inter partes* which deserves legal protection.

It would also appear that the effect of this agreement, and consequently the court order, is that section 31 of the Black Laws Amendment Act of 1963 is unconstitutional on the basis that it discriminates against women married by customary rites whose marriages were contracted during the subsistence of a civil marriage. This is a fundamental departure from the position that existed before the enactment of the Marriage and Matrimonial Property Law Amendment Act of 1988 and the Recognition of Customary Marriages Act of 1998. Before 2 December 1988, that is, before the coming into operation of the Marriage and Matrimonial Property Law Amendment Act of 1988, a civil marriage had the effect of dissolving or superseding a customary marriage. This position was changed by the Marriage and Matrimonial Property Law Amendment Act of 1988 and later confirmed in the Recognition of Customary Marriages Act of 1998. Both acts, however, prohibit the simultaneous existence of a civil and a customary marriage by one of the parties to any of these marriages. The result is that a spouse to a civil marriage is not competent to contract a customary marriage with another person during the subsistence of such civil marriage. In the authors’ view, this may be the reason why section 31 was not repealed by the Recognition of Customary Marriages Act of 1998 as it envisages a situation where the deceased spouse was married by custom to one or more than one spouse. For the same reason, this section was not previously repealed by the Marriage and Matrimonial Property Law Amendment Act of 1988.

The order relating to the relevance of the continued existence of section 31 of the Black Laws Amendment Act of 1963 in its present form has to be commended. Law reform in this instance is long overdue if regard is had to the fact that customary marriages have been elevated to the same position as valid marriages equivalent to civil marriages by the Recognition of Customary Marriages Act of 1998. Section 31 of the Black Laws Amendment Act of 1963 may on this basis be unconstitutional in that it unfairly discriminates against spouses married by customary rites. These spouses presently have the same rights as those married by civil rites, including the right to sue for loss of support as a result of the death of a breadwinner. It may therefore be argued that this section was impliedly repealed by the Recognition of Customary Marriages Act of 1998 (see Maithufi “The Extension of the Aquilian Action – The Zimbabwean Experience” 1990 *De*

*Jure* 379). The position appears to be that only spouses of customary marriages in the absence of an existing civil marriage owe each other a duty of support which is worthy of protection by South African law.

## **5 Review of claims by all customary law widows essential**

The authors agree with the decision of the Durban and Coast Local Division. Plaintiff's claim was not covered by the provisions of section 31 of the Black Laws Amendment Act of 1963 in that her deceased husband was at the time of his death, a spouse to a civil marriage with another woman. In fact, plaintiff's marriage to the deceased was invalid.

The plaintiff was married to the deceased by customary rites in terms of the Natal Code of Zulu Law (Proclamation R151 of 1987). According to this Code, a man was prohibited from contracting a customary marriage during the subsistence of a civil marriage with another woman. The code provided as follows:

"Any male may not enter into a customary marriage with another woman during the subsistence of a valid civil marriage" (s 36(4)).

The authors agree that the duty of a court is not merely to interpret the law but may, when circumstances before it permit, also engage in law reform (*Amod v Multilateral Motor Vehicle Accident Fund (supra)*, *Daniels v Campbell NO* 2004 5 SA 331 (CC), *Bhe v Magistrate, Khayelitsha* 2005 1 SA 550 (CC), and *Zimnat Insurance Co v Chawanda* 1991 2 SA 825 (ZSC)). The authors also agree with the following sentiments expressed by Levinsohn DJP:

"It seems to me that if changes need to be made these are matters which should enjoy the attention of the legislature. It is difficult to see how the principle in *Union Government v Warneke* 1911 AD 657 can be extended to accommodate the situation *in casu*" (*Nontobeko Virginia Gaza v Road Accident Fund (Judgment on Application for Leave to Appeal)* (unreported Supreme Court of Appeal Case No 579/2004) 4).

This is clearly a matter that needs the attention of the legislature. South Africa prides itself on having a rich cultural diversity which has to be reflected in its legal system. The case under discussion involves the recognition and enforcement of a duty of support arising from a customary marriage which was contracted during the subsistence of a civil marriage. The same question may arise in the case where the first marriage was by customary rites. The court was therefore indirectly called upon to determine the legal validity of a customary marriage contracted during the subsistence of a civil marriage (see *Wormald NO v Kambule* [2004] 3 All SA 392 (E); *Wormald NO v Kambule* 2006 3 SA 562 (SCA); and *Kambule v The Master* 2007 3 SA 403 (E)). Any marriage contracted under these circumstances is prohibited by South African law and as such invalid. Is this prohibition still necessary in the light of the recognition of a customary marriage as a valid marriage for all purpose? (See Read "A Milestone in the Integration of

Personal Laws: The New Law of Marriage and Divorce in Tanzania” 1972 *JAL* 19.) Contrary to the existing prohibition, customary marriages are still contracted during the subsistence of a civil marriage or a civil marriage during the existence of a valid marriage by customary rites. Is it not time to formally legalise these relationships? Failure to legalise polygamy in these marriages would inevitably lead to a harsh result, namely, that one of these marriages, despite the expectations of the parties thereto, is invalid.

The order granted in this case is in fact an encouragement by the Supreme Court of Appeal towards the reform of marriage law in South Africa. The order has the effect of extending the dependant’s action to a widow of a customary marriage which was concluded during the subsistence of a valid civil marriage. As already mentioned, the customary marriage so contracted is, in terms of current South African law, invalid in that a spouse to a civil marriage is not competent to contract another marriage. It is not surprising therefore that the third respondent, the Minister of Justice and Constitutional Development, was enjoined to review the relevance of the continued existence of section 31 of the Black Laws Amendment Act of 1963 which was enacted before a customary marriage was accorded full recognition as a valid marriage. It is submitted that the continued existence of this section may have been rendered superfluous or redundant by the Recognition of Customary Marriages Act of 1998. Its repeal was obviously overlooked when the Recognition of Customary Marriages Act of 1998 was enacted. The section may, however, still be relevant to customary marriages contracted contrary to the provisions of the Marriage and Matrimonial Property Law Amendment Act of 1988 and its predecessors (Act 38 of 1927, the KwaZulu Act on the Code of Zulu Law and Natal Code of Zulu Law of 1985 and 1987 respectively).

The review ordered, it is submitted, has to take into account the present constitutional dispensation relating to the recognition of marriages, in particular the Bill of Rights as contained in the Constitution of the Republic of South Africa, 1996 (Ch 2) and the impact of the Recognition of Customary Marriages Act of 1998 on family law in South Africa (see Maithufi and Bekker “The Recognition of Customary Marriages Act of 1998 and its Impact on Family Law in South Africa” 2002 *CILSA* 182; and Maithufi “Customary Law of Marriage and a Bill of Rights in South Africa: Quo Vadis” 1996 *THRHR* 298). In embarking upon this reform process, it would be wise to remember that:

“In modern Africa, there is a particularly strong need for law reform. Pre-colonial heritage, colonial rule and policies of independence have left the new African state with a complicated and disorganised mass of legal norms, indeed with a plurality of legal systems and concomitant choice of law dilemmas. Moreover, much of the imported general or common law on the one hand, and indigenous African Law, on the other, has become outdated in the light of modern social demands” (Hiemstra in Sanders (ed) *Southern African in Need of Law Reform* (1981) 1-2).



## 6 Review of proof of customary marriages

Review of the rights of all customary marriage widows to claim for loss of support is, however, not all there is to it. Proof of the existence of a customary marriage is notoriously vague. Previously customary marriages were not registered except in KwaZulu and Natal where the codes made it obligatory. Regulations providing for the registration of customary marriages in the so-called "black areas", later commonly referred to as "homelands", were also promulgated in terms of section 22 *bis* of the Black Administration Act of 1927 (GN R1970 of 1968-10-25). These regulations were never implemented. In former KwaZulu and Natal, registration virtually became part and parcel of the conclusion of customary marriages. In Transkei, registration was provided for by the Transkei Marriage Act of 1978 (Act 21 of 1978; and *Kwitshane v Magalela* 1999 4 SA 610 (Tk).

The production of a certificate issued in terms of the Black Laws Amendment Act of 1963 is regarded as conclusive proof of the existence of a valid customary marriage with the deceased spouse (s 31(2A)). Conflicting decisions were reached by our courts as to the nature of the certificate and the time at which it had to be produced (*Dlikilli v Federated Insurance Co Ltd* 1983 2 SA 275 (C); and *Msomi v Nzuza* 1983 3 SA 939 (D)). Despite this conflict, it is clear that what was required was a certificate issued by a commissioner (previously) or a magistrate stating that a customary marriage existed between the claimant and the deceased and was still in existence at the time of death. The issuing of the certificate may be based on the information obtained from a marriage register (at least in KwaZulu-Natal in terms of the codes) or from an enquiry held by a magistrate or commissioner, as the case may be (*Hlela v Commercial Union of SA* 1990 2 SA 503 (N); *Mgoqi v Protea Assurance Co Ltd* 1985 4 SA 159 (C); *Monamodi v Sentraoer Co-Operative Ltd* 1984 4 SA 485 (W); and see also Maithufi "Causing the Death of a Breadwinner – The Customary Marriage Widow's Problem" 1986 *De Rebus* 555).

Despite the foregoing it is presently accepted, since the decision in *Hlela v Commercial Union Assurance Co of SA Ltd* (*supra*) that:

- (i) a plaintiff cannot be compelled to produce the certificate to the defendant prior to issuing of the summons;
- (ii) the pleadings need not contain an allegation that the section 31(2) certificate is in possession of the plaintiff and is available to the defendant;
- (iii) the certificate must be produced to the court (and not the defendant);
- (iv) the certificate should be handed in when the existence of the customary marriage is being proved;
- (v) the pleadings need not aver that neither the plaintiff nor the deceased breadwinner at the time of his death was a party to a common law marriage; and
- (vi) the section 31 certificate may be issued on the basis of information derived from a register of customary marriages or from other sources" (*Olivier et al Indigenous Law* (1995) 140).

It was understandable that the Black Laws Amendment Act of 1963 contained an elaborate provision that a claimant for damages should produce a certificate issued by a commissioner (later magistrate) to the effect that a customary marriage had been entered into and was still in existence at the time of death of the deceased partner (ss 31(2)(a) and (b)). This certificate seemed to serve a purpose, although the authors were informed that many of them were questionable, being issued after only cursory enquiries. The Road Accident Fund is tied down by them except that it may question the findings of the magistrate in the High Court for which it would have to produce its own evidence to the contrary.

One would have thought that the Recognition of Customary Marriages Act of 1998 would have provided a solution. Although this Act provides that customary marriages have to be registered, "failure to register a customary marriage does not affect its validity" (4(9)). It is submitted that the Road Accident Fund is still bound by the provisions of the Black Laws Amendment Act of 1963, but the Act has no right of existence in isolation (it has to be read subject to the repealed s 22 of Act 38 of 1927).

The problem is further aggravated by the fact that customary marriages entered into before the commencement of the Recognition of Customary Marriages Act of 1998 had to be registered within 12 months after their commencement. This period was extended by another 12 months (ss 4(3)(a) and (b) of Act 120 of 1998; and see also GN 1228 of 2001-11-23). Late registration after the extended period will be regarded as invalid because of lack of authority. The alternative to late registration is to obtain an order by a court that the customary marriage be registered (s 4(7)(a) of Act 120 of 1998; and *Baadjies v Matubela* 2002 3 SA 427 (W)). The court in this instance would be a High Court or a Family Court (see definition of "court" in s 1 of Act 120 of 1998). This might be considered as unfair as courts in South Africa are, on account of exorbitant costs, virtually inaccessible for poor and middle class people.

Another matter that aggravates the plight of most who have claims or who are entitled to rights based on customary marriages, is that many such marriages are in fact not registered. It would appear that little attention was lent to the Recognition of Customary Marriages Act of 1998, nor to the opportunities to register customary marriages.

## **7 Conclusion**

We are often consulted especially by women who are caught on the wrong foot having to prove *ex post facto* that they are or were married by customary law. We are also often made acutely aware of persons who try to manipulate the system by trying to prove that they were married or not, depending on what suits them.

The problems relating to proof of the existence of a customary marriage cannot be solved by bringing domestic partnerships within the ambit of the law. A customary marriage is a marriage in its own right. By trying to resolve the lack of proof by applying to it the shenanigans of giving effect to

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“partnerships” would further confuse the issues. The problems that arise stem from existing customary marriages for which *de facto* proof is not readily available. The obvious remedy is to make registration a requirement for the validity of a customary marriage which has to be accompanied by publicity of the requirement in every nook and cranny of the country. In that event, a review of the regulations prescribing the manner of registration would be necessary. However, discussion thereof would take the authors beyond the scope of this note.

IP Maithufi and JC Bekker  
*University of Pretoria*