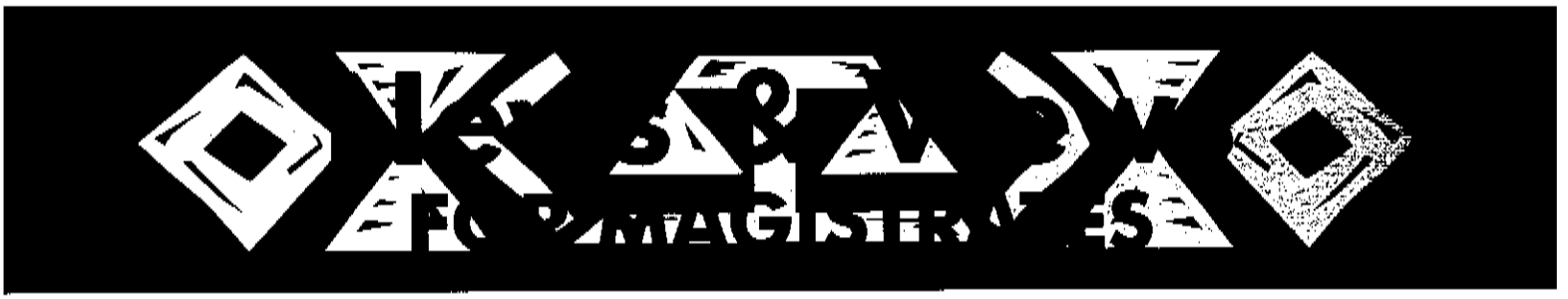

Black deceased estates

By Elmarie Knoetze
University of Port Elizabeth

As a new series, Prof Elmarie Knoetze of the Law Faculty of UPE will write a column on the customary law of succession and administration of Black estates.
In this, the first of the series, she considers the recent applications of *Bhe v The Magistrate, Khayelitsha* (CCT 49/03), *Shibi v Sithole* (CCT 69/03) and *South African Human Rights Commission v President of the Republic of South Africa* (CCT 50/03) in the Constitutional Court.

The *Bhe*, *Shibi* and *SAHRC* applications were heard by the Constitutional Court on 2 March 2004. At the time of writing, the decision of the Court in the matters is still awaited. The first two applications were for confirmation of the orders of constitutional invalidity made by the Cape and Pretoria High Courts in the cases of *Bhe* (2004 1 BCLR 27 (C)) and *Shibi* (Transvaal Provincial Division case number 7292/01, 21 November 2003 (unreported)). These decisions declared invalid sections 23(10)(a), (c) and (e) of the Black Administration Act 38 of 1927, as well as Regulation 2(e) of the Regulations of the Administration and Distribution of Estates of Deceased Blacks GN R 200 of 1987 and section 1(4)(b) of the Intestate Succession Act 81 of 1987.

The applicants in the first two matters (in the case of *Bhe* the two minor daughters of the deceased, and in the case of *Shibi* the sister of the deceased) sought to inherit from the deceased estates. In the third case, the South African Human Rights Commission approached the Constitutional Court directly in a class action on behalf of women and children seeking substantially the same relief. The Commission on Gender Equality acted as *amicus curiae*. The Minister of Justice and Constitutional Development supported the confirmation of the declaration of invalidity.

The Intestate Succession Act sets out the legal rules governing intestate succession, but excludes from these rules the estate of any person who lived under customary law. Such estates devolve in terms of customary law. According to the Regulations, customary law applies to the estates of unmarried Blacks as well as Blacks who were married in terms of custom. In accordance with custom, the male primogeniture rule provides for the inheritance by the eldest male descendant of the deceased, excluding the surviving spouse, younger sons, female descendants and other female relatives from succession.

The High Court in the first two cases held that the challenged provisions were unfairly discriminatory against Black females. The rule of male primogeniture was considered to be untenable in the current constitutional dispensation of gender equality. The High Courts accordingly ordered that until the legislative defects are corrected by statutory intervention, the distribution of Black intestate estates should be governed by the Intestate Succession Act, which provides for the inheritance of both the surviving spouse as well as male and female descendants or other blood relatives.

In the Constitutional Court application, the applicants supported the decisions of the High Courts, by submitting that the relevant provisions of the Black Administration Act were unfairly discriminatory and violated the applicants' constitutional right to dignity, as well as children's rights. The South African Human Rights Commission supported the applicants but contended that the discrimination took place on additional grounds to gender, namely race, age and birth in terms of section 9 of the Constitution.

The Commission on Gender Equality supported the declaration of invalidity but submitted that placing all Black estates under the ambit of the Intestate Succession Act would have a negative impact upon poor rural women. It submitted that it would be more appropriate for the Court to apply the rules of "living" customary law in terms of which females are often appointed as representatives of deceased Black estates, or to develop customary law of succession in accordance with section 39(2) of the Constitution in promotion of the values of human dignity, equality and freedom.

On the face of it, the issue is simple, because the existing law clearly discriminates in terms of race and gender, and is therefore unconstitutional. However, the eleven Constitutional Court judges were concerned about undermining the importance of customary law and apparently grilled the advocates for the applicants about the consequences of their applications. Justice S Ngcobo is reported to have said that "[w]e should be mindful of undermining these institutions [of customary law] that have been recognized by the Constitution. If we are to get rid of a justice system with the stroke of a pen I do not think that would be appropriate." Justice Albie Sacks mentioned that while it was clearly racist to apply different legal frameworks based on race alone, it was also racist to force people to process their affairs under a legal system that was alien to their culture. The judges were also worried that the Intestate Succession Act made no provision for polygamous marriages.

The outcome of the case may have a far-reaching impact on the future of the customary law of succession, and arguably also the system as a whole.

Out with the old...

By Belinda Molamu, Justice College

Justice College has moved to new premises. After approximately 50 years being housed in Proes Street, Justice College has moved to a new modern building, boasting hi-tech lecture halls at the Sunnyside Campus of UNISA. The road leading to the relocation was a long, winding one, however, through the steadfastness, or shall I say nagging, of Chief of the College, Cecille van Riet, we moved.

The new offices have brought a renewed sense of pride in the staff members. The familiar walls adorned with pictures of course attendants dating as far back as the seventies are no more. However, do not despair, the pictures have all been well preserved in our brag albums and will be available for viewing on request. The judicial training directorate has been placed separately from the other directorates and is subdivided into three section, viz, Civil, Criminal and Family, under the leadership of Senior Magistrates Ray Nelson and Cheryl Loots and Magistrate Anne van der Merwe. The new telephone number for judicial training is: (012) 481 2889; fax: (012) 481 2854. The e-mail addresses remain the same. The switchboard number is (012) 481 2892.

I believe that the new premises will provide a more conducive environment for judicial training and we are looking forward to hosting you on courses in the foreseeable future.

Justice College's new premises at Sunnyside

Mitchell's Plain Court and LRG reach out to the Western Cape High Schools on Human Rights Day

LRG in partnership with Mitchell's Plain Magistrates' Court and Mitchell's Plain Network opposing Women Abuse celebrated Human Rights Day by having an 'Open Court Day' exposing learners from six different schools in the region to the criminal court process and human rights. The schools that benefited from the programme were Lentegeur High, Rocklands High, Tafelsig High, Beacon Hill High and Portland High.

The programme for the day consisted of a brief tour of the courthouse followed by an information session on the functioning of the court by Mr Swart the Chief Magistrate at Mitchell's Plain. Mr Ngobeni who is also a magistrate at Mitchell's Plain explained the criminal proceedings. Tandazwa Ndita of LRG gave a talk on the importance of knowing and understanding human rights.

The experience left the learners excited and wanting to learn more about the criminal justice system!

Portland High learners on Human Rights Day

What would you do?

By Angelo Fick
Public Law Department, UCT

The applicant had been charged with driving under the influence of liquor under s 122(1) (a) of the Road Traffic Act 29 of 1989. He had pleaded guilty and was convicted. He was sentenced to three years' imprisonment and also disqualified from getting a driving licence for the following five years. Leave to appeal was refused. Applicant launched review proceedings in the Cape Provincial Division of the High Court. Amongst other grounds, he relied on his right to a fair trial. The facts, which were not disputed, were that the applicant's attorney had been ill on the day of the trial. As a result, a new attorney was nominated by the Legal Aid Board to apply for a postponement on the applicant's behalf. Although there was no indication of it in the magistrate's manuscript notes, the application for a postponement had been denied. The applicant had then only had a short time (about ten minutes) to consult with the new attorney. As a result of the advice given to him, he pleaded guilty and no mitigating evidence was led. The applicant had a number of prior convictions and the prison sentence was, consequently, handed down.

Answer on page 8

STRENGTHENING THE FAMILY COURTS IN SOUTH AFRICA – REFORMING THE MALFORMED?

Raesibe Tladi
Family Court Task Team Chairperson

When the Family Court Pilot Project (FCPP) was born during 1998-1999, there was much excitement that finally family law disputes were being given the attention they deserved, recognizing that the family was a fundamental unit of our society.

The project was founded on a vision to provide specialized protection to the family; offering accessible services that are sensitive to the needs of the community; and operating according to simple and appropriate procedures, applying ADR (Alternative Dispute Resolution) and a therapeutic approach to disputes in a user-friendly environment. That it was introduced as a pilot indicated that it was a test, to learn and to improve.

Benefits and innovations

The FCPP introduced the Divorce Court in the Magistrates' Court at Regional level. Despite the belief that the Family Court at this level would not enjoy a positive public image or the confidence of the public (Hoexter Commission), they are used extensively by all racial groups and have led to a reduction of the Divorce Court roll in the High Court. Their success contributed to realizing the aims of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) since women do not have to remain in marriages that do not work simply because they cannot afford a divorce. These courts are truly accessible.

All family related matters were placed under one roof and some courts also included administration of estates and breach of the peace orders. The pilot projects were set up with few resources. They used what already existed in terms of space and staffing, with a top-up budget from National Office. Despite these constraints, some projects became creative and innovative. Durban introduced a reception area to direct the public (not for screening), as well as a Penalty Court to deal with the criminal aspects of family law disputes. Cape Town introduced a support desk for divorces, run by non-legal volunteers and Johannesburg introduced a crèche, ad hoc mediation and the Presiding Officer established a relationship with traditional leaders.

Inefficiencies/malformation

The pilot projects have inefficiencies such as fragmentation, insufficient protection of the family, non-specialized assistance, multi-forum appearances, staffing and spatial needs.

To quote Sandra Burman, Emma Dingle and Nichola Glasser 'It is far from clear exactly what has come into existence, whether it is permanently or only temporarily malformed and what its future is. What is obvious is that it is not as it was intended to be by its progenitors.'

It is the Department and Family Court Task Team's view that such inefficiencies should not become permanent and that Family Courts do have a future. Thus, together with Chaskalson & De Jong Consultancy a strategic framework for family courts – the Blueprint – was developed to address these inefficiencies and strengthen the existing pilots into a working model to be rolled out to other provinces. It is also to be used to inform overarching legislation for the Family Courts, which is a long-term goal.

The blueprint

The nine interim policy principles governing the courts are that they should:

1. Deal exclusively with comprehensive service delivery in maintenance, domestic violence, children's court and divorce.
2. Provide services in an integrated manner.
3. Provide users with relevant substantive rights education services.
4. Provide users with substantive legal advice and assisted form completion.
5. Where appropriate, embrace the use of alternative dispute resolution and build this service directly into workflows.
6. Be staffed and supported by appropriately skilled people who will receive specifically developed training in order to enable them to perform their functions.
7. Operate in terms of their specific designated budget and move towards performance-based budgeting.
8. Operate within clear management and reporting lines.
9. Be subject to on-going monitoring and evaluation that is uniform in nature.

The integration of Family Court service delivery has been frustrated by a fragmented legislative framework, with different Acts underpinning the various areas of family court work. In spite of this obstacle, there is a great deal more integration in service delivery that can be achieved in the interim without overarching legislative reform. Minor legislative amendments have been proposed to provide the Family Advocate with the power to deal with all family related matters as well as to address the problem of acting appointments of Presiding Officers of the Divorce Court.

The interim model provides for a reception area which is the first point of contact between court users and the Family Court. It will schedule the court user for attention by an appropriate staff member and a preliminary screening to ascertain the nature of the problem and initial data capturing to track records of all matters that any individual has in the Family Court, to alleviate multi fora appearances. With an automated case flow management system this will be done at a click of a button.

The court user will then be referred to the Rights Education component to inform him/her of rights and obligations, remedies available and procedural requirements, since the majority of court users are not very literate. Then the court user is referred to the ADR component for mediation by Family Court staff or accredited service providers. Where it is not possible to mediate, the court user is referred to court for adjudication, as well as to non-legal support services such as counseling and offender rehabilitation programmes. These referrals take place at reception stage voluntarily or the court may order them.

Now it is up to the implementers to make a success of the Blueprint, otherwise it will not be worth the paper it is written on.

Complainants with intellect

She can't possibly co

By Beverley
Clinical Psychologist, C

The Sexual Abuse Victim Empowerment programme (SAVE) at Cape Mental Health Society (CMH). CMH is a NGO which offers mental health services to indigent people living in the community in Cape Town. While sexual assaults on clients with intellectual disabilities (ID) are not new to CMH, a specialized programme was put in place in 1990 in response to requests from the South African Police Service (SAPS) and Regional Court personnel for assistance.

International literature exists on the increased vulnerability of disabled people to abuse and their difficulties obtaining redress (for example, McCarthy and Thompson, 1997). The recognition of sexual crimes against people with ID is hindered by the tendency to avoid seeing such people as sexual (Brown 1991). Internationally, prosecution of such cases is rare, especially when the complainant is the sole witness (Cooke and Davies, 2001).

This constitutes a particular area of difficulty within the general high rate of sexual assault in South Africa. Sources within the justice system informed us that prior to 1990 one or two such cases would be considered for prosecution per year in regional courts, but exact statistics are difficult to obtain.

The SAVE programme offers social work services as well as a psychological evaluation. The psychologist submits the report to the investigating officer or the prosecutor, and is available to act as an expert witness in court. The evaluation covers:

- Assessment of the level of intellectual and everyday functioning
- Understanding of sexual matters and ability to consent to sexual activity
- Competence as a witness, including consistency of the account of the assault, understanding of the court process, the ability to distinguish between truth and lies and suggestibility.

Evaluative research on SAVE:
One hundred cases seen between 1990 and 2000 were examined. These represented 93 complainants as some had multiple cases. CMH files were used, as well as police dockets and court records. Complainants and their families were interviewed and asked to evaluate services received from CMH, SAPS and the Department of Justice.

Characteristics of the cohort:
- 93% were *women.*
- 40% were *under 16 years.*
- Almost 30% reported a *previous sexual assault by someone else.*
- 25% reported *previous abuse by the same accused.*
- Almost 60% were *found competent to testify, with support often recommended* (such as intermediaries and court preparation).
- Almost 90% of complainants *knew the accused.*
- *The charge laid was rape* in 90% of the cases.

Many of these results were expected, such as the majority being women, the significant rate of previous assaults (probably an underestimate), and the high rate of alleged perpetrators known to the complainant. People with ID are perceived within communities as 'easy targets'.

It must be remembered that this is a selected group of cases, in which the evidence was seen as sufficiently strong to warrant investigation to the point that CMH was called in. The fact that the majority of the charges were rape may reflect that sexual harassment or other forms of abuse are perceived as less serious and/or evidentially strong.

It is interesting that none of the accused was intellectually disabled. There is strong evidence that a substantial proportion of abusers of people with ID are disabled themselves. Possibly such assaults are more difficult to perceive as an abuse of power; we also know that there is a great deal of concern within the justice system about what would happen to a perpetrator with ID after conviction.

The progress of the cases:
- In almost 80% an *arrest was made within two weeks.*
- In 88% the matter was *finalized in court within two years.*
- Of those finalized, *a conviction was obtained in 28%.*
- 47% of the cases were *withdrawn.*

The 28% conviction rate is similar to that found in the SA Law Commission 2001 study on conviction rates in violent crimes. While that study found that, 2 years after the charge was laid, under 10% of rape cases resulted in conviction, with the majority not having yet gone to trial, an analysis of the finalized cases shows a conviction rate of 21%. The current finding on conviction rates compares with the National Prosecution Services January 2002 figures for convictions in Special Offences Courts, which are higher than the SA Law Commission conviction rate. This result suggests that, in Cape Town at least, complainants with ID in rape cases have as much chance of conviction as non-disabled complainants. This is a considerable human rights achievement.

That 88% of cases were finalized within two years shows once again that the cohort represents a selected sample. However, it seems that once cases are seen as sufficiently evidentially strong, the matter is vigorously pursued. This is a considerable achievement given the pressure on the SAPS and the courts. It is our experience that cases are moving

al disabilities in rape cases

pe in court, can she?

o Dickman
Mental Health Society

much more slowly through the system over the last few years, and CMH psychologists are frequently called to testify two years after the assessment. Further research is needed.

Evaluation of service from the Department of Justice by complainants and their families:

Sixty-five of the 93 families were interviewed. Where there were complaints about the courts, these centred around lack of information about the court process and reasons for delays. An incidental and important finding was that 37% (24 families) did not know the outcome or current status of their cases. A further 12 families lacked important information, eg. believing that a case was closed when the accused had absconded on bail. This lack of information has more to do with poverty than ID. Many families failed to attend all the court hearings due to financial constraints and information failed to get to them. Useful discussions have been held with SAPS and justice personnel about this problem.

There is an admirable commitment in the justice system in the Western Cape to the protection of the rights of people with ID to redress in cases of sexual assault. To our knowledge, nowhere else in the world is there such regular prosecution of such cases. CMH has been informed that the SAVE programme has been crucial in this regard, and the demand for assessments constantly increases. Currently 45 people per year are assessed – at a cost to CMH of approximately R2000 per assessment, this represents a considerable commitment within CMH to the advocacy of the rights of people with ID. There has been interest in expanding this programme elsewhere in South Africa. We would welcome information and discussion about the prosecution of these challenging cases.

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ARMSA's youth project

Western Cape members of ARMSA have joined up with Toastmasters International in order to train 64 previously disadvantaged Grade 10 pupils from schools in Mitchell's Plain, Gugulethu, Phillipi and Khayelitsha in communication skills. The project arose because the magistrates were fed up with young people throwing away their lives to crime – in the regional courts most of the serious crimes committed involve youth aged 17-25.

The project was launched on 15 May at Hyacinth Primary School, Mitchell's Plain. For 8 sessions, the selected learners will learn the art of public speaking, listening and thinking - vital skills that promote self-actualisation, enhance leadership potential, foster human understanding and contribute to the betterment of humankind. The programme hopes to give them the self-confidence to communicate well. Some of the learners were chosen to speak at a Youth Day Symposium held on 16 June at the University of Western Cape. At the end of the project in July, a competition will be held and the winning learner and school will win prizes. All the learners who attend will also receive certificates from Toastmasters and book awards.

Magistrate Robert Henney, chairman of ARMSA, described the project as 'a call to youth to be seen in the classroom and not the courtroom'. The magistrates feel that the project is a part of their function as judicial officers as their duty does not stop when they leave the formal setting of the courtroom. The magistrates want to act as role models and thus need to make themselves more visible to the youth.

At the launch of the project: Regional Court President Gadija Khan with some of the learners

Linking HIV/Aids and domestic violence in the courts

This research project was undertaken to assist in the development of a new training course offered by LRC that will sensitise magistrates to the links between domestic violence and HIV/Aids and its impact on their work.

Fieldwork was done in three provinces: the Western Cape, Limpopo and the Eastern Cape, and sites were chosen to represent a variety of demographic groups, resource contexts and a mix between urban and rural courts.

Few magistrates reported dealing with HIV/Aids when asked about their experiences in their courts. While most magistrates reported that HIV/Aids was a problem 'out there' in the communities which they served, they were not able to identify many (if any) instances where the issue had been raised in cases that they, or their colleagues, had heard.

Fewer still were able to identify a link between domestic violence and HIV/Aids, with a small number identifying risky sexual behaviour on the part of the male partner in abusive relationships as the main (and often only) intersection between the two pandemics. Almost all magistrates reported that they did not see that being HIV positive constrains complainants (and therefore particularly women) in their attempts to access and obtain relief through the court system, other than where the individual is in the very late stages of the disease and so physically very weak.

Magistrates at a recent workshop on domestic violence and HIV/Aids held at the Waterfront, Cape Town

Although there was some degree of recognition that it is largely women who are tested for HIV/Aids and so are aware of their status, it was seldom mentioned that this very fact may make women vulnerable to (further) domestic violence. Fidelity was raised as a problem in both contexts, with many reports that particularly male partners' sexual behaviour gives rise to domestic altercations and particularly forced sex. Issues such as a lack of access to financial assistance, nutrition, health care and social intervention were not raised as factors which may be exacerbated within a context of domestic violence.

Magistrates seemed to struggle with dealing with the issue of HIV/Aids within the court setting. Lively debate emerged on the issue of whether the Domestic Violence Act provided an opportunity for magistrates to give orders prohibiting harmful sexual behaviour (for example ordering that the respondent not have sex with the complainant without a condom) with responses ranging across the board. Problems with the enforceability of such orders were raised .

Few magistrates reported having received training on the issue of HIV/Aids other than an earlier course run by LRG, which was characterised as very successful and useful by those that had attended. The difficulty remained, even for those magistrates who had been trained, in applying the training in a context where very few people disclosed their HIV positive status whether directly or indirectly. Almost all magistrates reported that there was very little opportunity for training of peers within their courts, or even forums where issues such as these can be discussed among magistrates with similar experiences.

Most magistrates stated that there was an enormous need for this kind of training, both for themselves and within their courts. All respondents reported needing training on the basics of HIV/Aids, with a particular need mentioned for the opportunity to interact with people living with the disease within a community similar to the one which they serve - an activity which has been used by LRG with powerful effect on an earlier training course.

The training course aims to provide social context for magistrates on both the issues of domestic violence and HIV/Aids. It includes a discussion of the scope of the DVA to deal with the issues of HIV/Aids, and uses extensive case-study exercises, role-play exercises and 'best practise' discussions between attending magistrates.

Fact sheet

- Women are the fastest growing group of people living with HIV/Aids. One in two. Fifty-one percent of all people living with HIV/Aids today (estimated at approximately 20 million) are women.
- Women are 2–4 times more susceptible to HIV during unprotected sex.
- Women who experienced violence from intimate partners have a 50% higher risk of being infected with HIV.
- Violence against women is both a cause and a consequence of rising rates of HIV infections: a cause because rape and sexual assault pose a major risk for HIV transmission, and a consequence because studies have shown that HIV-positive women are more likely to suffer attack.
- Often, the perpetrator of violence is an intimate partner. (Deeply rooted in unequal power relations, sexual violence occurs because women cannot negotiate safe sex.)
- Very few judicial officers know how to deal with the impact of HIV/Aids in their courtrooms and in their communities.
- It is very rare to find a judicial officer who links sexual and gender-based abuses to the strikingly high HIV prevalence among girls and young women than their counterparts that persists in South Africa and in the rest of the continent.

Muslim women gain maintenance and inheritance rights

By Michelle O' Sullivan
Women's Legal Centre

The decision of the Constitutional Court of *Juleiga Daniels v Robin Grieve Campbell* and 9 others was handed down on 11 March 2004. The case concerned the constitutional validity of the Intestate Succession Act 81 of 1987 and the Maintenance of Surviving Spouses Act 27 of 1990 in so far as they failed to include persons married according to Muslim rites as spouses for the purposes of these Acts.

In *Daniels* the Constitutional Court declared that:

(i) the word "spouse" as used in the Intestate Succession Act, includes the surviving partner to a monogamous Muslim marriage;

(ii) the word "survivor" as used in the Maintenance of Surviving Spouses, includes the surviving partner to a monogamous Muslim marriage.

The effect of the order is that a surviving partner in a monogamous Muslim marriage *can claim maintenance from their deceased partner's estates and inherit as an intestate heir if their deceased partner dies without a will.*

The order of the court is retrospective. This case was decided under the Interim Constitution and the order therefore applies to all deceased estates where the deceased died after 27 April 1994. The Court held that it was not necessary for the purposes of this case to deal with the possible retrospective effect of the order. It said that should problems concerning retrospectivity arise, they stand to be dealt with on a case-by-case basis. And one would presume that this would be on a just and equitable basis through an enrichment action.

Thus in practical terms, if the assets in a deceased estate have been distributed, a widow could claim through an unjustified enrichment claim for her share of the estate in terms of Intestate Succession and also for reasonable maintenance under the Maintenance of Surviving Spouses Act ('the MSS'). However, as prescription applies to enrichment claims, any claim for enrichment would have to be brought within 3 years of the date of the decision of the Constitutional Court. The practical effect of the decision is that in estates that have been wound up an enrichment claim would have to be brought and require court intervention, and where the estate has not been distributed, the estate will now devolve in terms of the Constitutional Court order.

The reasoning of the Court

The meaning of 'spouse'

As stated above, the court held that the word 'spouse' in its ordinary meaning includes parties to a Muslim marriage. Not only is it far more awkward from a linguistic point of view to exclude parties to a Muslim marriage from the word 'spouse' than to include them, but also, the exclusion emanated from a linguistically strained use of the word flowing from a culturally and racially hegemonic appropriation of it. Thus, the previous discriminatory interpretations concerning Muslim spouses are no longer sustainable in the light of our Constitution (*Daniels* para 16 and an interpretation consistent with the Constitution should be preferred to one that led to invalidity.

The Court also recognised that an important purpose of the statutes is to provide relief to a particularly vulnerable section of the population, namely, widows who were not protected at common law. The Acts were introduced to guarantee what was in effect a widow's portion on intestacy as well as a claim against the estate for maintenance. The Acts were to ensure that widows would receive at least a child's share instead of their being precariously dependent on family benevolence. The purpose of the Acts would be frustrated rather than furthered if widows were to be excluded from the protection the Acts offer, just because the legal form of their marriage happened to accord with Muslim tradition and not the Marriage Act

The Court recognised that the central question is not whether the applicant was lawfully married to the deceased, but whether the protection which the Acts intended widows to enjoy should be withheld from relationships such as hers.

Although the applicant argued that any interpretation which gave a narrow meaning to the word 'spouse' so as to exclude parties to a Muslim marriage resulted in unfair discrimination on grounds of marital status, religious practices and culture and violated the right to dignity, the Court held that the ordinary meaning of the word 'spouse' *includes* parties to a Muslim marriage and it was thus not necessary to determine whether to interpret otherwise would be unconstitutionally discriminatory.

For the purpose of daily estate administration in the lower courts, it must be recognised that Muslim marriages are valid for the purposes of the Intestate Succession Act and the Maintenance of Surviving Spouses Act. Hence, a Muslim spouse may inherit under the rules of intestacy *and* claim maintenance against their deceased spouse's estate. These claims can no longer be denied on the grounds that Muslim marriages are not valid under South African law.

bit S & PIECES

Congratulations to both **Brian Nemavhidi** and **Femidah Hoosen** on the births of their babies, a boy, Brian Junior to Brian and a daughter, Zahra, to Femidah. We hope they bring you much happiness!

Above: Zahra, with Femidah Hoosen.

Left: Brian Nemavhidi Jnr

Tule-Tu Ntonjeni has recently been promoted to Head of Office at the Springs Court.

***Basil King**, Senior Magistrate and lecturer at Justice College, took part in the South African 8-ball Pool Championships at the Mangaung Sports Complex in Bloemfontein during the last week of April, representing the Gauteng Masters B side. In the singles tournament, Basil lost in the semi-final of the Masters Plate event and was knocked out of the Seniors' singles in the 3rd round. Basil has previously represented the Northern Gauteng Seniors' side in 2002 and 2003. Gauteng North won the 'A' division trophy in both years and last year with two sides entered in the 'B' division, Gauteng North finished as winner and runner-up.*

Una Rens, Magistrate Hankey in the Eastern Cape reports that Eastern Cape magistrates have been doing a large number of community outreach initiatives targeting women, children and other vulnerable groups. They had a great response and the Communication section of the Dept. of Justice was extremely helpful, providing them with visuals such as booklets, pamphlets and videos.

LRG workshops

Over the last while, we have received a number of queries as to how we select participants for our workshops. We don't have a hard and fast set of rules for this.

Workshops are usually regional and so we will focus on people in a particular geographic region. For some workshops our aim is to introduce LRG's work to people who have not yet been exposed to it and at others we aim at expanding topics or themes we have already engaged on with particular magistrates. For yet others, we chose magistrates who work with a particular focus e.g. domestic violence or civil issues.

LRG's core philosophy is to work with magistrates who are interested in what we do, so if you are interested in attending workshops please phone and give us your name. We will then add it to our list and as soon as there is a workshop in your area we will invite you. If you know of colleagues who are interested - tell us also.

If you have any particular topics or areas of law that you would like us to research for discussion at workshops, please let us know as well. We aim to make our workshops relevant to your needs.

What would you do? (from page 2)

The answer!

The right to a fair trial protected in section 35 of the Constitution, specifically includes the right of an accused person 'to choose and be represented by a legal practitioner and also to have a legal practitioner assigned to' him or her 'by the State at the State's expense if substantial prejudice would otherwise result'. This protection of the accused' s right to legal representation means more than just having someone standing next to him or her and speaking on his or her behalf. The right to legal representation involves the attorney acting in an accused's best interests and putting the best possible case forward. Whether to grant an application for postponement is within the presiding officer's discretion. However, it has been held that such officer 'should be slow to refuse a postponement where the true reason for a party's non-preparedness has been fully explained, where his [sic] unreadiness to proceed is not due to delaying tactics and where justice demands that he should have further time for the purpose of presenting his case'. On the facts of this case, the applicant had been denied the right to effective legal representation. Further, need for a postponement was not attributable to anything that the accused had done wrong and there was evidence 'crying out to be led' on his behalf in mitigation (relating to his drinking problem and treatment for it). The conviction and sentence were set aside. From *Beyers v Director of Public Prosecutions, Western Cape, and Others* 2003(1) SACR 164 (C).

Crime research website

For those of you with access to the net, there is a really useful website called the South African Crime Research Guide (www.crimeresearch.org.za) It covers topics such as crime analysis and mapping, resources on different types of crime, links to numerous organisations and the like.

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