



UNDERSTANDING CUSTOMARY MARRIAGES IN SA

Advocate Veerash Srikison emphasises the importance of couples in customary marriages understanding what makes their union legally recognised.

When the Recognition of Customary Marriages Act (RCMA) became law on 15 November 2000, it gave full legal recognition to customary marriages of the indigenous African people of South Africa. Even those involved in an existing valid marriage under customary law before this date had their marriage recognised under this new law. It is important to note that this Act now states the rules that people getting married under customary law must follow in order for their marriage to be recognised.

In terms of Section 4 of the Act, a customary marriage is recognised if the following requirements are complied with:

- Both parties to the marriage must be over the age of 18 years and have consented to the marriage.
- If both or either of the spouses are/is a minor, child's parent or guardian must consent to the customary marriage.
- The marriage must be negotiated, celebrated and entered into in accordance with customary law.

Lobola is not a necessary requirement for legal recognition of the customary marriage.

If paid, it proves that the marriage was negotiated in accordance to custom, but it does not automatically make the marriage valid in the eyes of the law.

REGISTRATION OF THE CUSTOMARY MARRIAGE

Either spouse may request a registration of the marriage and must do so within three months of the marriage. The registration can only take place if the following people, once they have completed the necessary forms and declarations, are present at any office of the Department of Home Affairs, or through a designated traditional leader in areas where there are no Home Affairs offices:

- The two spouses, with copies of their valid identity books and a lobola agreement, if available.
- At least one witness and/or representative each from the groom's family and the bride's family.

In the event that the spouses were minors (or one was a minor) at the time of the customary marriage, the parents should also be present when the request to register the marriage is made. Even though not registering the customary marriage does not invalidate the marriage where there is one husband and

one wife, it does invalidate the marriage if the husband is marrying a second wife after this Act was passed into legislation, that is, after 15 November 2000.

The registration of a customary marriage also plays an important role when a spouse dies and proof is required that a customary union did indeed take place for the surviving spouse, and possibly his/her children, to claim benefits from the deceased's estate, especially where the claim of the customary marriage is disputed by the deceased spouse's family.

THE LEGAL STATUS OF A CUSTOMARY MARRIAGE

All customary marriages where there is one husband and one wife are in community of property. If the parties want to be married out of community of property, they will have to enter into an ante-nuptial contract before getting married. If they want to change to a marriage out of community of property after they are already married, they will have to apply to the High Court. If the husband has no other wives, the couple can get married under civil law as well as customary law. However, neither of them will be able to enter into customary marriages with anyone else while they are married to each other under civil law.

If the husband wants to marry another wife he must enter into a written agreement or contract, which will state what should happen to the property and he must apply to the court to approve the written contract. The court has to make sure that the property interests of all the wives are protected.

Should a couple want to divorce from each other they must approach a court of law and show that the marriage has broken down beyond the point of reconciliation. The court will also decide on the contact and care of the children based on the best interests of the children and not who paid the lobola. 

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