



The Society For The Protection Of Our Constitution

20 APRIL 2018

ATTEMPT TO ENSNARE ADAPTATION OF THE LAWS IN THE HOLY QURAN

1. The Applicant is Women's Legal Centre Trust, an organisation that purports to advance the protection of rights of women (hereinafter referred to WLC).
2. The Respondents include the *President of the Republic of South Africa*, the Minister of Justice, the Minister of Home Affairs, Association of Muslim Women in South Africa and *United Ulama Council of South Africa*.
3. In 2009 the Constitutional Court dismissed an application by WLC for *direct access*.
4. The WLC sought the same Order from the Constitutional Court in 2009 that it is now seeking from the Western Cape High Court under case number 22481/14.
5. WLC *prayed* that the Constitutional Court order *Government of South Africa* to enact *law* recognising marriages solemnised in terms of *Islamic Law* as lawful. This is the same relief that WLC now seeks from the *Western Cape High Court*.
6. The WLC did not receive *certification* to act on behalf of a *class* of people. The WLC can therefore not rely on its authority in terms of Section 38 (c) of the *Constitution of the RSA*. (1). WLC did not disclose to the court the name of the *group of Muslim women* whose interests it purports to advance. Hence WLC did not disclose *authority* as contemplated in Section 38 (c) of the SA Constitution with specific reference to a *group*. (2).
7. The *majority* of Muslim women in South Africa adhere to the view that the laws in the *Holy Quran* buttressed by the *Shariah* must be preserved for all time and are *immutable*.



8. The *South African government* spent millions of rands in investigating *recognition of Muslim* marriages in South Africa without adapting the laws in the Holy Quran and Shariah to modern secular laws.
9. The *courts* in South Africa have *on an ad hoc* basis recognised marriages solemnised in terms of *Shariah* to redress hardships experienced by *Muslim* women.
10. Section 43 and 44 of the *Constitution* of the RSA vests the *exclusive* authority on Parliament to make *law*.
11. Sections 55 (1) and 68 of the *Constitution* of the RSA vests the National Assembly and the National Council of Provinces respectively with the exclusive responsibility to *initiate, prepare and enact law*.
12. The *jurisdiction* of South African courts are restricted by the provisions of Section 165 of the *Constitution of the RSA*.
13. The principle of *separation of powers* recently described as *judicial overreach* impedes our *courts* from *usurping* the exclusive power conferred upon the *legislature*.
14. During the course of the proceedings that started on 16 April 2018 and continued to 20 April 2018 Desai J *quizzed* whether the court should declare *all marriages* solemnised in terms of *Shariah* to be *lawful*. Such a *declarator will* subject marriages solemnised in terms of *Shariah* to the equality clause in Section 9 of the Constitution of the Republic of South Africa, the Divorce Act 70 of 1975 and the Marriages Act 25 of 1961.
15. Section 9 (3) of the SA Constitution recognises a marriage between the same *genders* is *inconsistent* with the *Holy Quran* that prohibits marriage between the same *genders*.
16. The Marriages Act 25 of 1961 *deems* all marriage to be *in community of property*. *Shariah* deems *all marriages* to be *out of community of property*.

17. Divorce Act 70 of 1975 permits a court to *order* a divorce only in the event of:

- i. Irretrievable breakdown of marriage;
- ii. Mental illness;
- iii. Continuous unconsciousness

18. Shariah regards a *divorce* to be lawful upon *utterance* by the husband directed to the wife proclaiming divorce *three times*.

19. A wife may obtain a *fasa* upon her satisfaction of *prescribed* criteria. A *fasa* is best described as a *pronouncement* of annulment of marriage.

20. Another impediment upon the court ordering that all marriages solemnised in terms of *Shariah* would be the *altering* of *status* of tens of thousands of Muslim women who *do not* acquiesce.

21. Advocate Anwar Albertus SC reminded the court in his *opening* argument that Muslims subscribe that: -

“The Holy Quran is a book about which there is no doubt, a guidance for those conscious of Allah”.

DRAFTED FOR/ON BEHALF OF THE SOCIETY FOR THE PROTECTION OF OUR CONSTITUTION

(1) *Numsa v Oosthuizen & Others* 2017 (6) SA 272 GJ

(2) *Highveldridge Residents vs Highveldridge TLC* 2002 (6) SA 66 TPD

