



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Manwadu v Manwadu and Others (799/2023) [2025] ZASCA 10 (February 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appellant's appeal against an order of the Limpopo Division of the High Court, Polokwane (the full court).

The issue before the Limpopo Division of the High Court, Thohoyandou (the high court) and the full court was two-fold. Firstly, whether the first respondent, Matodzi Joyce Manwadu and Livhuwani Robert Manwadu (the deceased) were married by customary law on 13 March 1979. Secondly, whether a civil marriage entered into between the deceased and the appellant, Nthuseni Christinah Manwadu on 23 December 1996 was valid and had existed at the date of the death of the deceased. If the former is correct, the first respondent asserted that the civil marriage between the appellant and the deceased was invalid in terms of s 10 of the Recognition of Customary Marriages Act 120 of 1998 (the RCMA). The dispute in this Court centred on whether the customary marriage of the first respondent and the deceased was proven by the first respondent.

Relying on s 4(8) of the RCMA, the respondent attached an uncertified copy of what she alleged was a Venda identity document (the ID document), which reflected her name and identity number, the deceased's name but no identity number and an endorsement of the date of marriage. The respondent relied on this ID document as prima facie proof of the existence of the customary marriage to the deceased, as envisaged in the subsection.

The high court per Kgomo J (sitting as the court of first instance) dismissed the application and found that the respondent had not proven the existence of the customary marriage. Kgomo J held that appellant and the deceased had been married by civil law and that they had executed a joint will and testament.

On appeal, the majority of the full court (Ledwaba AJ, Kganyago J concurring) held that this ID document was prima facie proof of the existence of the customary marriage. It set aside the judgment of Kgomo J. Diamond AJ dissented.

This Court granted special leave to appeal. The appeal, inter alia, raises the issue of whether the ID document constituted admissible evidence and if admissible, whether the ID document with the endorsement of the date of a marriage and the name of the deceased constituted a 'certificate' and prima facie proof of the existence of such marriage between the respondent and the deceased in terms of s 4(8) of the RCMA. If not, whether the respondent had proved the customary marriage through collateral evidence of its existence.

In the majority judgment, per Weiner JA, it was held that the ID document relied upon by the respondent did not constitute a certificate as contemplated in ss 4(4) and 4(8) of the RCMA, nor did it comply with the customary law requirements, therefore to prove the existence of the marriage, the respondent had to advance collateral evidence that there was a marriage. The respondent was obliged to show that all legal and customary requirements were adhered to. The majority found that the respondent failed to refer to even one person who confirmed her allegations about the traditional ceremony and other customs having been observed and a customary marriage having been concluded. Neither did she show that the traditional rituals and celebrations occurred in terms of Venda Law. Weiner JA reasoned that in such a case it would not be appropriate or 'safe' to accept the ID document as proof of the customary marriage. It was held that her ID document was not a marriage certificate. It therefore, on its own, could never have amounted to prima facie proof that the respondent and the deceased were married under customary law.

The authenticity and weight of the ID document as well as the existence of the customary marriage was pertinently challenged by the appellant in her answering affidavit.

In a minority judgment, Makgoka JA held that the admissibility and authenticity of the document were never pleaded by the appellant, and were therefore, never in dispute before the high court, and could not be an issue in this Court.

Furthermore, Makgoka JA reasoned that if the ID document was an endorsement of the marriage and demonstrated, prima facie, the existence of marriage, the appellant was required to adduce evidence in rebuttal to disturb the prima facie evidence, however she did not. Therefore, in the absence of any such evidence by the appellant, the prima facie case became conclusive. This obviated the need for the respondent to prove all other requirements of the RCMA such as lobola negotiations, the payment thereof, celebrations, etc. Makgoka JA was of the view the respondent should have prevailed in the court of first instance and in the SCA.

For the reasons set out above, the SCA found that the respondent failed to discharge the onus to prove the existence of the customary marriage between herself and the deceased, therefore the appeal was upheld.