

CLIFFE DEKKER HOFMEYR **ADVERTORIAL**

# REALISING WOMEN'S RIGHT'S FOR AN EQUAL FUTURE

Tackling gender equality requires both legal and social undertaking.  
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**T**he achievement of gender equality is a process dependant on various interconnected factors. The law, economic realities, and social and interpersonal dynamics must all work together if we are to triumph in this battle for equality. However, the importance of our law cannot be understated in realising the rights of women in our Constitutional dispensation. Our law continues to mutate in pursuit of these ideals.

In June 2022, the Constitutional Court in *Women's Legal Centre Trust v President of the Republic of South Africa (2022)* handed down a powerful judgment progressing the rights of women in Muslim marriages. Here, two pieces of legislation were declared inconsistent with sections 9, 10, 28 and 34 of the Constitution as they fail to recognise the validity of marriages solemnised in accordance with Sharia law.

In a unanimous judgment, the Constitutional Court found that the effect of this denial is to deprive Muslim women and children of the remedies and protections they would otherwise have. The court held that there is no justification for the continuing nonrecognition of Muslim marriages, especially considering "the historical context of systemic violation of the rights of Muslim women". The court reasoned that a woman's choice to conclude a Muslim marriage plainly "does not mean that she should not be protected from the economic and social hardships she suffers in such a marriage".

## EQUALITY, THE LAW AND SOCIAL REALITY

In pursuit of equality, lawyers and lawmakers have a duty to interrogate missteps in our judicial processes and correct them. In a matter before the Cape Town Magistrate Court, a protection order was granted against a woman who disclosed on a private social media group that she was raped by an ex-boyfriend. She intended it as a warning to others



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and a way to find healing, community and support. The protection order directed that she was "not allowed to tell anyone, in any manner, that [the applicant] had raped her". The court stated: "It is 'strange' that she was 'raped' [previously] ... and yet failed to lay one charge of rape. This court by no means wants to silence the respondent ... but in my humble view, she cannot continue to tell others that the applicant had 'raped' her." Extracts from this judgment serve as a stark reminder that our law cannot work in isolation from the social realities of our country and an understanding of rape culture.

Fortunately, review and appeal processes allow for an interrogation of the law and facts considered by lower courts. On appeal, the Western Cape High Court in *Segerman v Petersen (2022)* overturned the ruling of the Magistrate Court, finding that the court was incorrect in drawing a negative inference from the respondent's failure to report the rape to the police as "the reasons why rape victims do not lay charges are well-known and our courts have taken cognisance of it".

CDH's Pro Bono & Human Rights Practice is committed to playing its part in moving toward generation equality. The Cape Town Practice, in particular, is focused on implementing and developing the law to protect women against violations of their basic human

rights, thereby taking meaningful steps towards gender equality. Our practice is pursuing a matter in which section 12(4) of the Prescription Act of 1969 is being challenged

as unconstitutional. The intention is that a successful outcome will positively progress our laws around sexual abuse, which we know disproportionately affect women. But as is evident from the Segerman lower court judgment, there is more to achieving generation equality than the letter of the law.

How women and girl children are viewed, rape culture and

social dynamics will all directly inform our journey to equality – a journey we must all take together. ■



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