



Real Estate Law & Conveyancing

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SOUTH AFRICA

- The impact of the Constitutional Court's landmark ruling on customary and civil marriages for property transactions

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The impact of the Constitutional Court's landmark ruling on customary and civil marriages for property transactions

In the landmark case of *VVC v JRM and Others* [2026] ZACC 2, handed down on 21 January 2026, the Constitutional Court provided critical insight on the legal relationship between customary and civil marriages by refusing to confirm the High Court's constitutional invalidity ruling and instead resolving the matter on statutory interpretation grounds, with significant practical implications for property ownership and conveyancing.

The ruling reinforces the transformative purpose of the Recognition of Customary Marriages Act 120 of 1998 (RCMA), which seeks to remedy the historical marginalisation of customary law and place it on equal footing with civil law.

The dispute

The case involved a couple who entered a customary marriage in 2011 without an antenuptial contract (ANC), resulting in a marriage in community of property with equal ownership of their joint estate.

In 2019, while still married under customary law, the couple signed an ANC purporting to change their matrimonial property regime to "*out of community of property*" ahead of a civil ceremony in 2021.

When the marriage later dissolved, the validity of this ANC was challenged because the couple had not sought judicial approval to change their property system as set out in the Matrimonial Property Act 88 of 1984 (MPA).

The High Court decision

The High Court (Gauteng Division, Pretoria) declared the 2019 ANC invalid and went further by declaring section 10(2) of the RCMA unconstitutional on the grounds that it violated equality and property rights. The High Court proposed reading additional words into section 10(2) to remedy the constitutional defect and suspended the invalidity order for 12 months to allow Parliament to cure the defect.

However, the Constitutional Court took a different approach.

The Constitutional Court decision

In a 6–3 majority decision, the Constitutional Court held that when spouses in a customary marriage later conclude a civil marriage, the customary marriage is not dissolved.

The Constitutional Court viewed the relationship as a "*single, continuous marriage*" where the transition to a civil ceremony is merely declaratory rather than constitutive of a new legal union – it confirms the pre-existing marriage rather than creating a new one.



The Constitutional Court's majority ruling found that, properly interpreted, section 10(2) of the RCMA does not permit the execution of an ANC prior to the change in marriage system, and does not provide for another means to bring about a marital property regime change, save by way of section 21 of the MPA.

The Constitutional Court's majority ruling accordingly found that the ANC concluded between the parties was invalid, because of their failure to observe the provisions of section 21 of the MPA.

Importantly, the Constitutional Court refused to confirm the High Court's constitutional invalidity order. The majority held that the constitutional issue should never have been decided because it only arose if the ANC was valid – which it was not. By resolving the matter on statutory interpretation grounds, the court avoided the constitutional question entirely.

The current legal position

A customary marriage is by default a marriage in community of property (unless an ANC is signed before the customary ceremony) and any later attempt to change this regime must comply with the strict requirements of section 21 of the MPA.

This ruling therefore casts doubt on the validity of antenuptial contracts concluded after a customary marriage but before a subsequent civil marriage.

What this means in practice

The judgment has significant implications for how spouses manage their assets and property ownership, with immediate practical consequences for married persons, purchasers as well as legal and property practitioners.

If you are married under customary law

Unless an antenuptial contract was concluded prior to the customary marriage, the default position in customary marriages is community of property conferring joint ownership and management of marital assets.

Spouses already married under customary law cannot alter their matrimonial property regime merely by executing an antenuptial contract before a civil ceremony. Any such change requires a court application in terms of section 21 of the MPA to protect creditors and economically vulnerable spouses.

Judicial oversight prevents a spouse from using a subsequent civil ceremony to unilaterally contract out of the joint estate to the prejudice of a weaker bargaining partner. A customary marriage remains legally binding until terminated by death or divorce, and its proprietary consequences are not displaced by a later civil ceremony or private agreement.

If you did not sign an ANC before your customary marriage, you are married in community of property and you remain so unless and until a court approves a change under section 21 of the MPA.

If the matrimonial property regime when concluding a civil marriage after a customary marriage does not change, the existing legal position continues unchanged. The civil marriage is "*declaratory rather than constitutive*", meaning the joint estate already established remains intact, with no division of assets or creation of a new estate. Spouses still retain a half-share in any immovable property registered in either of their names.

The RCMA allows spouses to enjoy equal legal status and capacity, including full rights to manage property, contract and litigate. A subsequent civil ceremony cannot be used by either spouse to unilaterally withdraw from the joint estate or reduce the other's proprietary rights without judicial oversight, and the marriage may be dissolved only by a decree of divorce, ensuring judicial supervision and fairness.

Subjecting the ANC to court application and review ensures that the immovable property ownership status is transparent and that no party is prejudiced by a private, "unsupervised" change in the estate.

If you are buying immovable property

Potential buyers must exercise caution and verify the marital regime of the seller before entering into a transaction relating to immovable property. Spousal consent to the sale of immovable property is a requirement if the spouses are married in terms of customary law without having concluded an antenuptial contract prior to the conclusion of the customary marriage.

If consent from both spouses is not obtained, or if the seller incorrectly believes a post-customary marriage ANC is valid, the validity of the entire transaction can be called into question.

Due diligence steps

Owners of immovable property should disclose their marital regime to ensure the proper procedure is followed for a successful transaction. Purchasers as well as legal and property practitioners must investigate whether a customary marriage preceded the civil marriage listed on the seller's identification documents to ensure the correct property regime is applied to the transaction.

Follow these steps:

- **Step 1:** Investigate marital history and verify whether the seller's civil marriage was preceded by a customary marriage.
- **Step 2:** Confirm the matrimonial property regime (do not rely solely on a purported ANC signed after a customary marriage but before a civil ceremony).
- **Step 3:** If the marriage is in community of property, ensure spousal consent is obtained for the sale.



Conclusion

Ultimately, this ruling confirms that customary marriages enjoy the same constitutional status as civil marriages, and the law will not permit spouses to “sidestep” judicial oversight when altering their property arrangements.

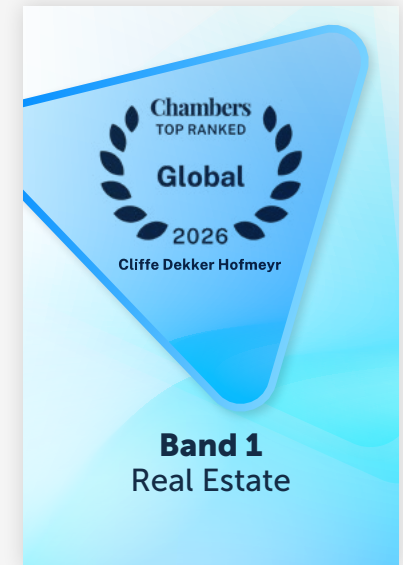
For owners, prospective buyers and property practitioners, the message is clear: marital status and property regimes must be carefully investigated, particularly where a civil marriage may have been preceded by a customary marriage. Failure to do so risks invalid transactions, defective consent and exposure to litigation. Judicial oversight can provide the necessary transparency and protection for vulnerable spouses, while also reinforcing legal certainty in property dealings.

For married couples: if you wish to change your matrimonial property regime after marrying under customary law, you must obtain court approval under section 21 of the MPA, regardless of whether you subsequently enter a civil marriage. **Couples who have already concluded an ANC after their customary marriage but before a civil marriage should seek legal advice, as the validity of such ANC may be in question.**

For purchasers, legal and property practitioners, as well as lenders, this case underscores the critical importance of thorough due diligence. Verify marital history, confirm the matrimonial property regime and ensure all required spousal consents are obtained before concluding property transactions.

Parties navigating ongoing matters should factor in the possibility of continued legal developments. Although the VVC decision addresses the immediate dispute, the broader legal landscape remains uncertain. Future judicial decisions or legislative amendments may reshape this area of law, and several related questions are likely to be tested through further litigation.

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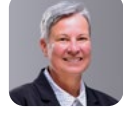
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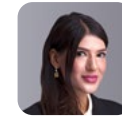
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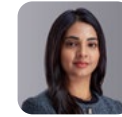
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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