



THE CHALLENGES OF NAVIGATING CIVIL AND CUSTOMARY MARRIAGE REGIMES

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Recently, the Limpopo High Court heard a very interesting divorce matter¹ where both the husband and wife claimed that their customary marriage and a civil marriage co-existed alongside each other. It is important to note that Acting Judge Mangena intervened during the proceedings and stated: “The assertion that both marriages are valid is legally untenable, as this submission is based on a misinterpretation of the law.” Ideally, this perspective resonates with the majority of black people who are married, as they often enter into a customary marriage first before engaging in a civil marriage. Customary marriages follow the customs and traditions of indigenous African people in South Africa. Customary marriages are governed by the Recognition of Customary Marriages Act 120 of 1998, a law that took effect on

15 November 2000 (“RMCA”). This legislation aimed to address historical discrimination against African women by officially recognising all African customary marriages in South Africa. It ensures that women in customary marriages receive the same status and legal protections as women in civil marriages. The RCMA establishes equality between husbands and wives in marriage, and both monogamous and polygynous customary marriages are legally recognised under the Act.

When considering whether it is legally possible for parties to marry under both civil and customary law, it is important to know that if you are already in a customary marriage, you cannot enter into a civil marriage with anyone other than your customary spouse, as long as your customary marriage is still valid. Spouses in a customary marriage can enter into a civil

law marriage with each other, but only if their marriage is monogamous. If two spouses who are already in a customary marriage choose also to get a civil marriage, their civil marriage will automatically be in community of property, unless they explicitly state otherwise in an antenuptial contract.

Essentially, if you are in a civil law marriage, you cannot legally enter into any other civil or customary marriage while the current civil marriage is still valid. Based on this explanation provided, Acting Judge Mangena was right to refer the matter to oral evidence. This was necessary because there was a dispute of fact. It is not legally feasible for both parties to be married to other parties under civil and customary law simultaneously. The claims made by both parties cannot coexist within the framework of matrimonial law. It is well-established that genuine material disputes of fact cannot be resolved solely based on the documents submitted to a court of law. The court may grant the following orders: direct the hearing of oral evidence on specific issues, dismiss applications, or refer the matter to trial. This is in line with Rule 6(5)G of the Uniform Rules. The Constitutional Court confirmed this in a case of *Mamadi and Another v Premier of Limpopo Province*.² Justice

Theron referred the case back to the Limpopo High Court for trial due to a significant dispute of facts.

In the present case, the high court in Limpopo was faced with an appeal in which a husband and wife contested their marital status. The main issue was whether the couple was married under civil law or customary law, including the question of antenuptial agreements. The appeal was filed by both parties, who argued that they were married according to customary law, as opposed to civil law. The marriage can only be civil or customary, not both. For these reasons, it is clear that the matter cannot be finalised on paper; as a result, Acting Judge Mangena ordered that the matter proceed to oral evidence.

In conclusion, we believe that Acting Judge Mangena's assertions regarding the challenges of navigating two distinct marriage regimes are intended to foster greater public awareness. By highlighting the complexities and potential conflicts that arise from such situations, the judge seeks to encourage a broader understanding and dialogue around the legal and emotional implications of being caught between these two frameworks. [A](#)

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- 1 *L.M.P v N.J.D.P (Appeal)* (HCAA33/2024) [2005] ZALMPPHC 122 (19 June 2025).
- 2 *Mamadi and Another v Premier of Limpopo Province and Other* CCT 176/21 [2022] ZACC 26.

