



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

From: The Registrar, Supreme Court of Appeal
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M M NGWENYAMA V F M MAYELANE & ANOTHER

Today, the Supreme Court of Appeal (SCA) handed down a judgment, in the case of Mphephu Maria Ngwenyama v Modjadji Florah Mayelane, upholding an appeal against the an order of the North Gauteng High Court declaring null and void ab initio a polygynous marriage between the appellant and her deceased husband contracted in terms of customary law, because it was not preceded by the conclusion of a contract regulating the future marital property system of both marriages, as envisaged in s 7(6) of the Recognition of Customary Marriages Act 120 of 1998. The Women's Legal Trust was admitted as amicus curiae in the proceedings before this court.

The deceased was married to both the appellant and the respondent according customary law. On his death both spouses who were not aware of each other's respective marriages, sought to register their customary marriages with the Department of Home Affairs where they learned about each other for the first time. The respondent approached the North Gauteng High Court seeking an order declaring that the appellant's marriage was null and void ab initio because the deceased husband had failed to approach the court for approval of the contract in terms of s 7(6) referred to above. The high court concluded that the marriage null

and void because of non-compliance with s 7 (6), consequent.

On appeal, this court held that even though the wording of s 7(6) is couched in a peremptory language, courts were, when interpreting a statutory provision enjoined to prefer an interpretation that falls within the constitutional bounds over that which does not. Such an approach would result in untold hardship to women married customary law and would adverse effects on the children born to such marriages as they would be rendered instantly illegitimate. Properly construed, the legislature could never have intended failure to comply with s 7 (6) does not render an otherwise valid customary marriage invalid.