



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

M v M

The Supreme Court of Appeal (SCA) today upheld the appeal of the appellant against the dismissal of her application instituted in the Limpopo High Court, Thohoyandou in which she sought an order declaring her customary marriage to her deceased husband valid and also declaring the civil marriage of the first respondent to the deceased a nullity.

The two issues before the SCA were whether: (a) the appellant's customary marriage to the deceased was valid; and (b) whether the civil marriage of the first respondent to the deceased was also valid. It was common cause between the parties that the appellant married the deceased by customary rites in 1979 and that the first respondent, who had married the deceased by customary rites in 1975, also concluded a civil marriage with the deceased on 2 August 1995.

The appellant contended that the first respondent's civil marriage fell foul of the law in that at the time it was concluded it was not legally permissible for the deceased to contract a civil marriage whilst the appellant's customary union with the deceased subsisted.

The argument of the first respondent that the appellant's customary marriage in 1979 was invalid because the deceased was already married to her by custom was rejected by the SCA. The SCA held that the Act that the first respondent relied upon only prohibited conclusion of a civil marriage if the man or woman was a partner in a subsisting customary union and not a customary marriage.

Thus, the law did not prohibit the conclusion of more than one polygamous customary marriage whilst the first still subsisted. Consequently the SCA found that the appellant's customary union was valid but not the first respondent's civil marriage.