

1. Whether the Principle of Marital Power violated the Plaintiff's Constitutional Rights, and

2. Whether Section 11 of the Matrimonial Property Act as it then was at the time of the alienation of the property, i.e., on 9 May 1988, and as it presently is in its amended form, is unconstitutional, in the following respects:
 - 2.1. Whether the Plaintiff's right, in terms of Section 9(2) of the Constitution, to be regarded as equal before the law and to be afforded equal benefit of the law has been violated.

 - 2.2. Whether the Plaintiff as a spouse to a marriage in community of property is not afforded the protections afforded to other spouses to marriages in community of property, namely the protections found in the common law in respect of the right to vindicate property belonging to the joint estate and at Section 15 of the Matrimonial Property Act.

 - 2.3. Whether the Plaintiff's right, in terms of Section 9(3) of the Constitution, to be protected from unfair discrimination has been violated.

 - 2.4. Whether the Plaintiff has been unfairly discriminated on the grounds of gender, and whether:

2.4.1. Marital Power violated the Plaintiff's right in this respect, as it deprived her of the ability to control the property belonging to the joint estate, she has with the First Defendant, on account of her gender alone.

2.5. Whether the Matrimonial Property Act, as it then was, at the time of the alienation of the property, violated the Plaintiff's right from protection against unfair discrimination as the abolition of marital power in terms of Section 11 did not apply to her marriage with the First Defendant since *such marriage was concluded prior* to the commencement of that Act.

3. Whether the distinction made by the Matrimonial Property Act, namely that its application would be dependent on the date of the conclusion of the marriage and not the date of the commencement of the Act is irrational.
4. Whether, as it presently stands, this Act unfairly infringes on the Plaintiff's rights and protections afforded to women whose marriages were concluded after its commencement.
5. Whether the Plaintiff's right to be protected from unfair discrimination is automatically unfair insofar as the discrimination was premised on a stated ground, namely gender.

6. Whether the Matrimonial Property Act, insofar as it *limits the abolition* of marital power to those marriages concluded after its commencement, indirectly and unfairly discriminates the Plaintiff, as:

6.1.1. it irrationally distinguishes her marriage and the marriages of other women in similar circumstances, based on the date of the conclusion of the marriage, and

6.1.2. legalises the otherwise unlawful conduct and discrimination, which continued to occur after the commencement of the Act.

7. Whether the Plaintiff's property rights under section 25(1) of the Constitution have been violated by Section 11(4) of the Matrimonial Property Act.

8. Whether the Plaintiff's right of ownership of the property which includes the right to vindicate her property has been arbitrarily violated by the State, through:

8.1. Section 11 of the Matrimonial Property Act as it then was which only provided for the abolition of marital power to those marriages which were concluded prior to its commencement.

- 8.2. Section 11(4) of the Matrimonial Property Act as it is at present (that is after the enactment by the Fifth Defendant of Act 132 of 1993), in that the State has legalised, that which is otherwise unlawful, namely the alienation of property belonging to the joint estate by the First Defendant, without the consent of the Plaintiff.
9. Whether the limitation of the Plaintiff's equality and property rights as aforementioned is not justifiable in the circumstances, in terms of section 36 of the Constitution.
10. Whether:
- 10.1. Section 11(4) of the Matrimonial Property Act should be declared as unlawful and invalid, as it violates the Plaintiff's right to the equal protection and benefit of the law, and directly and indirectly unfairly discriminates against the Plaintiff, on the basis of her gender.
- 10.2. The declaration of unconstitutionality of Section 11(4) should be with retrospective effect from the date of the commencement of the Matrimonial Property Act.

11. Whether Section 11(4) is incapable of being rendered constitutional through interpretive means and must be severed in entirety from the Matrimonial Property Act.

TAKE NOTICE FURTHER that any interested party may, with written consent of all the parties to the proceedings, given not later than 20 days of the issuing of this notice, be admitted therein as amicus curiae upon such terms and conditions as may be agreed upon in writing by the parties.

THE REGISTRAR IS KINDLY REQUESTED TO PLACE THIS NOTICE ON THE NOTICE BOARD

SIGNED AT HILLCREST ON 28 March 2024



**MHLABA AND ASSOCIATES
PLAINTIFF'S ATTORNEYS**

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TO: THE REGISTRAR

PIETERMARITZBURG

AND TO: SM MBATHA INC

1ST AND 2ND DEFENDANT'S ATTORNEYS

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C/O SL KUNENE AND PARTNERS

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PIETERMARITZBURG

RECEIVED COPY HEREOF
THIS.....^{3rd}..... DAY OF.....^{April}.....²⁰²⁴
AT.....^{10:32}.....
SIGNATURE.....^[Signature].....
SM MBATHA INC
PLAINTIFF / DEFENDANT

AND TO: REGISTRAR OF DEEDS KWAZULU NATAL

THIRD DEFENDANT
300 PIETERMARITZ ST
PIETERMARITZBURG

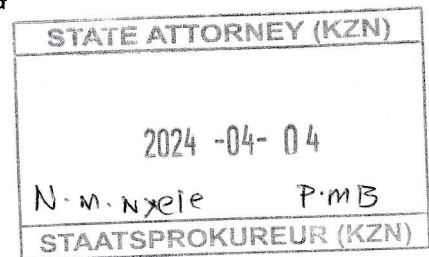


AND TO: STATE ATTORNEY, PIETERMARITZBURG

FOURTH AND FIFTH DEFENDANT'S ATTORNEY
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302 CHURCH STREET
PIETERMARITZBURG

REF: 116/0025016/2023/M/P44



AND TO: HH SMALL ATTORNEYS

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