

# Case: VVC v JRM and Others [2026] ZA CC 2

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20 February 2026

## INTRODUCTION

The case of *VVC v JRM and Others*<sup>1</sup>, addresses the constitutional validity of Section 10(2) of the Recognition of Customary Marriage Act<sup>2</sup>, (hereafter RCMA) which allows spouses in a monogamous customary marriage to change their matrimonial property system from in community of property to out of community of property without judicial oversight when they subsequently enter into a civil marriage. Essentially, Section 10(2) of the RCMA states that if parties in an existing monogamous customary marriage contract a marriage under the Marriages Act<sup>3</sup>, their marital system will default to in community of property unless they enter into an antenuptial contract (hereafter ANC) that explicitly excludes joint ownership and regulates their matrimonial property. The wording of this section is argued to be in conflict with 21 of the Matrimonial Property Act (hereafter MPA)<sup>4</sup>, which mandates judicial oversight in altering a matrimonial property system.

The Constitutional Court (hereafter CC) ultimately overturned the order of constitutional invalidity previously issued by the High Court of South Africa, Gauteng Division, Pretoria (hereafter HC)<sup>5</sup>.

## BACKGROUND

On the 5th of August 2011, the parties entered into a customary marriage; however, they did not enter into an ANC to govern their matrimonial property system, resulting in their customary marriage being classified as in community of property. Eight years later, on the 19th of February 2019, the parties executed an ANC, predating their civil marriage, which took place on the 10th of June 2021. This contract stipulated that their marriage would be out of community of property, subject to the accrual system. It is important to highlight that there was no division of the joint estate formed by the customary marriage prior to the parties' civil marriage.

In May 2022, the first respondent sought to enforce the ANC in pursuit of a decree of divorce against the applicant, who contended that the ANC was invalid. The applicant further pleaded in the alternative, should the contract be deemed valid, she sought to have section 10(2) of the RCMA be declared unconstitutional, citing a

conflict as mentioned previously. The HC chose to separate the legal issues and concentrate on addressing the question of the constitutionality of section 10(2).

## HIGH COURT DECISION ANALYSIS

Citing various precedence by *Rogers J*<sup>6</sup>, *Acting Judge Marumoagae* addressed the complex interplay between societal structures and matrimonial law, emphasizing that, despite the progressive advancements women have made in various sectors, many continue to occupy the role of the financially weaker spouse. This demographic often faces disadvantages as a result of decisions made by their financially stronger partners.

The HC evaluated the constitutionality of Section 10(2) of the RCMA. The judgment revealed that the ANC entered into by the parties after their customary marriage, and preceding their civil marriage, functioned as a postnuptial contract. This is because the contract improperly altered their matrimonial property system, rendering it invalid, as it failed to comply with Section 21 of the MPA, which mandates judicial oversight for any changes to a matrimonial property system.

The HC characterized Section 10(2) of the RCMA as unconstitutional on four primary grounds:

- 1. Lack of Judicial Oversight:** The absence of judicial oversight in permitting changes to a matrimonial property system undermines essential the 'checks and balances' designed to safeguard the rights of spouses as well as the interests of creditors.
- 2. Unfair Discrimination:** The HC identified a systemic imbalance wherein women, often entering marriages with less bargaining power, are disproportionately impacted by the lack of oversight. This condition places them at significant financial risk through contracts that may unreasonably favour the economically stronger spouse. Furthermore, this differentiation results in more robust protections for spouses in civil marriages compared to their counterparts in customary marriages, thus violating the principles enshrined in Section 9(1) of the Constitution<sup>7</sup>, that prohibit unfair discrimination on listed grounds held in subsection (3).

3. **Arbitrary Deprivation of Property:** The *HC* concluded that Section 10(2) of the *RCMA* contravenes Section 25(1) of the Constitution. The rationale stems from the fact that spouses married in community of property acquire equal ownership in the joint estate. By permitting changes to the matrimonial property system via a simple contract, the financially stronger spouse could effectively claim assets belonging to the joint estate unfairly. The *HC* deemed this to be unjust, as it circumvented the need for judicial intervention to ensure an equitable distribution of the joint estate.
4. **Prejudice to Creditors:** Lastly, the *HC* found that Section 10(2) of the *RCMA* allowed changes to the matrimonial property system without the prior notification of creditors who have an interest in the joint estate. This omission was seen to represent a significant legal defect, as the *MPA* mandates such notification to prevent the occurrence of unjust prejudice to creditors with interests in the joint estate.

Consequently, the *HC* issued the following order:

1. The *ANC* executed by the parties was deemed invalid.
2. Section 10(2) of the *RCMA* was declared unconstitutional, providing Parliament with a twelve-month timeframe to rectify the identified deficiencies.
3. The *HC* referred its decision to the *CC* for confirmation pursuant to Section 172(2)(a) of the Constitution.
4. It ordered costs in favour of the defendant.

This ruling was said to have reinforced the necessity for protective legislative frameworks that safeguard the rights and interests of all parties especially women within matrimonial structures, particularly in the context of customary marriages.

### CONSTITUTIONAL COURT ANALYSIS

The central issues for determination regarding the *HC* ruling, which was subject to the confirmation of the *CC*, were as follows:

1. The validity of the Antenuptial Contract (*ANC*).
2. The interpretation of section 10(2) of the Recognition of Customary Marriages Act (*RCMA*) and its constitutional validity.
3. The appropriate remedy.

The Majority Judgment, delivered by Justice Majiedt, held several critical conclusions:

1. The *CC* first determined that the *ANC* in question was invalid, as it was executed after the customary marriage. This rendered it a postnuptial contract,

which necessitated adherence to the mandatory judicial oversight requirement found in section 21 of the *MPA*. The Majority reasoned that when parties engaged in a customary marriage subsequently enter into a civil marriage, they do not establish a second marriage, nor do they dissolve the customary marriage. Instead, the civil marriage effectively subsumes and replaces the previous marriage system, while the marriage relationship remains singular and continuous.

2. In relation to the interpretation and constitutionality of section 10(2) of the *RCMA*, the Majority established that there exists a manner of interpretation that could circumvent any constitutional conflict. The *CC* emphasized that, wherever feasible, statutory interpretation should favour compliance with constitutional principles. Thus, it reiterated that the civil marriage represents a continuation of the customary marriage. Furthermore, the *CC* concluded that section 10(2) of the *RCMA* does not authorize postnuptial contracts that change the matrimonial property system without a court order as mandated in section 21 of the *MPA*. This interpretation is pivotal as it upholds the necessity of judicial oversight, which serves as a legal safeguard for economically disadvantaged spouses and creditors. The majority went further, stating that the matter pertaining to section 10(2) of the *RCMA* was primarily one of procedural invalidity rather than unconstitutionality, as the *ANC* was invalidated due to the parties' failure to adhere to the prescribed court process in section 21 of the *MPA*.
3. The Majority further concluded that, given the *ANC* was deemed invalid, the *HC* prematurely declared section 10(2) of the *RCMA* unconstitutional. The invalidity of the contract negated the constitutional challenge, aligning with the nature of the parties' presentation of the case; as the applicant contended that the *ANC* was invalid and, if found to be valid, only then sought to have the section to be declared unconstitutional.

In the context of legal interpretation surrounding the *RCMA*, it is imperative to acknowledge the dissenting judgment lead by Justice Rogers, which stands in opposition to the majority viewpoint. Justice Rogers substantiated his position through the following critical arguments:

1. The textual interpretation of Section 10(2) of the *RCMA* indicates that an *ANC* may validly be executed after to a customary marriage but prior to the civil marriage. Specifically, the terms "Ante" and "nuptial," which translate to "before the nuptials," imply that the nuptials in question pertain to the civil marriage. Furthermore, the phrasing "the/their marriage" within the section logically aligns with the civil marriage context.

2. Justice Rogers emphasized the necessity of safeguarding section 10(2) from legislative redundancy. He contended that an interpretation limiting section 10(2) to ANC's executed before a customary marriage would render it practically useless, as Section 7(2) of the RCMA already establishes the default system of community of property for customary marriages, unless explicitly excluded by an ANC. Therefore, for Section 10(2) of the RCMA to retain any legal significance, it must allow for a change of the matrimonial property system at the instance of the civil marriage.
3. Additionally, he asserted that the transition does not result in arbitrary deprivation of property rights. Justice Rogers stated that the existence of a single hybrid marriage, characterized by both customary and civil elements, ensures that the joint estate established by the customary marriage remains intact, if the ANC makes no reference to the previous assets. This perspective effectively neutralizes concerns regarding creditor prejudice, as liabilities incurred during the customary marriage remain enforceable against the joint estate or both spouses.
4. Finally, Justice Rogers brought to light the financial implications of necessitating judicial oversight in these matters. He noted that such requirements would compel couples to engage with notaries and navigate the complexities of legal proceedings, which could impose considerable financial burdens.

Despite the compelling nature of the minority's arguments, the majority judgment prevailed, concluding with the following orders:

1. The order of constitutional invalidity issued by the HC, which declared section 10(2) of the RCMA unconstitutional, is not upheld.
2. No order is made regarding costs.

## CONCLUSION

In conclusion, a pivotal takeaway from this case is that a civil marriage does not invalidate a customary marriage, nor does the reverse. It is important to note that any ANC executed after the initial marriage be it customary or civil renders the contract invalid, effectively categorizing it as a postnuptial agreement. The only legally recognized means of altering a matrimonial property system is through a formal court process as held in section 21 of the MPA. Couples are thus strongly encouraged to seek legal assistance in order to obtain a comprehensive understanding of their unique circumstances prior to initiating the processes involved in their chosen marital path.

<sup>1</sup>VVC v JRM and Others [2026] ZACC 2.

<sup>2</sup>Recognition of Customary Marriage Act 120 of 1998.

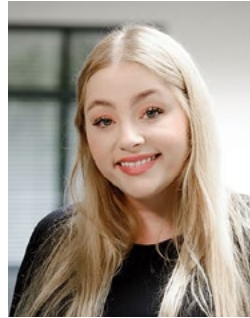
<sup>3</sup>Marriages Act 25 of 1961.

<sup>4</sup>Matrimonial Property Act 88 of 1984.

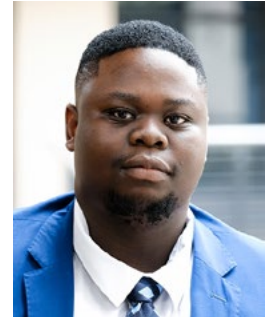
<sup>5</sup>JRM v VVC and others (Pretoria Attorneys Association as amicus curiae) [2024] 3 All SA 853 (GP).

<sup>6</sup>EB (born S) v ER (born B) and others 2024 (1) BCLR 16 (CC); KG v Minister of Home Affairs and others 2024 (2) SA 1 (CC).

<sup>7</sup>The Constitution of the Republic of South Africa, 1996.



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