

GREYLING v MINISTER OF HOME AFFAIRS

FACTS OF THE CASE

The applicant, Mrs Greyling and her husband were married out of community of property without the accrual, a few years before the commencement of the matrimonial property act. She and her husband lived on a very large farm in a rural area, and she raised their three children, all of whom became high achievers. This meant that the Applicant was very involved in their schooling, transported the children on a consistent basis, was a very good wife and mother. Her husband, on the other hand, was a very successful farmer who won awards for farming, he excelled financially and was able to purchase more farms. The family lived a luxurious lifestyle, drove luxury cars, and enjoyed holidays overseas. However, as a result of abuse, the couple separated during 2016. The Applicant then challenged what she believed was an unfair situation in which her pending divorce would ordinarily see her walk away with nothing more than a small inheritance she received from her mother and a possible maintenance claim. The applicant submitted that s 7(3)(a) arbitrarily and irrationally differentiated between people married before and after 1 November 1984, being the date on which the MPA commenced and contended that it was irrational that she would be protected by section 7(3) if she had married four years earlier.

LEGAL QUESTION

Whether it was constitutional for spouses married out of community of property with the exclusion of the accrual system after 1 November 1984 to be deprived of the relief provided for in s 7(3) of the Divorce Act.

RATIO DECIDENDI

Judge Van Der Schyf held the view that the legislature, in an effort to address the obvious disadvantage suffered by economically disadvantaged parties in marriages out of community of property concluded before the commencement of the MPA, introduced s 7(3)(a) and reasoned that an entirely novel concept was brought into this branch of our law, namely that the Court was given the power under certain circumstances to order the transfer of assets of the one spouse to the other and that the power that was created enabling a court to make such a redistribution order was a reforming and remedial measure. The judge rightfully took the view that the Bill of Rights, and thus section 9 of the Constitution, applies to matrimonial property law since marriage is a matter of choice and so too are the proprietary consequences of marriage. The court was of the view that it would be patently unfair that an economically disadvantaged party who can make out a case for relief in terms of s 7(3), whose contribution is not recognised and adequately compensated by the spouse who benefitted from such contribution, is metaphorically left out in the cold at the mercy of the spouse whose estate increased, without any recourse to the court to address the injustice.

COURT ORDER

Section 7(3)(a) of the Divorce Act, 70 of 1979, was declared inconsistent with the Constitution.

The Minister Of Others Affairs

**Abdul Aziz Nassihudin, Tedi
Sudrajat, Sri Wahyu Handayani, Aryuni
Yuliantiningsih, Riris Ardhanariswari**

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