

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: A2023-062743

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO

12/3/2026

DATE

SIGNATURE

In the matter between:

E[...] **S[...]**

Appellant

and

H[...] **Z[...]** **A[...]**

Respondent

Flynote - Practice—Appeal—Appealability—Jurisdictional ruling dismissing Rule 43 application—Order final in effect, definitive of rights and disposing of relief—Appealable (Zweni v Minister of Law and Order 1993 (1) SA 523 (A) at 532I–533B).

Family law—Divorce—Rule 43—‘Spouse’—Muslim marriage terminated by talaq—Whether party may invoke Rule 43 pending civil divorce—Yes; read in harmony with Divorce Act 70 of 1979 as amended by Act 1 of 2024 and with interim regime in Women’s Legal Centre Trust v President of the Republic of South Africa 2022 (5) SA 323 (CC) (paras 1.1–1.9; esp para 1.7; 60).

Constitutional law—Religious freedom—Recognition of Muslim marriages—Extension of Divorce Act protections not a limitation of s 15 right; failure to extend would infringe women’s and children’s rights (WLCT (CC) para 60).

Civil procedure—Amicus curiae—Rule 16A—Late application—Interests of justice—Refused for want of timeliness and because constitutional point unnecessary for interpretive disposition of appeal.

Headnote: Issue - whether a court may entertain an application under uniform rule 43 where a Muslim marriage has previously been terminated by talaq; whether a jurisdictional dismissal of such an application is appealable.

Held: A jurisdictional order refusing to entertain rule 43 relief is appealable because it is final in effect, definitive of the parties' rights and disposes of the interim relief (*Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I–533B).

Held: The Divorce Act 70 of 1979, as amended by the Divorce Amendment Act 1 of 2024, applies to all Muslim marriages; a talaq does not preclude a spouse from instituting civil divorce and invoking rule 43 interim protections. 'Spouse' in rule 43 must be interpreted purposively and harmoniously to include a party to a Muslim marriage notwithstanding a prior talaq

Held: Parties cannot, by private agreement or acquiescence, waive the statutory protections and judicial oversight embedded in s 7 of the Divorce Act; any settlement must operate within that framework.

Order: Appeal upheld; jurisdictional ruling set aside; rule 43 application may be re-enrolled.

JUDGMENT

FISHER J (SENYATSI AND DLAMINI JJ CONCURRING)

Introduction

[1] This is an appeal against the order of Mabesela J in respect of the upholding of a jurisdictional point taken by the respondent in an application brought under rule 43 of the uniform rules. The merits were never reached.

- [2] The court a quo upheld the point, finding that it did not have jurisdiction to entertain the claim under rule 43 in that the parties were not “spouses”¹ as contemplated in rule 43 because their marriage, which was a Muslim marriage had already been terminated in accordance with Muslim tenets.
- [3] This appeal is with leave of the Supreme Court of Appeal (SCA), leave to appeal having been refused by the court a quo.
- [4] This leave notwithstanding, the respondent raises a point directed at the appealability of the jurisdiction point. It is argued that orders under rule 43 are not appealable because section 16(3) of the Superior Courts Act ² permits of no appeal from any judgment or order in proceedings in connection with the relief claimable under rule 43.³

Appealability

- [5] This point can be summarily dealt with. The judgment is not one “in connection with” rule 43 relief; it is in respect of a jurisdictional point which is final and definitive of the parties’ rights.
- [6] Thus, the triad of considerations in *Zweni v Minister of Law and Order*⁴ of finality; definitiveness; and disposal of main relief hold sway in the determination of whether the case may be appealed.
- [7] If section 16(3) were to be interpreted to preclude appeal in these circumstances this would be irrational in that it would allow for the very purpose of the Divorce Act, which expressly includes the rights of Muslim women to interim relief under

¹ Rule 43(1) reads as follows: This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

- (a) Maintenance pendente lite;
- (b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;
- (c) Interim care of any child;
- (d) Interim contact with any child.

² Act 10 of 2013

³ Section 16(3) reads as follows: (3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application —

- (a) by one spouse against the other for maintenance pendente lite;
- (b) for contribution towards the costs of a pending matrimonial action;

⁴ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A).

rule 43, to be thwarted.

- [8] On a purposive and contextual interpretation section 16(3) has no application when the merits of rule 43 are not implicated.

Issues for decision on appeal

- [9] Ms Grobler for the appellant, argued initially that the appeal could be decided based on a finding that the question of jurisdiction fell properly to be dealt with by the trial court and that the application under rule 43 should have been decided in the interim.
- [10] In this submission she placed reliance on the recent case of *H.A v N.A*⁵ in which resort was had to the well-trodden common law principle espoused in *Zaphiriou v Zaphiriou*⁶ to the effect that “spouse” in rule 43(1) must be interpreted as including, not only a person admitted to be a spouse, but also one who alleges that she is a spouse.
- [11] In *H A v N A*⁷, it was held that the question of jurisdiction was more properly decided in the main action and should be deferred.
- [12] I disagree that this court should not decide the jurisdictional point. The fact that this court is dealing with an appeal has a bearing on the appropriateness of such an approach at this stage. On a deferred approach, this court would be called on to decide only one issue: whether the question of the jurisdiction could and should have been decided at the interlocutory rule 43 stage.
- [13] The amendments to the Divorce Act⁸ enacted under Divorce Amendment Act 1 of 2024 put beyond question the validity or otherwise of a Muslim marriage for the purposes of rights and obligations pertaining thereto under civil divorce proceedings, including rule 43 proceedings.
- [14] A failure by this court to recognise this would be inappropriate in that it would lend uncertainty to the applicability of the Divorce Act to Muslim marriages generally, where there, in fact, cannot be any such uncertainty.

⁵ *H.A v N.A* (144907/2024) [2025] ZAGPPHC 121 (13 February 2025).

⁶ *Zaphiriou v Zaphiriou* 1967 (1) SA 342 (W).

⁷ *H.A v N.A* supra note 4.

⁸ Divorce Act 70 of 1979.

[15] Any uncertainty allowed for is inevitably tied to the foundational constitutional commitments to equality, dignity, children's rights, and access to justice which informed the amendment. To my mind, this court should not shrink from deciding the scope of application of the Divorce Act as amended.

[16] This is not to say that the applying of *Zaphiriou*⁹ in *H.A v N.A*¹⁰ was wrong. Indeed, given the nature of the proceedings, being that expeditious temporary relief be granted and given also the way the rule 43 court roll operates in Pretoria, being that a number of rule 43 applications are dealt with in one day, it was then and there the most sensible approach for the court to adopt.

[17] This appeal court is in a different position. It has no constraints in relation to a full ventilation of any arguments pertaining to the application of the Divorce Act to Muslim marriages and specifically the entitlement to rule 43 relief interim to civil divorce proceedings.

[18] The parties are agreed that a determination of the merits entails an interpretation of the Divorce Act.

[19] Thus, the narrow issue for determination by this court is whether rule 43 applies if there has been a termination of the Marriage under Sharia law. This entails a broader a determination of the scope of the amendments to the Act in relation to Muslim marriages.

Material facts

[20] The parties were married in accordance with Sharia Law¹¹ on 26 November 2020, which is automatically out of community of property.

[21] The respondent issued the appellant with a series of *talaqs*¹² between February 2021 and March 2022.

⁹ *Zaphiriou v Zaphiriou* supra note 5

¹⁰ *H.A v N.A* supra note 4.

¹¹ The comprehensive body of ethical, legal, and religious principles derived from the Qur'an, the Sunnah (the Prophet Muhammad's normative example), and the interpretive methodologies of Islamic jurisprudence. It encompasses the moral ideals, legal norms, and spiritual guidelines by which Muslims seek to order both personal conduct and communal life in accordance with what is understood to be divine will.

¹² *ṭalāq* - In Islamic law (Shariah), refers to a husband's formal pronouncement ending the marriage contract.

- [22] Despite the issuing of the *talaqs* the parties remained living in their matrimonial home and as husband and wife.
- [23] On 09 November 2021 a daughter was born of this union.
- [24] During March 2022, the *Jamiatul Ulama* (the Council of Muslim Theologians) at the instance of both parties issued a ruling confirming the existence of an irrevocable¹³ *talaq*. For context there was dispute as to whether or not a *talaq* had been pronounced and if so under which *talaq* the Muslim marriage was terminated.
- [25] In March 2022 the *Jamiatul Ulama* issued a ruling to the effect that a final *talaq* had been issued and was effective from March/April 2021.
- [26] In June 2022 the Constitutional Court handed down the decision in *Women's Legal Centre Trust v President of the Republic of South Africa and Others*¹⁴ which not only declared the existing statutory legal order as embodied in the Marriage¹⁵ and Divorce Acts and the common law unconstitutional to the extent that they did not recognise the civil validity of Muslim marriages and directed that the legislature was obliged to enact legislation designed to remedy this deficiency, but also created an interim regime that would take effect retrospectively and operate pending the proclamation of legislation which took account of the declarations of invalidity.
- [27] This interim remedy was the law in operation when the appellant instituted the divorce proceedings in issue. This interim position was later overtaken by the legislative amendment in issue¹⁶ but is relevant because the amendment to the Divorce Act substantially followed the relief fashioned by the court in the interim remedy. It thus has bearing on the legislative intention behind the amendments.
- [28] The question of the temporal sphere of operation of this interim regime had to be considered so as to strike a balance as to which Muslim marriages and divorces fell under such regime and which did not.

¹³ Certain sects or schools of Sharia law adhere to a revocability principle in relation to *talaq*.

¹⁴ *Women's Legal Centre Trust v President of the Republic of South Africa and Others* 2022 (5) SA 323 (CC).

¹⁵ Marriage Act 25 of 1961.

¹⁶ Divorce Amendment Act 1 of 2024.

- [29] The Women's Legal Centre Trust prayed that the SCA should backdate the interim relief to 27 April 1994 and apply it to all Muslim marriages that had been dissolved under Sharia law as at that date.
- [30] The SCA held, however, that retrospective relief backdated to 27 April 1994 would have profound unforeseen circumstances. The court, thus, set the date of respectivity at 15 December 2014, being the date of institution of proceedings by the Women's Legal Centre Trust in the High Court.
- [31] The Constitutional Court followed this lead set the operative date of retrospectivity to include Muslim marriages subsisting at 15 December 2014. It included in the period before this operative date those marriages that had been terminated but in respect of which legal proceedings had been instituted and not yet determined.
- [32] Apart from these parameters, all Muslim marriages and divorces from such date were regulated by the interim remedy of the Constitutional Court.
- [33] The appellant instituted divorce proceedings during June 2023. This obviously fell within the parameters for the institution of action after 15 December 2014.
- [34] The respondent delivered a plea and counterclaim in September 2023 in terms of which he claimed that the marriage was terminated by the issuing of a *talaq* in April 2021.
- [35] The appellant pleaded in reconvention in October 2023 that, notwithstanding the issuing of the *talaq* during April 2021, the marriage remained recognised at civil law.
- [36] In December 2023 the appellant brought the rule 43 proceedings in issue where the respondent's contention that there was no marriage was upheld.

Application to be admitted as amicus

- [37] Approximately two weeks before the hearing date of the appeal, the Muslim Lawyers Association (MLA) brought an application to be admitted as *amicus curia*, alternatively to intervene in the appeal.

[38] The parties are both legal practitioners. The respondent does not oppose the application of the MLA but the appellant resists it on the basis that it was brought out of time and presents an opportunity to delay the finalisation of the appeal which she contends prejudices her and is not in the interests of justice.

[39] The MLA characterises the dispute upon which it seeks to make submissions as follows:

“On the one hand Muslim marriages are recognized. On the other hand, to permit the seeking of a divorce through court proceedings following an Islamic divorce nullifies the entire institution of an Islamic divorce and, in so doing, infringes upon a party’s right to freedom of religion and freedom of contract. The MLA seeks by way of this application to introduce detailed evidence of an expert nature in relation to aspects of Sharia Law.”

[40] Essentially, the submission sought to be made is that if the word “spouse” is interpreted to include a woman divorced under Sharia law this would be unconstitutional in that it infringes the section 15 guarantees of freedom of religion which, it is argued, includes the right conclude a marriage in accordance with Sharia law.

[41] The application to be admitted as amicus was not brought with reasonable promptness as is required. The appellant was, thus, not given adequate time to deal with it. It seeks to raise a constitutional point late in the day. Were it to be entertained at this stage his would inevitably delay the appeal. This is not in the interests of the appeal and especially the appellant.

[42] The issues in the appeal, as it stands, are interpretive. The question of the constitutionality of the meaning of rule 43(1) read with the Divorce Act as amended is, to my mind, not a question which will add to this appeal. Neither party has raised it.

[43] The point can be raised independently of the appeal in the constitutional environment where proper notice can be given such as will allow other interested parties to join in the suit.

[44] It may be that arguments are raised in this context in relation to whether the issue is *res judicata* by the Constitutional Court considering its pronouncements in *Women's Legal Centre Trust* where it held¹⁷:

“There has been no suggestion that extending the benefits to be derived from the Marriage Act and the Divorce Act to women in Muslim marriages and children born of such marriages will limit the right to freedom of religion guaranteed in the Bill of Rights. To the contrary, failing to extend such benefits infringes the rights of women in and children born of Muslim marriages. It should be made clear that the constitutionality of Sharia marital law is not under consideration. We are not required to determine whether Sharia marital law passes constitutional muster. We are concerned about the hardships faced by women in Muslim marriages as a consequence of being excluded from the benefits derived from the Marriage Act and the Divorce Act. We note the submissions on behalf of the WLCT, the UUCSA and the MAC that Sharia marital law is not inconsistent with the Constitution.” (Emphasis added)

[45] But this is beyond the scope of the issues on appeal before this court.

[46] In all the circumstances, the failure to comply with rule 16A is not condoned and in any event this court's discretion is best exercised against the admitting of the MLA.

[47] This application is, thus, refused.

The arguments on the merits

[48] The appellant argues that, properly construed, the Divorce Act expressly makes the Act applicable to Muslim marriages as at 15 December 2014 regardless of whether there has been a *talaq*. She argues that action can be instituted before or after a *talaq*. The argument goes that a Muslim marriage is not regarded as having been terminated for the purposes of the enforcement of the rights and obligations which inhere under the Divorce Act. It is argued further that rule 43 type relief is expressly included as proceedings which may be brought under the Divorce Act.

¹⁷ *Women's Legal Centre Trust v President of the Republic of South Africa and Others* supra note at para 60.

[49] Mr Bava SC for the respondent argues that the court *a quo* was correct in its finding that the prior issuing of a *talaq* rendered the rule 43 proceedings unavailable to the appellant as she could no longer be considered a “spouse” within the meaning of rule 43.

[50] In the first instance, the respondent argues that the meaning of rule 43 is clear: it does not apply if there has been a divorce according to Muslim tenets before the institution of action.

[51] If this argument fails, it is argued on behalf of the respondent that, on the facts of this case, the parties submitted themselves to a determination by the *Jamiatul Ulama* as to the status of their marriage and that, accordingly, they are bound by that determination in that the agreement to be bound is contractual.

[52] Mr Bava also raises further questions of acquiescence in the Sharia process by the delay in seeking the civil divorce. The point is made that the appellant waited a year after the determination of the *talaq* before launching civil proceedings. Thus, the question is what effect issues of acceptance of and acquiescence in the Sharia processes has on the application of the Divorce Act to Muslim marriages. Essentially, these issues raise questions of whether the Divorce Act can be contracted out of or the entitlement to the rights thereunder waived.

[53] The issues for determination can be stated thus:

a. What is the effect of a *talaq* on the applicability of rule 43 ?

b. If so, how is its applicability affected by the fact that the parties submitted themselves to a determination of the *Jamiatul Ulama* and delayed in the bringing of the civil remedy?

[54] I will deal serially with these questions.

[55] What is the effect

The civil effect of a talaq on rights under rule 43

- [56] *Zaphiriou*¹⁸ represents a pre-constitutional attempt by courts to draw a balance between disputes as to the existence of marriages and the needs of women and children for interim relief. This was, then, chiefly achieved by reference to common law principles.
- [57] Before *Women's Legal Centre Trust* this was of no help to Muslim women in that their marriages were not recognised, primarily because Sharia law allows polygamy. The Divorce Act now specifically defines common law principles relating to marriage to include Muslim marriages. Thus, the common law still applies to the extent that it is not inconsistent with statute.
- [58] Whilst *Zaphiriou* still has value in respect of the common law principles pertaining to Muslim marriages and, as referred to above, it was applied for good measure in *H. A. v N. A*¹⁹, the issue was dealt with definitively in *Women's Legal Centre Trust*²⁰ and the subsequent amendment of the Divorce Act.
- [59] The Women's Legal Centre Trust sought confirmation by the Constitutional Court of orders handed down in the SCA relating to declarations of constitutional invalidity in relation to statute and the common law failures to recognise the validity of Muslim marriages.
- [60] The Constitutional Court delivered judgment on 28 June 2022, confirming the SCA's order. The case addresses the constitutional obligations of the State relating to family law, religious freedom, and the protection of women and children in Muslim marriages.
- [61] The Court held the Marriage and Divorce Acts and the common law to be unconstitutional to the extent that they did not recognise Muslim marriages; it held that this lack of recognition impinged on fundamental rights including equality rights (section 9); dignity rights (section 10); children's rights (section 28) and access to courts (section 34).
- [62] The declarations of invalidity were suspended for 24 months to allow Parliament

¹⁸ *Zaphiriou v Zaphiriou* supra note

¹⁹ *H.A v N.A* supra note .

²⁰ *Women's Legal Centre Trust v President of the Republic of South Africa and Others* supra note .

to remedy this lack of recognition.

[63] Pending legislative correction, the Court provided an interim remedy which was, essentially, a confirmation of the interim relief prescribed by the SCA.

[64] The interim regime and its foundation and implications are important in that they serve to show the balancing principles adopted by the Court with reference to competing rights, especially religious freedoms.

[65] The legislature followed the lead of the Constitutional court in enacting that the amendments were retrospective to 15 December 2014 on the basis that subsisting Muslim marriages and those where, notwithstanding the issuing of a *talaq*, there had been legal proceedings instituted.

[66] The precludes introduced by the Amendment Act contain the following in relation to the applicability of the Act:

“This [Divorce Act] applies to all subsisting Muslim marriages, including a Muslim marriage-

(a) which was terminated or dissolved in accordance with the tenets of Islam and where legal proceedings for the dissolution of the said Muslim marriage in terms of the Divorce Act, 1979 (Act 70 of 1979) have been instituted but not yet finalised; and

(b) which subsisted as at 15 December 2014 (see s. 6 of Act 1 of 2024)”

[67] The suggestion was made on behalf of the respondent that, properly construed, this means a wife must institute action before the divorce under Sharia law in order to enjoy the rights afforded her and her children under the Divorce Act. This principle can be described as “first come first served”– whichever spouse institutes divorce, be it under Sharia Law or civil law, determines the choice of law between Sharia Law and civil law.

[68] This construction would mean that if a wife perceives that her husband is dissatisfied with the marriage she must hasten to institute proceedings before the *talaq* is issued in order to have her rights under the Divorce Act and specifically, for the purposes of this appeal, rule 43. Simply put, this would mean

if she instituted action before he pronounced the *talaq*, she and her children would have the rights under the Act but if she failed to do so in time, she and her children would be deprived of such legal remedies.

[69] We know well by now that the interpretation exercise in relation to legislation involves a unitary consideration which takes account of language, context and purpose.²¹

[70] The Act must be interpreted with its purpose in mind in the context of the declaration of constitutional invalidity as to the failure to recognise the validity of Muslim marriages.

[71] The endeavour begins with the reasons why the non-recognition of Muslim marriages was unconstitutional in the first place.

[72] The motivation for the declaration of invalidity was that Muslim women are deprived of the proprietary and other protective remedies the Divorce Act is designed to guarantee. The Court noted that they “were often left destitute, or with very small estates, upon Talāq”.

[73] The stated purpose of the change in the law was to allow Muslim women the benefits of the Divorce Act despite of and in the face of a *talaq*; not in the absence of a *talaq*.

[74] Thus, there can be no doubt that the amendment to the law was for the purposes of protecting women and children from any unconstitutional consequences of a *talaq*. There is, accordingly, no logic to a construction which keeps the imposition of Sharia law applicable if a *talaq* has been pronounced.

[75] I have, already, touched on the Constitutional Court’s approach to the constitutionality of Sharia law itself. The Court made it clear that it was dealing only with civil rights of Muslim women and children in divorce and that it was not required to determine whether Sharia law passed constitutional muster.

[76] It stands to reason that this means that Sharia law is constitutional only to extent

²¹ Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA).

that the effects of a *talaq* do not deprive a wife and children of the rights and benefits under the Act.

[77] Thus, notwithstanding *the talaq*, a wife may still seek civil divorce.

[78] As I have said in reference to the application of the MLA, to the extent that this is still a live constitutional issue it can be raised in the proper forum.

[79] The pronouncement of a *talaq* is clearly an indication of marital breakdown, but it does not circumvent rights under the Divorce Act if it comes first.

[80] To put the argument in relation to whether rule 43 applies after *talaq* completely to rest, reference to the Divorce Act as amended shows that the rights under rule 43 are now expressly afforded to Muslim women and children under the Divorce Act itself.

[81] “*divorce action*” is defined to mean an action by which a decree of divorce or other relief in connection therewith is instituted and to includes interim applications pending the divorce action for interim custody access to a minor child of the marriage for maintenance and for a contribution towards costs which are all matters dealt with under rule 43.

[82] Section 1(2) provides that, for the purposes of the Act, a divorce action shall be deemed to be instituted on the date on which the summons is issued or the notice of motion is filed or the notice is delivered in terms of the rules of court, as the case may be.

[83] It stands to reason that Muslim marriages which are subject to the Divorce Act, (which after 15 December 2014 is every Muslim marriage) are subject also to rule 43.

[84] To put a finer point on it with reference to the judgment under appeal, the term “spouse” in rule 43(1) should be read expressly to include Muslim woman notwithstanding the termination of her marriage under Sharia law.

[85] I now turn to examine whether contract or other conduct which may be interpreted as acquiescence of the wife to the application of Sharia law to the

exclusion of the rights afforded by the Divorce Act and the common law.

Can a Muslim woman contract out of or waive her rights under the Divorce Act?

[86] The respondent expresses outrage that a woman, after having lived with the reality of her marriage having been terminated under Sharia law for years, can apply under the Divorce Act for a civil divorce.

[87] He argues that the lack of certainty for the parties and third parties wrought by such a construction could not have been the intention of the legislature.

[88] The argument of the respondent seems to be that there must be scope for a Muslim couple to contract out of the benefits under the Divorce Act, or for a finding that a wife, by her conduct or other expression of acquiescence, has waived her rights under the Divorce Act.

[89] A Muslim civil divorce follows similar provisions relating to division of assets as any other divorce, save that it is automatically out of community of property accordance with Sharia law.

[90] Section 7 deals, in some detail, with the division of assets and maintenance on Divorce. It provides for these aspects to be dealt with in terms of a written agreement which is incorporated in the divorce, alternatively and in the absence of agreement, the court may determine a just and fair division of the assets taking into account an open list of factors, including the direct and indirect contributions of the respective spouses to the maintenance or increase of the estate of the other party, either by the rendering of services, the saving of expenses and the existing means and obligations of the parties, including those that flow in the circumstances where the husband has more than one spouse.²² The court may also order that satisfaction of the order be deferred on such conditions that it deems fair.²³

[91] The Constitutional Court emphasised a general inequality in bargaining power of women under Sharia law, however, under the amended Act, the situation may

²² Section 7(3A) to 7(5).

²³ Section 7(6).

be reversed. The court thus has the power to alleviate any injustice to which the husband might be subject under the new regime.

[92] Thus, whilst the Divorce Act cannot be contracted out of or the rights thereunder waived, any inequalities which arise are accommodated by the provisions thereof by the court's determination of justice and fairness.

[93] It is worth noting that the position is no different from that pertaining to non-Muslim marriages. In both cases the court has a wide discretion to do justice between the spouses.

Conclusion

[94] Whilst freedom to practice one's religion and respect for the tenets of all religions is jealously guarded by our courts, such freedoms must be balanced against the requirement that Parliament uphold the other constitutional imperatives which were invoked in *Women's Legal Centre Trust*.

[95] The Divorce Act, properly construed, thus applies to all Muslim marriages which subsisted as at 15 December 2014. This includes those marriages where proceedings for divorce were pending at such date.

[96] Thus, in sum, the Divorce Act does not apply to Muslim marriages where there has been a *talaaq* issued prior to 15 December 2014 unless action was instituted and was still pending before that date. Other than that, the Divorce Act applies to all Muslim marriages regardless of whether there has been a divorce under Sharia Law.

Order

[97] I make the following order:

1. The appeal succeeds and the order of the High Court to the effect that the court has no jurisdiction is set aside.
2. The appellant may re-enrol the rule 43 application in its present form or as

supplemented to deal with any changes which have occurred since the application was removed from the roll in the court a quo.

3. The respondent is to pay the costs on scale C

FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG

SENYATSI J
JUDGE OF THE HIGH COURT
JOHANNESBURG

DLAMINI J
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Caselines. The date for hand-down is deemed to be xx March 2026.

Date of hearing:**16 February 2026**

Date of judgment: **12 March 2026**

Appearances:

Counsel for the Appellants: **Adv L Grobler**

Attorneys for the Appellants: **Shaheed Dollie Attorneys**

Counsel for Respondent: **Adv Bava SC**

Adv A Saldulker

Attorneys for the Respondent: **N Moola Inc**