

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZACC/2021/7.html
Name of case:	<i>Sithole and Another v Sithole and Another</i>
Court name:	Constitutional Court
Type of court:	<input checked="" type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Matrimonial Property
Justice(s)/Judge(s)	Tshiqi J Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J and Victor AJ (Concurring)
Reference No:	[2021] ZACC 07
Filing No:	CCT 23/20
DESCRIPTION	
Facts:	<p>Mrs Agnes Sithole, the Applicant, was married to Mr Gideon Sithole, the respondent, in 1972. Unbeknown to Mrs Sithole, their marriage matrimonial property regime was out of community of property. This was the default position created by the Matrimonial Property Act, 1884.</p> <p>In 2000, they purchased their family home and this was registered in Mr Sithole's name. During the past few years, their relationship deteriorated, and Mr Sithole would threaten to sell their house from time to time.</p>

	<p>Mrs Sithole then launched an application at the Pinetown Magistrates Court for an order interdicting and restraining Mr Sithole from selling their home. She learned during these proceedings that she was married out of community of property and that her husband did not need her consent to sell the property.</p> <p>The applicants, Mrs Sithole and the Commission for Gender Equality, jointly brought an application before the High Court to declare section 21(1) and 21(2)(a) of the MPA unconstitutional and invalid. They claimed that women who are unable to divorce their husbands or to change the proprietary regime of their marriage will continue to suffer the discriminatory impact of section 22(6) of the Black Authorities Act (BAA). The applicants contended that section 22(6) of the BAA disadvantaged Black women by providing that except in limited circumstances, their marriage would be out of community of property, it subsequently denied hundreds of thousands of Black women the protection that is afforded by a marriage in community of property. The Marriage and Matrimonial Property Law Amendment Act (the Amendment Act) repealed section 22(6) of the BAA; but did not end the disadvantage suffered by Black women who had married before 1988 as the default position in such marriages is that they are out of community of property.</p> <p>The High Court granted their application. The high court held that section 22(6) of the BAA only precluded black couples from having their marriage in community of property and black couples did not enjoy the legal protection afforded by a marriage in community of property that all other South Africans enjoyed. The High Court further held that section 21(2)(a) discriminated against black persons married before 1988. An application to confirm this order was then brought to the constitutional court.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The Constitutional Court found section 21(2)(a) of the Matrimonial Property Act 88 of 1984 to be unfairly discriminatory and such discrimination was not justifiable under section 36 of the Constitution. As such, all marriages of black persons that are out of community of property and were concluded under section 22(6) of the Black Administration Act before the 1988 amendment are, save for those couples who opt for a marriage out of community of property, hereby declared to be marriages in community of property.</p>



REFERENCES	
Reference(s) to other court decision	