

# "What's in a (Woman's) Name?": a personal case narrative

Doo Aphane

## Introduction

In January, 2009, I presented an unprecedented case for women's rights before the Swaziland High Court. I presented the case in my personal capacity but on behalf all fellow women and especially those that are, were, and have been married by civil rites in community of property profit and loss. I challenged the discriminatory title deed laws which prevented women married in community of property from registering property in their names. Additionally, and embarrassingly the case was also about my demand to enforce my rights and those of fellow married women regardless of marital regime to retain and use last names given at birth commonly referred to as maiden names. Honestly, speaking I do not appreciate what is maiden about these names but simply view them as identities that are given to all children largely along patriarchal lines as a people that are patriarchal.

The motivation in taking the case to court was several fold; at a personal level it was to restore my dignity and that of women married in community of property, and to have registered and put to rest that women, similar to their male counterparts have identities that they are proud of, are part of their heritage and need or want to protect. At an activism level I wanted put a stop to the undue power over joint estates which the law gave to husbands, many of whom had misused to the disadvantage of their wives, children and successors in title, through selling or donating family property without their wives' knowledge nor consent. I also wished to draw attention to that women's rights are human rights, as such they should be upheld, to enable women to participate fully in all areas be they political, social or economic with the "full" backing of the law.

The frustration of being disenfranchised by the provisions of Sections 16(3) the Deeds Registry Act No. 37/1968 was coupled with my work as inaugural Legal Officer at Swaziland's first legal Aid Clinic under the auspices of the

Council for Swaziland Churches, founding National Coordinator of Women and Law in Southern Africa (Swaziland). As Women's Legal Rights Initiative Regional Coordinator, I was finding myself over exposed to women who had been disenfranchised by their husbands' misuse of marital power leading to their death, disgruntlement, homelessness, illness and lack of self esteem and powerlessness. The combination of the two factors played a pivotal role in fuelling me to take the matter of denial of women registered in community of property to register title in their own right.

## The legal context

Section 16(3) of the Deeds Registry Act provides:

"immovable property, bonds and other real rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bond or real rights are by law or by a condition of a bequest or donation excluded from the community."

I garnered the strength and courage to take the matter in the courts against a legal landscape which had promised a new dispensation that would lend impetus to the upholding of women's rights. The era of hope for application and implementation of women's human rights in Swaziland began in March, 2004 when the country acceded to the Convention on Elimination of All forms of Discrimination against women (women's convention) without any reservations. This was soon followed by the adoption of the national constitution, the Constitution of the Kingdom of Swaziland Act 2005, which notwithstanding its flaws in the drafting process and constitution itself has clear provisions on equality of persons before the law under Sections 20:

- (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.
- (2) For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability.
- (3) For the purposes of this section, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.

- (4) Subject to the provisions of subsection (5) Parliament shall not be competent to enact a law that is discriminatory either of itself or in its effect.
- (5) Nothing in this section shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society. And

The Constitution makes explicit commitments to the rights and freedoms of women:

28. (1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
  - (2) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.
  - (3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

My turn to litigation was prompted by an observation of the slow pace by the Ministry of Justice and Constitutional Affairs and legislature in aligning the country's laws with the Constitution of Swaziland since its promulgation in July, 2005 with an implementation directive in February, 2006. In taking the matter to court I was aware of that the country's political history of having been ruled under a decree from April, 1973 (when the Independence Constitution was repealed) to 20 (where the new Constitution had been adopted) would militate against the case been understood in its context. I knew the emphasis would be less on the rights and freedoms of women and more on what it meant to litigate against the state, an action being viewed as political and something that every Swazi is supposed to shun. Moreover, the country was still reeling under the old dispensation where both general law being Roman Dutch common law supplemented by statute was operating side by side with Swazi law and custom, without a constitution to which all of them had to defer.

The two systems of law operated simultaneously, each having legitimacy to deal with legal matters according to its own rules and interpretations.

Each system operated on par with the other with no clear hierarchy in terms of which is to take precedence in instances where the two diverge on the determination of the same issue, as they often do. This situation causes much consternation in the legal arena where the decision taken on a matter may differ simply because of the forum and law used in its adjudication. This is primarily the case in matters concerning family law in which both systems have a well developed jurisprudence. With respect to women, matters relating to the family are precisely the area in which women find themselves subordinated by patriarchy manifesting itself in the guise of societal adherence to custom and tradition. Thus, in many cases the two systems of law are in concert in their regard of the woman as a subordinate to her male counterpart. Where protection exists in one system, it may be nullified by the matter being determined according to the law that is to the disadvantage of the woman on that particular issue.

The context under which I took the matter to court was one where the status core prevailed, much against the adopted national constitution. Similarly to other countries with a history of political domination by western imperialists in the colonial era, Swaziland operated a dual legal system comprising of; Swazi law and custom, and general law (received common law supplemented by statute ). Marriage was thus governed dually; people who wish to get marriage had a choice between a customary and a civil rites marriage. Customary marriages are potentially polygynous whilst civil marriage a monogamous . Monogamy in civil marriage is protected by a bigamy clause. Under civil law it is critical to choose the proprietary consequences of one's marriage between in and out of community of property. Where parties wish to get married in out of community of property, they have to register an ante nuptial contract (ANC) prior to the marriage. Otherwise, all marriages by civil rites are automatically in community of property with the husband having the marital power which includes administration of property. Whilst customary marriages per se are neither in nor out of community of property, they have been interpreted by common law to be out of community of property. Therefore, each wife in a polygenous marriage should ideally set up her own estate.

The proprietary consequences are thus, that women married by civil processes out of community of property without their husband's marital power were always in a position to register title to property. Whilst those married out of community of property were prohibited, especially in light of

the exclusionary statutory provision under the notorious Section 16(3) of the Deeds Registry Act as cited above. Women married by customary rites could register title to land by default. In short, a marriage in community of property results in the pooling of all assets and liabilities of the couple.

The denial of women married under this regime to register title to property either jointly or on their own behalf has far reaching consequences. There are numerous cases where matrimonial homes or other fixed assets have been sold with neither the knowledge nor consent of the wife. In some instances the wives had been the sole contributor to procurement of the said asset, for instance through an employer's mortgage bond. Where wives married in community of property died intestate, predeceasing their husbands, a majority did not bother to wind the joint estate as dictated by the law, much to the disadvantage of the children regardless of age of their deceased's wives and other intestate heirs. The law made it conducive for the surviving husbands to commit the crime of non reporting of estates of deceased persons. Only a minority of the husbands have been brought to book by their adult children when they learn of their rights. It is common occurrence to find children whose mother predeceased their father fighting over an estate with the step mother on the basis that their father married her and moved in with assets of a joint estate. This happens notwithstanding this seeming protective provision;

"No widow or widower with minor children from previous marriage, other than by Swazi law and custom, may marry unless the provisions of section 93 of the Administration of Estates Act No. 28 of 1902 have been complied with."<sup>1</sup>

Where husbands predecease their wives, the surviving widows married in community of property have to bear the cost of transferring (transfer duty) their portion of the estate into the names. Needless to say, this is discriminatory and economically disadvantageous to women at a time when they are vulnerable. Due to the high costs of transfer duty, many resort to keeping the property in the deceased's name, which has its own disadvantages for instance when they need to use the property as collateral it has to be in their name.

The constitution's full implementation was effective on 6 February, 2006. I had reason to be optimistic and believe that the laws would be aligned with its provisions and that of the Convention on Elimination of All Forms of Discrimination against Women. The calmness in the women's movement over a period of four years regarding the very sluggish pace in aligning of

legislation with the constitution and convention on elimination of all forms of discrimination against women made me opt for a solo route, which I viewed as strategic. I just could not sense the pulse of the movement; my own perception was that it had somewhat lost its subversive beat which was a necessary ingredient to catalyse implementation of the constitution for women's benefit. I needed to take matters into my own hands, rather than to wait for women's movement dynamism to reheat to the point where my own issues could be addressed.

As I saw it, at the end of the day, the choice of litigation was going to give redress to women married in community of property and to myself in as far as registering of title to land was concerned. Of course, I was very much alive to the fact that women married in community of property were neither homogenous nor do they have the same view regarding the issue of registration of property. It was glaringly clear to me that some wanted to be able to register jointly with their spouses whilst for some their needs could only be addressed by registering title on their own. In as much as I was wanted joint registration in the spirit of that the marriage itself is in community of property, my prayer before the court was such that it addressed both situations.

As stated in the court records of both the High and Supreme court, my leading argument was for the abolition of Section 16(3) of the Deeds Registry Act. This would in essence mean that there would be no prohibition to women married in community of property from registering title to land, whether on their own or jointly with their spouses and whoever they choose to register with. My goal was to seize the opportunity to address and lay to rest the issue of non registration of property by women married in community of property when my husband and I decided to acquire a piece of land in 2008. I saw this as an opportunity to insist on my constitutional rights to equality before the law. I ensured that the Deed of sale between us as potential buyers and the seller was couched in the manner I wanted the title deed to be.

However, as stated in my application the attempt to register the property jointly were refuted by our Conveyancers on the basis of Section 16(3) cited above. This was the genesis of the court battle. I was aware that the offending section had to be removed to align the law with the constitution which provides for gender equality.

However, I had not bargained for the fact that even my identity, my last name Aphane, would be an issue.

This came as an affront to me. Therefore, the litigation was based on both the use of my last name in title *Aphane* and the substantive issue of being registered in the deed. The conveyancer himself could not cite the common law rule, statute or regulation that obliged me as a married woman, moreover, one married in community of property to adopt my husband's last name for purposes of registering title to fixed property. But despite the constitution, I could not register title to land. Moreover, the conveyancer would not accept my birth affidavit for the property registration in my only last name *Aphane*. The expectation was that I would register the affidavit in my husband's last name citing my own as *nee*.

The conveyancer and his team had not bargained on the fact that that I was not about to take a change in my identity lightly. I held a very vehement argument about his insistence on the use of my husband's last name which I have never opted to assume. I asked the conveyancer to furnish me with a statute that compels married women to assume their husband's names on marriage. I further cited the Registration of Names Act which merely dispenses the issues with meticulous procedures for married women who wish to assume their husband's names, and allows for a woman to retain her birth-given name on marriage.

The conveyance sighted regulations 7 and 9 of Deeds Registration Act of 1962 pertaining to property registration and practice for his insistence that I change the birth affidavit to my husband's name. The saddest part, to me, was that the conveyancer himself was not just citing what he knew and believed to be rules pertaining to property registration. He viewed these as normative - rules to which he could not see why I could not succumb, because I was admitting to be married.

My activism got the better part of me. On the pretext of trying to understand the assumption of husband's names by married women, I politely asked if he were married, and of course he played into my hands and agreed to engage along that line, he answered in the affirmative. I asked his wife's maiden name, which he gladly told me. I then informed him that from then on I was going to refer to him as Mr. his wife's maiden name. His tone and demeanour immediately changed, taking my comment as a serious personal affront. I asked him to control his temper as he is the one who had just introduced me to the assumption that people assume their spouse's last names on marriage. In the heated exchange of words he tried to reason with me that he had said only that according to custom women assume

their husband's names. I asked him whose custom he is making reference to because to date married women are called by their maiden last names, and as Swazi we have agreed that there is equality in treatment and protection by law regardless of gender, through the constitution which we adopted in 2005. Thus my interpretation under this dispensation which we are living in is that if names are changed at marriage it should be for both and therefore, by that same token his had changed. Eventually, I won the battle of logic with the conveyancer and by the time I left his office both of us had reverted to our only last names, those given to us at birth by our parents in conformity to custom and state law.

On resuscitation of the convivial relationship with the conveyancer, he registered once again his keen interest in assisting me to register the property with my name included on condition I could get an order from the High Court, to the effect that said property could be registered in name and that I could use my last name. How bizarre could things get? I walked out of his office with a promise to furnish him with a court order, which I did on 23 February, 2010.

As I walked out of my conveyancer's offices they were generous enough to inform me of a practicing attorney at law who felt as strongly as I did of the denial of women married in community of property to register title in contravention with the constitution. By then my mind was hard at work trying to identify attorneys with agency for social justice especial as this relates to women. The very same evening I discussed the matter with my husband and options of attorneys in town. My husband and I were in complete agreement that I should take lead in identifying the attorney to represent me because; of my legal background and the matter was revolving around the discrimination against me.

From the very first meeting, I was impressed with the agency of the person who was to be my attorney. He was as passionate as I am to see women's human rights being made real in Swaziland as promulgated by the constitution. From our initial conversation, there were lots of tangible things that proved my then attorney-to-be's agency in social justice. Our initial conversation centred on each of our willingness to hold on to the process regardless of the amount of political heat the case would generate. He was a bit anxious about my husband's willingness to sign an affidavit on the problems that we had experienced trying to register the property in both our names, and on his capability to stand the ground when especially at the



stage where the matter would be public. I assured him that he was going to co-operate. Independently of my feminist stance and women rights activism he is a man who objects to discriminatory practices and is strongly of the view that we should be jointly registering all property as the marriage itself is in community of property. As proof of his independence and willingness to support me in the case, I furnished the attorney with all his contact details and gave him a go ahead to make direct contact with him and each time there were affidavits for his signature. By the end of the very day, the two men who became central to my case had been in contact. Following their conversation my attorney called to once again express his willingness to represent me and we took it from there.

### **Taking steps towards the courtroom**

After decades of lobbying and advocating for changes in law to recognise women on an equal footing with men, I found it appropriate to take the matter to court and challenge the offensive section of the Registry of Deeds. The moment was opportune since it was four years after the adoption of an enabling constitution. I saw this as a moment to be ceased register through court process the frustration that women suffer under unequal laws that discriminate against them, many of whose negative impact is also passed on to their children through operation of law. Although the litigation was centred on property rights for women married in community of property, arguments around it in court were bound to raise issues around marital power its negative repercussions on women against their protection as equal citizens under the constitution notwithstanding its own flaws in the crafting process and derogations from established principles<sup>1</sup>. This was indirectly the time for reckoning with all those laws and administrative process that discriminate against women in Swaziland.

My strategy was to approach the court on an application for joint registration, which was very suitable for me on a personal level. However, I was aware that out there, there were many women who wanted to register on their own for various reasons. Thus the basis of my application was a demand that Section 16(3) to be revoked to enable me to register title jointly with my husband as per the facts and evidence of a joint deed of purchase.

The only party that I informed about the matter before its launch by the media in the public gallery was the Open Society Initiative of Southern Africa through its local representative. This is one institution that I had observed

to have continuously demonstrated its willingness to support social justice issues including making rights real for women for over a decade without fear or favour. I was not prepared to work with any individual or institution that was hesitant of the step I was making. I was looking for affirmation and support only.

As soon as the respondent, the Swaziland Government, in particular the (Registrar of Deeds, Minister of Justice and Constitutional Affairs and the Attorney General) was notified of the approach, the media caught wind of the matter and reported on it. The report was quite factual, but as often is the case, the head line was more about the litigant women's rights activist and the stunt she was pulling against government. The coverage leaned more towards inviting the public to watch the space for more, as this individual woman was taking on government on her constitutional rights, than focusing on this discriminatory law and its effect not only to women but their significant others.

After the Attorney General on behalf of government had filed a motion of intention to oppose, there was an offer made for the matter to be concluded outside court. I would be allowed to register title jointly with my husband and in my last name *Aphane*. I refused the offer, how could this be possible without removing Section 16(3) of the Deeds Registry Act? I made it clear to my attorney that to me it would be simply tantamount to accepting a favour when I have consciously taken the route of going to court because I wanted my rights to be upheld within existing law.

The asset in my own approach for rights was, of course, that these rights belong also to fellow women similarly positioned. We did not have legal access to "ordinary" registration of title deeds in our own birth-given names if we had married. The government on the other hand argued that joint registration was possible and not offensive to Section 16(3). According to the state arguments the prohibition was only in relation to registration by a woman married in community of property on her own. This argument was advanced simultaneously with conceding that Section 16(3) of the Deeds Registry Act was unconstitutional going against Sections 20 and 28 for the Constitution. Furthermore, the government was arguing that nullification of Section 16(3) would create a vacuum in law regarding the registration of real rights of persons married by civil rites in community of property. Government was arguing that the repeal of Section 16(3) should be undertaken by parliament. It viewed my demand for nullification as usurping the powers of parliament.

My journey was characterised by both challenges and uplifting moments. Being the feminist and women's rights activist that I am, I ought to have known better than to have imagined that things would travel smoothly, or that the legal arguments around discrimination, so obvious to me, would be obvious to others. Nonetheless, I was *volenti*; I took the journey with the full knowledge, appreciation and consent of the maze I was placing myself in. On the whole, I was very much at peace with myself, and passionately convinced that I was embarking on a journey whose time had come. As I stood in court as an individual *vis-a-vis* the Government of Swaziland, my hope was kept alive by the knowledge that I was neither the first nor last woman to walk a similar path. Moreover, some have walked the path without the support and resource base in terms awareness of the law and its procedures as I did.

I drew strength from the cases of women like Venia Magaya from Zimbabwe, Nonkululeko Bhe in South Africa and Unity Dow of Botswana's citizenship case. Venia Magaya fought to keep her family's property after the death of her father. Her half brother from her father's second marriage believed as male he had rights to own the property according to customary law and thus challenged her. Venia had been granted heirship by the customary court which lost in the Magistrate court and later confirmed on appeal. Magaya's total circumstances, including that she had actually bought the parent's house is humbling and a source of strength. The case of *Nonkululeko Letta Bhe and others v. the Magistrate, Khayelitsha and others* resulted in a judgment which declared the customary law rule of male primogeniture in succession to be unconstitutional, enabling two minor girls to inherit their deceased father's house. The fact that this landmark decision was made when the South African Law Reform Commission process to develop legislation was still underway also gave me hope that my case was on track. Unity Dow, a lawyer then, sued her government for being discriminated in passing on her Botswana citizenship to her children with a foreign husband. From these fellow women's circumstances and many others from African and further afield the morale behind was that I should not quit but hold on until the bitter end.

I cannot underplay the role played by the unwavering support received was assured of the support of my husband, my attorney, regional institutions human rights institutions particularly Open Society Initiative of Southern Africa (OSISA), members of the women's movement, family, and friends. My attorney took a keen and personal interest in the case and was very consultative taking my views into consideration throughout the process. Even when the tide of

opposition seemed to be getting high, I felt reassured, confident, and proud to be actively involved in the decisions made throughout the legal process. Through the valuing of my input and according me great respect as a litigant, I was continuously motivated and kept in focus. The professional treatment accorded to me felt like the beginning of restoration of my dignity. Many a time I pondered whether the same would have been afforded to any other woman. Would any other woman have the same level of interest in the case or they would just completely outsource it to the attorney as their agent who knows best? Would any other woman have access to the same level of communication network as I did, in the office, at home and mobile?

Whilst the media was crucial in its reporting of the case, its effect was both negative and positive. On the positive side, the public was informed of the case and presented opportunity to highlight, discuss and debate the status of women's experiences under unfair and inequitable laws, policies and practices of the country. On the negative side, reports were sensational and failed to disseminate the critical information to the public. This was particularly the case with the notice of intention to appeal by the Government of Swaziland and the Supreme Court verdicts. Print media was consistent in reporting about the case, radio and television were not. On the day of the High Court judgement for instance, the local broadcasting service, Swaziland Broadcasting and Information Service (SBIS) refused to cover the gender consortium and I on radio. It was only two days later that we were invited to the studio to talk about the verdict. With national television I was invited to together with the gender consortium representatives to a breakfast show, only to be turned back on the claim that leadership was against my appearance on television.

Through media discussions it emerged that while some men and women supported the court case and celebrated the eventual High Court victory, there were those who saw the move as self serving on my part, a way to build a professional profile. Some members of the public saw my litigation as an attempt to erode traditional rules and to challenge biblical interpretations which regarded women as secondary to men. Some questioned my husband's support and found it unbelievable. The media itself pressurized him to speak out about this case.

My husband's simple and humble view was and continues to be that we are married, and it is in community of property, therefore, in acquiring property both our names should appear as owners. Therefore, as I noted

earlier, throughout the case I was assured of his support in a home which was a hospitable environment allowing me to continue to be myself. My then employer did not interfere in the case, thus giving me space to pursue it and continue working normally. I ensured that colleagues I was interacting with on a day to day basis had accurate and up to date information so that they could disseminate appropriate information. They also proved to be allies, dispelling inaccurate information that was being circulated by the grapevine ranging from my alleged matrimonial problems to tales that a looming divorce was the real reason for the case. Again, I wondered about all this; many women would not have the hospitable home environment I did, nor the explicitly supportive husband and work-place.

The case also proved to be something of a time of reckoning for the women's movement, it was time to be what is it always demanding from government; delivery, action. It was time for the movement to move from rhetoric to action by demonstrating support for one of their own kind!! Mind you, the movement caught wind of the case through the media like everybody else. Members of the women's movement across the country were in the main supportive from the day the case was reported on in the media, January, 2009, albeit initially behind closed doors. However, the women's movement support was undermined by the lack of a clearly articulated prioritised agenda and resources especially for unplanned activities such as this case. Plans to create awareness around the case were also partly compromised by lack of financial resources and mobilisation strategy. The gender consortium secretariat deserves special mention for going an extra mile in trying to mobilise around the case amidst its context and challenges. There were, of course, hush-hush dissenting tones from the some in women's movement and its allies, who I believe were feeling aggrieved that the case should have been taken by a woman with some other profile, not an activist of note.

### **In the courtroom, towards conclusions**

Initially the case was to be held by a bench of three judges in the High Court. That made it very difficult to get a hearing date since they all run tight unsynchronised schedules. At some point a judge had to recuse himself for having been seen having had small talk with me at a social function. Obtaining a full bench proved impossible and eventually, the Chief Justice authorised that one High Court Judge could hear the matter. The case was fully argued on 28 July, 2009 before Her Ladyship Justice Qinsile Mabuza.

By Swaziland's standards the turnout in support of my appearance in court was quite good, at about fifty people. These were mainly women and a few men from the gender consortium, supportive institutions, family and friends. Towards the end of September, 2009 I started badgering my attorney for the verdict, as always he was giving me feedback from the judge. In October, 2009, however, the judge asked both parties to file further heads of arguments on the case. Evidently, the judge had identified a need for more arguments to be able to give a verdict that would tilt the scale of justice in favour of one of the parties.

This time around my attorney and I decided to change the line of argument from that of insisting on repealing of Section 16(3) of the Deeds Registry Act, to that of reading in changes to the Act. This meant that the same section could be retained but altered to have a different meaning. In essence, the argument was to move from having a Section 16(3) which was exclusive of women married by civil rites in community of property, to being inclusive of them. The state, whilst conceding on the unconstitutionality of Sections 16(3) was arguing that Parliament should be given a period of twenty four months to amend the statute as it sees fit aligning it to the national constitution. The state was not opposed to joint registration though. A ruling in favour of the state would have temporarily defeated part of my strategy of inclusiveness of all women married in community of property. It would only cater for instances of joint registration.

The case was won at the High Court under Judge Quintile Mabuza on the 23 February, 2010, the order of the court was: a) The words **not** and **save** are hereby severed from Section 16(3) the word **even** is read in; in place of **save**; such order is effective as of today's date. b) The applicant is granted costs on an ordinary scale.

The effect of the High Court Judgement was that Section 16(3) became inclusive reading as follows:

"immovable property, bonds and other real rights shall (not) be transferred or ceded to, or registered in the name of, a woman married in community of property, (save) even where such property, bond or real rights are by law or by a condition of a bequest or donation excluded from the community."

Through this legal sleight of hand, Section 16(3) changed from being exclusive to inclusive. In essence women married in community of property similar to their male counterparts and other women regardless of marriage status or

type of marriage could register title to land whether jointly or by themselves.

The government appealed against the judgment. As soon as the appeal was public, those who were opposed to the judgment gained ground congratulating government for making sure that “one disgruntled woman” would not change what was described as the norm which much support arguments from custom and the religion. In the meantime my conveyancers were preparing for registration, slowed down a bit by ill preparedness on the part of the seller who remained corporative. Notwithstanding, the appeal the said property No. 36 at eNtabeni 1, was registered in the names of Aphane and Zulu three days before the Supreme Court ruling of the 28 May, 2010.

The Supreme Court hearing was on the 17 May, 2010 before a full bench of five judges, including the Chief Justice. Obviously, the argument on my side was to have the High Court judgement upheld. In the alternative, the argument was that in the event the court held for government the period granted to Parliament to enact appropriate legislation should be twelve months. The Supreme court verdict upheld the appeal, setting aside the High Court order, declaring Section 16(3) of the Deeds Registry Act inconsistent with Sections 20 and 28 of the constitution and thus invalid, suspending the period of invalidity for a period of twelve months , authorising the Registrar of Deeds to register immovable property, bonds and real rights in joint names of husband and wives married in community of property, awarding the respondent, that is me, costs in both the High and Supreme Court.

A crucial aspect which played in favour of the court process was the focused interaction between myself and the seller. Without a binding deed of sale between us the case would have not sustained. For litigation to be continued, it was imperative to have a willing seller and buyer, who have initiated the property acquisition process, able to fulfil all the deed of sale conditions but for the registration which was the subject of the court process. Since I had successfully applied for a mortgage loan to pay for the balance of the plot, the bank could only release the amount owed on registration of the property in accordance with the law. The seller raised issue with the protracted case in as far as her rights to payment were concerned. With assistance from a regional human rights body with a very strong women’s rights component the seller’s demands were met without taking legal transfer of the property. Thus the seller was kept within the process because the deed of sale between ourselves remained valid, yet simultaneously the seller was kept at bay having paid her dues agenda.

Through self introspection on my journey, I have come to realise that the amount of inner strength and courage had been gathered over a very long time both consciously and unconsciously. This is a journey that begun when I chose to get married in community of property, but detested some aspects which I have advocated, lobbied for and finally litigated against. Thus I presented a different kind of litigant. Granted, the case was about my personal circumstances but simultaneously more about a bigger picture than that. I am thus tempted to deduce that there is much value in getting litigants for test cases that truly understand and appreciate the value of the case beyond their personal circumstances. Amongst the throngs of grassroots women, there are many with the requisite agency. What remains is for awareness to be created for transformation not just for the sake for disseminating information.

I have encouraged many women to walk this path and having undertaken it myself, I have come out the wiser, I believe. The journey made me realise the importance of not just strategic but also practical needs of women when they go through such cases. Neither need should be underplayed. Women's movements should be as emphatic in making provision for practical as much as for strategic needs during the case. Thus, as I continue to encourage others to venture into similar escapade, I shall now be more emphatic in providing for the needs of the litigant including emotional support. The journey clearly has potentials of unprecedented isolation. My imagination is not wild enough for me to envisage the trauma that litigants in my position go through without support both in the private and public domain.

## Endnotes

1. Section 5 of the Marriage Act No 47/1964.
2. For instance, passing on of citizenship to children and spouses is not on the same footing for women and men See Sections 43 and 44.