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by Muneer Abduroaf



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Abstract

Section 37D(1)(d)(i) of the Pension Fund Act 24 of 1956 enables a divorced spouse to claim pension interest from the pension fund organisation of his or her former wife or husband if certain requirements are met. This paper analyses the application of s 37D(1)(d)(i) to South African Muslims who married in terms of Islamic law only as well as those South African Muslims who married in terms of Islamic law as well as civil law. It highlights some of the problem areas found within the current application of the provision. The paper concludes with an overall analysis of the findings and makes a recommendation as to a way forward.

* Muneer Abduroaf is a senior law lecturer at the University of the Western Cape, Department of Criminal Justice and Procedure. He may be contacted on 021 959 2000 or at mabduroaf@uwc.ac.za



I. Introduction

A pension fund organisation is referred to inter alia as an 'association of persons established with the object of providing annuities or lump sum payments for members or former members of such association [...]'.¹ Section 37D(1)(d)(i) of the Pension Fund Act 24 of 1956 (hereafter referred to as PFA) enables a divorced spouse to claim pension interest from the pension fund of his or her former wife or husband if certain requirements are met. The claim must be based on the amount assigned in terms of a divorce order granted in terms of s 7(8)(a) of the Divorce Act 70 of 1979 (hereafter referred to as DA) or in terms of a court order granted based on a settlement reached pursuant to an Islamic divorce.² This paper analyses the application of s 37 D(1)(d)(i) of the PFA to a South African Muslim couple and looks at a number of scenarios in this regard. For purposes of illustration, the letter X is used hereafter to refer to the member of the pension fund organisation whereas the letter Y is used hereafter to refer to the non-member spouse of X. Two scenarios are looked at in this paper. The first scenario looks at how s 37D(1)(d)(i) of the PFA applies to a couple married in terms of both Islamic law as well as civil law. The second scenario looks at how s 37D(1)(d)(i) of the PFA applies to a couple married in terms of Islamic law, and not civil law. The paper concludes with an overall analysis of the findings and makes recommendations as to a way forward.

II. Analysis of a couple subject to an Islamic and a civil marriage

A South African Muslim couple has the option of concluding a marriage in terms of their religion. This type of marriage is not governed by any of marriage legislation within the South African context. This could be referred to as an Islamic marriage.³ The couple in question also has the

¹ See s 1 of the Pension Fund Act 24 of 1956 which states that a pension fund organisation means '[...] (a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or (c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds [...]'. Section 1 of the DA states that a pension interest '[...] in relation to a party to a divorce action who - (a) is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of the rules of that fund if his membership of the fund would have terminated on the date of the divorce on account of his resignation from his office; (b) is a member of a retirement annuity fund which was *bona fide* established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party's contributions to the fund to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), for the purposes of that Act.'

² Section 37D of the PFA states that the '[...] (1) a registered fund may [...] (d) deduct from a member's or deferred pensioner's benefit, member's interest or minimum individual reserve, or the capital value of a pensioner's pension after retirement, as the case may be - (i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7 (8) (a) of the Divorce Act, 1979 (Act No. 70 of 1979) or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution [...]'.
³ See 2010 version of the Muslim Marriages Bill for an example of proposed legislation governing Islamic marriages and some of its consequences within the South African context, available at <https://pmg.org.za/bill/235/> (accessed on 14 April 2020).

option of concluding a marriage in terms of existing South African marriage legislation governing marriages. The marriage would then be referred to as a civil marriage.⁴ It is also possible that the couple concludes both an Islamic marriage as well as a civil marriage. The couple in question would then be married in terms of both Islamic and civil law.

Section 37D(1)(d)(i) of the PFA enables Y to lodge a claim against the pension fund organisation of X if certain requirements are met. The claim must be based on the amount assigned in terms of a divorce order granted in terms of s 7(8)(a) of the DA or in terms of a court order granted based on a settlement agreement reached pursuant to an Islamic divorce.⁵ It can be seen from this section that there are two ways in which a claim can be made against a pension fund organisation. The first way is in terms of the DA whereas the second way is in terms of a court order granted based on the settlement agreement reached pursuant to an Islamic divorce.

Section 7(8)(a) of the DA states that '[t]he court granting a decree of divorce in respect of a member of such a fund, may make an order that - (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party [...]'.⁶ This section would apply in the event where X and Y concluded a civil marriage or concluded an Islamic marriage as well as a civil marriage.⁷ It will be accepted for purposes of this illustration that X and Y concluded both an Islamic marriage as well as a civil marriage.

The question as to whether Y is entitled to a portion of the X's pension interest would depend on the matrimonial property subject to the marriage.⁸ Section 7(7)(a) of the DA states that '[i]n the determination of the patrimonial benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall, subject to paragraphs (b) and (c) be deemed to be part of his assets [...]'.⁹ Section 7(7)(c) of the DA states that s 7(7)(a) of the DA 'shall not apply to a divorce action in respect of a marriage out of community of property entered into on or after 1 November 1984 in terms of an antenuptial contract by which community of property, community of profit and loss and the accrual system are excluded.'¹⁰ It will be assumed for purposes of this discussion that X and Y have not concluded an antenuptial contract. This would then mean that they were married in terms of the default matrimonial property system which is in community of property.¹¹ It should be noted that the default matrimonial property system in terms of

⁴ See the Marriage Act 25 of 1961, the Recognition of Customary Marriages Act 120 of 1998, and the Civil Union Act 17 of 2006 for examples of law governing marriages in terms of South African legislation governing marriages and its consequences.

⁵ Section 37D of the PFA, see *supra* n. 2.'

⁶ See Section 7(8)(a) of the DA.

⁷ It should be noted that a civil marriage is not regarded as a valid marriage for Islamic law purposes. It would therefore be required that X and Y conclude both the Islamic as well as the civil marriage.

⁸ The three matrimonial property regimes found within the South African context are the marriage in community of property, the marriage out of community of property with the application of the accrual system, and the marriage out of community of property without the application of the accrual system. See Matrimonial Property Act 88 of 1984.

⁹ See s 7(7)(a) of the DA.

¹⁰ See s 7(7)(a) of the DA.

¹¹ See Matrimonial Property Act 88 of 1984.

Islamic law is that the property of both parties to the marriage are kept separate.¹² This would be more in line with the notion of out of community of property without the application of the accrual system. It is also interesting to note that there have been many attempts to enact aspects of Islamic law in terms of South African legislation and that in the 2010 attempt of the proposed marriage legislation it states that the default system in terms of the proposed legislation would be out of community of property without the application of the accrual system.¹³ It could be argued that Y is not entitled in terms of Islamic law to claim the pension interest of X. It should be noted here that there are a number of Islamic institutions in South Africa that are of the opinion that marriages in community of property as applied in South Africa is not valid and not allowed in terms of Islamic law.¹⁴ It will be assumed that X and Y knew of the default regime in terms of Islamic law, but decided to marry in community of property in terms of South African law.

One of the problems with the dual marriage situation is that it could lead to a scenario where the civil marriage has been dissolved but the Islamic marriage has not been dissolved. The requirements in terms of s 37D(1)(d)(i) of the PFA would nonetheless have been met in a situation like this, as a decree of divorce would be present.¹⁵ However, s 5A of the DA enables a presiding officer to refuse granting a divorce in a situation where the Islamic marriage would remain intact subsequent to the civil divorce. The section states that '[i]f it appears to a court in divorce proceedings that despite the granting of a decree of divorce by the court the spouses or either one of them will by reason of the prescripts of their religion or the religion of either one of them, not be free to remarry unless the marriage is also dissolved in accordance with such prescripts or unless a barrier to the remarriage of the spouse concerned is removed, the court may refuse to grant a decree of divorce unless the court is satisfied that the spouse within whose power it is to have the marriage so dissolved or the said barrier so removed, has taken all the necessary steps to have the marriage so dissolved or the barrier to the remarriage of the other spouse removed or the court may make any other order that it finds just.'¹⁶ This provision would be quite useful to Y in the event where X wants a civil divorce but does not want to issue a religious divorce by way of a talaq.¹⁷ Y could then raise the issue in terms of s 5A of the DA and the proceedings could possibly be stayed until such a point where X has issued the divorce in terms of Islamic

¹² See 2010 version of the Muslim Marriages Bill where it states under s 8 that '(1) A Muslim marriage to which this Act applies is deemed to be a marriage out of community of property excluding the accrual system, unless the proprietary consequences governing the marriage are regulated by mutual agreement of the spouses, in an antenuptial contract which must be registered in the Deeds Registry – (a) in the case of a marriage concluded before the commencement of this Act, and if at the time of the conclusion thereof a written agreement regulating the proprietary consequences of the marriage existed between the spouses, within 12 months from the date of commencement of this Act; and (b) in the case of a marriage concluded after the commencement of this Act, within three months from the date of execution of the contract, or within any extended period as the court may, on application, allow.', available at <https://pmg.org.za/bill/235/> (accessed on 14 April 2020).

¹³ See 2010 version of the Muslim Marriages Bill under 8, *supra* n. 12.

¹⁴ See Muslim Judicial Council (SA) Fatwa Committee 'MJC Position on Succession Law and Related Matters' (2017) where it states under 2.5.1 that '[i]t is difficult, if not impossible, to reconcile community of property as a consequence of marriage with ownership and transfer of property under the Shariah.' See also JAMIATUL ULAMA KWAZULU-NATAL Resolving a Community of Property estate?, available at <https://jamiat.org.za/resolving-a-community-of-property-estate/> (accessed 14 April 2020), where it states that '[...] [t]he 'Community of Property' matrimonial regime is not recognized in Islamic Law. In the Shari'ah, ownership is established for each person individually by default. Such ownership is transferred or shared through specific juristic acts or events. Marriage is not one of them, and hence does not create a partnership or 'Community of Property'. The only recognized matrimonial regime in the Shari'ah that has been prescribed by South African Law is a marriage 'Out of Community of Property without the accrual system' by means of an Ante Nuptial Contract where each spouse retains all of his/her assets [...]']

¹⁵ Section 37D of the PFA, *supra* n. 2.

¹⁶ See s 5A of the DA.

¹⁷ It should be noted that a talaq occurs when a husband issues a wife with a divorce by pronouncing it on her.

law and Y is then free to remarry. It should be noted that s 5A is prescriptive as the word 'may' is used regarding the refusal.¹⁸

It is also not always possible for a presiding officer to know whether or not one of the parties are also married in terms of their religion and would not be able to remarry subsequent to the civil divorce, unless this is brought to the attention of the presiding officer by the parties to the divorce themselves. A ground for the divorce must however be present in order for the civil divorce to take place. Section 3 of the DA states that '[a] marriage may be dissolved by a court by a decree of divorce and the only grounds on which such a decree may be granted are - (a) the irretrievable break-down of the marriage as contemplated in section 4; (b) the mental illness or the continuous unconsciousness, as contemplated in section 5 of a party to the marriage.'¹⁹ These requirements could easily be met on the paper if alleged by the parties concerned, and the divorce decree would then be granted even though the couple is still married in terms of Islamic law. The situation could be seen as a loop hole in the South African legal system. The state of affairs could also lead to a scenario where the couple intentionally decides to dissolve the civil marriage for the sole purpose of claiming pension interest. It is not certain as to whether the dissolution of the civil marriage in such a way would be regarded as a crime in terms of South African law. It seems highly unlikely that this would be the case.

The next question that should be looked at is whether the Islamic marriage would be impacted upon in the event where a civil marriage is dissolved. The general answer to this question would be that the Islamic marriage remains intact, as long as there is not an act that causes it to be dissolved.²⁰ A tricky situation would arise in the event where a presiding officer asks the couple whether their Islamic marriage has been dissolved as required in terms of s 5A of the DA.²¹ It is not certain as to whether the presiding officer would grant the divorce if the couple answers by saying that the Islamic marriage has not been dissolved and that they have no intention on dissolving it. The question that would then arise would be whether there is truly an irretrievable breakdown of marriage if the couple nonetheless wants to remain married as husband and wife in terms of Islamic law. An alternative argument that could be made is that the civil marriage has broken down but the Islamic marriage is still intact. It is not certain as to how a presiding officer would respond to this claim. The couple could also just respond to the question by stating that the Islamic marriage has been dissolved even though in fact it has not. This would bring about an issue regarding the status of the Islamic marriage. There is an opinion found within the body of Islamic jurisprudence to the effect that if a husband is asked by someone if he divorced his wife and he respond with a 'yes' then it would have the same effect as if he said he has informed the presiding officer that he has divorced his wife.²² This could be quite problematic in

¹⁸ See s 5A of the DA.

¹⁹ See s 3 of the DA.

²⁰ See s1 of the draft 2010 Muslim Marriages Bill where the issue of divorce is discussed, available at <https://pmg.org.za/bill/235/> (accessed on 14 April 2020).

²¹ See s 5A of the DA.

²² See ZUHAYLEE MM, *Al Qawaa'id Al Fiqhiyyah Wa Tatbeeqaatuhaa Fee Madhaahib Al Arba'ah*, Vol. 1, 3rd ed. Damascus 2009, 384–386, where it states that if a man is asked whether he Islamically divorced his wife and he says yes, then it is as if he said I divorced her.

terms of Islamic law as there is an opinion that this would be regarded as an Islamic divorce in terms of Islamic law.²³

An easier approach would be for X to pronounce an Islamic divorce on Y, and then apply for the civil divorce via the courts. This would then also be in line with s 5A of the DA.²⁴ The couple may then remarry in terms of Islamic law after the pension fund matter has been concluded. The big question would be whether all of this hassle would be worth it and this type a scenario would bring about a number of ethical questions concerning X and Y. It might also lead to a situation where either X or Y decide that they are no longer meant for each other as they are better off apart. The above-mentioned problematic examples support the argument that there is a real need for the regulation of Islamic marriages, divorces and related matters in terms of South African legislation. This would also lead to legal certainty as to what laws are applicable to Muslims in South Africa.

III. Analysis of a couple subject to an Islamic marriage only

Section 37D(1)(d)(i) of the PFA was amended in 2013 and its amended version came into effect on 28 February 2014. The amended version now states that '[...] (1) A registered fund may [...] (d) deduct from a member's or deferred pensioner's benefit, member's interest or minimum individual reserve or the capital value of a pensioner's pension after retirement, as the case may be - (i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7 (8) (a) of the Divorce Act, 1979 (Act No. 70 of 1979) or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution [...]'.²⁵ The italics part is the addition to the section. There has been some contention regards the interpretation and application of the addition made to the section.

²³ See AL MUNAJJID MS, 120315: If the husband says "I divorced my wife" but he is lying or does not intend to divorce, available at <https://islamqa.info/en/answers/120315/if-the-husband-says-i-divorced-my-wife-but-he-is-lying-or-does-not-intend-divorce> (accessed 15 April 2020), where it states that "Question [:] If a husband announces his divorce of his wife among his family and relatives by saying 'I have divorced her', with the intention of divorce based on the fact that he goes to the judge to divorce her, but the divorce is not completed because the two sides cannot agree with regard to the custody of the children, what is the Islamic ruling on a husband who announces his divorce among the people by saying I have divorced her and that's that? Answer [:] Praise be to Allaah. If the husband says of his wife: 'I have divorced her', then divorce takes place, whether he intended divorce or not, and whether he was telling the truth or lying, because this phrase is clear and divorce takes place thereby even if he did not intend it. Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (7/306): [Begin quote] 'If it is said to him, 'Do you have a wife?', and he says no, intending thereby to lie, then he does not have to divorce his wife. But if he says, 'I have divorced her', intending thereby to lie, then the divorce is binding. Rather [the first scenario] is not binding if he intended to lie, because he is saying 'I do not have a wife' which is a metaphor that cannot refer to divorce at all. And if he is telling lies with no intention of divorce, then it does not count as such. But if he said, 'I have divorced her', intending to lie, then she is divorced, because the word divorce (talaq) is clear and divorce takes place thereby even if it was not intended' [end quote]. The divorce that takes place in this case is a revocable divorce; a husband may take his wife back during the 'iddah if it is the first or second divorce. And Allaah knows best." The other opinion is that the Islamic divorce is not valid. This opinion is followed by some Hanafee and Shafi'ee scholars. See Islamweb.net 'Fatwa 23014: Ruling on informing someone that you divorced his wife but lied about it' available at <https://www.islamweb.net/ar/fatwa/23014/%D8%AD%D9%83%D9%85-%D9%85%D9%86-%D8%A3%D8%AE%D8%A8%D8%B1-%D8%A3%D9%86%D9%87-%D8%B7%D9%84%D9%82-> (accessed 15 April 2020) for a further discussion on this issue.

²⁴ See s 5A of the DA for the wording in this regard.

²⁵ Section 37D of the PFA, supra n. 2.

The Pension Fund Adjudicator stated in a determination in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)* [2015] that in their view '[...] the intention of the legislature [regarding s 37D(1)(d)(i) of the PFA] was to accord spouses married in terms of Islamic law equal treatment granted to parties married in terms of civil and customary marriages in so far as dealing with patrimonial assets following the dissolution of a marriage [...]'.²⁶ The complaint submitted by the complainant to the Pension Fund Adjudicator was that the respondents refused to pay the pension interest in accordance with the settlement agreement that was made an order of court pursuant to an Islamic divorce.²⁷ The respondents argued that they were not in a position to pay the pension interest in favour of the complainant because the amended provision was problematic. Their submission to the Pension Fund Adjudicator was that 'if the intention [of the legislature was] that it should be possible to obtain section 7(8) orders in respect of Islamic marriages, there is a shortcoming in the legislation insofar as the Financial Services General Laws Amendment Act, 2013 only amended section 37D(1)(d)(i) of the Act, while there are many provisions in the Act, the Income Tax Act, 58 of 1962 and the Divorce Act, which [are required to be amended] before orders following the dissolution of Islamic marriages (i.e. orders dealing with matrimonial consequences of the parties) may be treated in the same manner as the dissolution of civil and customary marriages (i.e. divorce orders granted in terms of the Divorce Act).'²⁸ One of the recommendations made by the respondents was that '[...] [t]he parties can wait for the legislative amendments to be made and come into effect, whereafter they can resubmit the order to the first respondent and claim the payment of the share of the pension interest to the non-member spouse. However, there is no guarantee that such legislative amendments will apply retrospectively.'²⁹

The Pension Fund Adjudicator stated in its determination that even though the Pension Fund Adjudicator (Tribunal) '[...] welcomes the second respondent's concern about the need to make amendments to certain provisions of the Act and other relevant pieces of legislation in order to give full effect to the provisions of section 37D(1)(d)(i) of the Act, it is this Tribunal's view that the intention of the legislature was to accord spouses married in terms of Islamic law equal treatment granted to parties married in terms of civil and customary marriages in so far as dealing with patrimonial assets following the dissolution of a marriage. Were this Tribunal to accede to the request of the respondents for the parties to wait until an amendment is made to the relevant pieces of legislation, it would be perpetuating a differentiation which cannot be justified in a democratic and multi-cultural society as ours. This Tribunal holds the view that it cannot be party to the perpetuation of injustice and discrimination against parties married and divorced in

²⁶ See 5.7 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)* issued on 23 April 2015, Reference Number PFA/WC/00011266/2014/MD, available at <https://www.pfa.org.za/Determinations/20142016/Paulse%20v%20Sanlam%20Staff%20Umbrella%20Pension%20Funds%20and%20Another.pdf> (accessed 15 April 2020).

²⁷ See 3.1 and 3.2 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)*, *supra* n. 26.

²⁸ See 4.8 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)*, *supra* n. 26.

²⁹ See 4.9 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)*, *supra* n. 26.

terms of Islamic tenets, where it is clear that the legislature intended them to be treated in a similar fashion as parties in civil and customary marriages, and where parties have reached an agreement regarding the payment of pension interest and made such an agreement an order of the court.’³⁰

The Pension Fund Adjudicator then made the order stating that ‘[...] [t]he first respondent is ordered to compute and pay the complainant her share of pension interest [...] as provided in the settlement agreement made an order of the court on 25 February 2014 within four weeks of this determination.’³¹ It should be noted that there has (to date) been no further legislative amendments made with regard to the provisions in question. It would be highly unlikely for pension fund organisations to withhold benefits in favour of former spouses that were married in terms of Islamic law based on the conclusions reached by the Pension Fund Adjudicator in this matter.

An interesting question that should be raised at this point would be on what basis in terms of Islamic law would the claim for the pension interest be made by Y? It has already been stated in section III of this paper that 2010 version of the Muslim Marriages Bill would be out of community of property without the application of the accrual system.³² It has also been stated above that there are a number of South African institutions that deem a marriage in community of property to be invalid.³³ These are only but a few points that should be reflected on in this regard, which confirms the need for legislative intervention in this regard.

IV. Conclusion

This paper has analysed the right of Muslim couples married in terms of Islamic law to inherit pension interest. The findings have shown that there are a number of problems that could arise when civil and Islamic divorce laws are looked at. This has been illustrated when the status of a couple married in terms of Islamic law as well as South African was looked at. The problems highlighted within s III of this paper have shown that there is a need for legislative intervention in order for the issue of legal certainty to be addressed with regard to Islamic marriages and its consequences within the South African context. I would therefore recommend legislation to be enacted by the South African Parliament to deal with issues concerning Islamic marriages, Islamic divorces and related matters.

³⁰ See 5.7 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)*, *supra* n.26.

³¹ See 6.1.1 of the Determination in terms of section 30M of the Pension Funds Act, 24 of 1956 in the matter of *Z Paulse (complainant) v Sanlam Staff Umbrella Pension Fund (First Respondent) and Sanlam Life Insurance Limited (Second Respondent)*, *supra* n. 26.

³² See the draft 2010 Muslim Marriages Bill where the status is discussed, available at <https://pmg.org.za/bill/235/> (accessed on 14 April 2020).

³³ See Muslim Judicial Council (SA) Fatwa Committee ‘MJC Position on Succession Law and Related Matters’ (2017) for 2.5.1, *supra* n. 14. See also JAMIATUL ULAMA KWAZULU-NATAL, *supra* n. 14, where it states that ‘[...] [t]he ‘Community of Property’ matrimonial regime is not recognized in Islamic Law. In the Shari’ah, ownership is established for each person individually by default. Such ownership is transferred or shared through specific juristic acts or events. Marriage is not one of them, and hence does not create a partnership or ‘Community of Property’. The only recognized matrimonial regime in the Shari’ah that has been prescribed by South African Law is a marriage ‘Out of Community of Property without the accrual system’ by means of an Ante Nuptial Contract where each spouse retains all of his/her assets [...]’.