## CASE NO.4466/2013 WESTERN CAPE HIGH COURT

# A RESPONSE TO THE W LC (WOMEN'S LEGAL CENTRE)

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#### INTRODUCTION

This article is a response to the supplementary affidavit submitted by one legal aunt, Jennifer Lynn Williams, the director of the Women's Legal Centre of Cape Town. The affidavit was submitted in Case No.4466/2013 in the matter between Tarryn Faro vs M. Bingham and Others.

Faro, the Applicant, had applied to the Western Cape High Court for an order to declare her to have been the wife of her deceased husband at the time of his demise, and that she was entitled to inheritance. The Court had granted the orders she had sought.

Our response pertains to the WLC's argument in favour of MMB (Muslim Marriages Bill). In this response we are not really concerned with the judgment given in favour of the Applicant.

We have already published a booklet, *Case No.4466/2013 OUR COMMENT*, in which we commented on the judgment.

Whilst the WLC perhaps has the support of a couple of miscreant sheikhs in the Western Cape, it enjoys absolutely no support in the Muslim community of South Africa. These legal aunts have no right to acquit themselves regarding MMB in a manner to convey the notion that they are rendering the Muslim community a favour. They do not represent Muslims, and they have no right to even attempt to get MMB imposed on the community notwithstanding their self-adopted domain of "protecting and advancing human rights of women", or so-called hallucinatory rights.

The Muslim community views the WLC with religious abhorrence. We urge these aunts who are all lawyers to engage in a panoptical research and study of the Marriages Act and related Acts of Law. Such a study will prove salubrious for them, for they shall then not fail to discern that the law already provides for the recognition of Muslim marriages – the much clamoured objective of the WLC. It is

Muslim recalcitrancy which buffets off the legal recognition which the law offers to Muslim marriages in the same way as it provides for the marriages of all communities in the land. See the chapter at the end of this article.

#### THE RESPONSE

In its paragraph No.8, the Women's Legal Centre avers:

".....since the advent of our non-racial constitutional democracy many Muslims have remained or have become parties to Muslim marriages, which are not recognised as valid marriages in South Africa for many purposes. The perpetuation in South Africa of Muslims' religious and social marginalization, which in the past coincided strongly with racial discrimination against them and their political disempowerment, is shameful."

The introduction of the 'racial discrimination' element relative to the non-recognition of Muslim marriages is a red herring to divert focus from the unsubstantiated claim made by the WLC in this paragraph. The implied notion that during the apartheid regime Muslims were singled out for discrimination for non-recognition of their marriages is deceptive and misleading. The law in this regard remains today the same as it was during the apartheid age. Just as the government today is not singling out the Muslim community for discrimination regarding their marriages, so too was it the case during the apartheid time.

While racial discrimination was the cornerstone of the apartheid regime, it nevertheless, did not deny legal recognition to the marriages of any racial group provided they registered their marriages in terms of the law. The non-recognition of Muslim marriages is not the effect of discrimination, neither in the apartheid days nor today. Muslims are today just as free as they had always been to legally register their marriages should they desire legal recognition. The law does not discriminate against them on this score.

That Muslim religious marriages are not legally recognized, is a matter of their own volitional choice. While the law allows them to register their marriages to gain legal recognition, the vast majority of Muslims intentionally refrains from so doing since they do not deem it necessary to acquire such recognition. It is their belief that religious recognition is sufficient.

The implication by the WLC that Muslims are being subjected to "perpetuation of religious and social marginalization", is baseless. The present government is not subjecting Muslims to religious persecution. The alleged "perpetuation of religious and social marginalization" is a figment of the WLC's imagination. Muslims do not feel nor believe this averment which the non-Muslim WLC has gratuitously made on their behalf. This claim is bereft of factual substance. When Muslims, of their own volition refrain from registering their marriages, thereby rebuffing legal recognition, then it is irrational to imply that the government is marginalizing them religiously and socially.

The contention of the WLC would have had substance if the law denied Muslims the facility of legal recognition by way of registration of their marriages as is applicable to all citizens of the country. Muslims are just as free as all the non-Muslim citizen in so far as gaining legal recognition for their marriages. Any Muslim desirous of acquiring legal recognition, only has to follow the procedure of the law as all other citizens are doing. There is no logical need for having a separate Act for according legal recognition specifically to Muslim marriages when they are currently free to acquire such recognition. Muslims understand their emotions, feelings, beliefs and needs better than WLC.

The Muslim community resents the matriarchal conduct which the Women's Legal Council is displaying towards Muslims. We are capable of understanding our own needs. We are not in need of the WLC to inform us what our needs, emotions and religious feelings should be.

Even the religious marriages of Christians are not legally recognized if the marriage is not solemnized by a registered marriage officer. Thus, the issue of legal non-recognition of Muslim marriages is not the consequence of any discrimination or religious marginalisation. It is the effect of the voluntary choice of Muslims themselves.

In the same paragraph 8, the WLC states:

"It not only impairs Muslims' fundamental human dignity but has serious practical consequences that important corollaries of Muslims' marriages such as divorce, maintenance after divorce and custody of children after divorce are inadequately regulated or entirely unregulated by South African law...."

The non-Muslim, secular WLC lacks understanding of the Muslim concept of "human dignity". We are Muslims and we do not feel or believe that our "fundamental human dignity" is benign impaired by legal non-recognition of our religious marriages. Muslims do not feel the way the WLC is presenting the picture. Legal non-recognition of our marriages is never an impairment of our fundamental human dignity. Anyone entertaining such a feeling is free to acquire legal recognition by simply following the legal procedure of registering the marriage. It is as simple as that. There is no need for the enactment of a special Act of law such as the confounded MMB for conferring legal recognition to Muslim marriages when the existing dispensation presents such recognition on five different platters which shall be referred to later in this article.

Regarding the "important corollaries" mentioned by the WLC, the vast majority of Muslims are satisfied that the Shariah adequately caters for the execution and fulfilment of all these requisites. In fact, the important corollaries can never be adequately regulated by any secular law. Much of the "important corollaries" attendant to Muslim marriages are in flagrant conflict with the country's Constitution, hence the enactment of an Act of law will only

complicate the issue. It will be a grossly inadequate measure for regulating the consequences of Muslim marriages. The only adequate measure is the Shariah. Precisely for this reason are Muslims not interested in legal recognition of their marriages. Regardless of any so-called Muslim Marriages Act, it will be inadequate to regulate the consequences of Muslim marriages.

Any Muslim who is dissatisfied with the Shariah, is free to pursue the secular path and have his marriage registered to gain legal recognition and the concomitant consequences. Thus, the clamour for a special Act of law to confer legal recognition is irrational and totally unnecessary.

In its paragraph 10, the WLC states:

"Within a year of its establishment the MPLB (Muslim Personal Law Board) was disbanded due to ideological differences among its members."

This averment is a gross understatement. The MPLB was disbanded due to the intense opposition of the Muslim community which had understood that the Shariah would be seriously compromised should the MPL initiative be condoned. In fact, from the very outset of the formation of the MPLB, the Mujlisul Ulama of S.A. had warned of this misconceived move which we had attributed to the short-sightedness of the Ulama who had agreed to serve on this body. We reproduce here the advice and admonition which we had proffered to the Ulama and the Muslim community in September 1994.

#### MPLB UNACCEPTABLE

A group of individuals among whom modernism preponderates, has set up a body which they have designated the Muslim Personal Law Board (MPLB). The ostensible aim of this body is to gain governmental recognition for certain aspects of the Shariah. A perusal of two papers authored by this body clearly confirms our suspicion regarding the gross inefficiency and incompetency of the so-called MPLB. The papers which the MPLB terms 'Muslim Succession Act' and Recognition of Muslim Marriages Act, will, Insha'Allah, be rebutted in terms of the Shariah in a further bulletin to be issued by the Mujlisul Ulama of South Africa.

#### UNACCEPTABLE

It is imperative that the Muslim community as well as the government understand that the MPLB is unacceptable to the Shariah and to the Ummah of South Africa. This body is highly incompetent in Shar'i matters as the papers prepared by it 'illustrate. The Ulama of the country cannot accept this body as being competent to act on Shar'i matters.

It is the duty of the Ulama to inform the Muslim public that the MPLB constitutes a grave fitnah and danger for Islam. Under the present dispensation. Muslims are able to regulate their marriages and Islamic inheritance by circumventing the un-Islamic provisions in the law. The very law, viz., kufr law, which does not recognize Muslim marriages, etc., can be utilized to circumvent the unsavoury aspects of the law. However, we foresee grave dangers in the anti-Islamic laws which a body such as MPLB would strive to have enshrined as law. It is, therefore, of utmost importance that the Ulama as well as the Muslim community make known their strong opposition to this body which lacks Shar'i credibility. The government should be told in unambiguous terms that this body is unacceptable to the Muslim community and that it does not have a mandate from the community or from the Shariah to either represent the Ummah or to seek enshrinement of its modernistic views as laws binding on Muslims. Muslims refuse to accept and recognize this mutant which has just reared its unly head.

#### COMPOSITION

The very composition of the MPLB is in conflict with the Shariah. This body has a female for its vice-president inspite of Rasulullah's statement:

"Never will prosper a community which hands its affairs to a woman."

The Qur'aan-e-Hakeem says:

#### "Men are the rulers of women."

The Shariah is explicit in the restriction of leadership to males. It is un-Islamic and in conflict with the Qur'aan and Sunnah for males to sit under the leadership of women. But, it is clear that the modernist elements in the MPLB are bent on peddling their satanic opinion of "equality of the sexes" and "equal rights" for women which are anti-Shariah ideals espoused by the present government.

These un-Islamic ideals and anti-Shar'i concepts of the modernists will, Insha'Allah, be refuted by us in further articles. It is clear that the modernist elements will do their utmost to implement their conspiracy of making the MPLB a body which will be in diametric conflict with the Shariah—the Shariah which has been known to the Ummah from the time

of Rasulullah (sallallahu alayhi wasallam). In addition to the introduction of women into its ranks, the other modernist element in general has no affinity with the Sunnah. The moulana/university lecturer element cannot be allowed to serve on a body which seeks to deal in legal matters of the Shariah. The views of these modernists pose a very grave danger for the Imaan of Muslims.

#### **JAMIATUL ULAMA BODIES**

The presence of the Jamiatul Ulama of Transvaal and Jamiatul Ulama of Natal on this un-Islamic body has added to the confusion in the community. We accept that these Ulama bodies had joined with good intentions. But, we are sure that they will soon realise their shortsightedness. Their experimentation with this body will, we are certain, convince them of the folly of consorting with modernists who have neither the Shariah at heart nor possess Shar'i competence. It is of utmost importance in the interests of the Muslim community that the two Jamiatul Ulama bodies withdraw from the MPLB. The majority of the Ulama are averse to the idea of the Ulama participating in a body dominated and steered by the modernist element which constitutes a greater danger to Islam than all kuffaar missionaries put together. The position of the Jamiats in such an un-Islamic set-up as the MPLB is untenable. It cannever be justified on any Shar'i basis. The incompatibility between the modernist deviates and the Ulama who propagate the Qur'aan and Sunnah is too vast. The gap is unbridgeable. Sooner or later the Jamiats will recognize that they are among aliens whose opinions are akin to kufr.

Those Ulama-e-Haqq associated with the Jamiats have a sacred duty to pressurize the executive of their respective Jamiats to withdraw from the MPLB and to totally dissociate from its machinations. If they fail the community in this matter, they should understand that they would then have abdicated their holy duty of Amr Bil Ma'roof Nahy anil Munkar. The duty of the Ulama is to propagate the Haqq. The Haqq must be stated regardless of the opposition of the myriads of tin-topped votaries of baatil. The Ulama are those who go by the Qur'aanic principle:

"They do not fear the insults of those who insult."

The type of admixture of elements which comprises the MPLB cannot issue rulings on matters of Shar'i import. It does not behove any among the Ulama-e-Haqq to accord credibility to a body which lacks in Shar'i credibility.

#### ONLY THE ULAMA

On legal matters of the Shariah it can be only the Ulama who have authority. The view of the woman who claims that there should be no

'Shariah Committees' is blatantly haraam and reveals the kufr thinking of the modernists. The claim that "there could be no hierarchy of theologians" is a subtle scheme to scuttle the Shariah and to present the personal ideas of the modernists as the new shariah or the new islam. Since the new brand of 'Islam' which the modernist element propagates conforms to the un-Islamic ideas of "equality of the sexes", the modernist scheme is sure to find favour in governmental circles. It is, therefore, of greater importance for the Ulama to realise the snare in which they will become entrapped if they permit the MPLB to manipulate the Ulama (i.e. the two Jamiats presently on the board) to gain recognition. Without the sanction of the Ulama we state unequivocally that the MPLB cannot be recognized by either the Muslim community or by the government.

The views of a body which has no mandate from the Shariah nor representing the Ummah of South Africa cannot be imposed on the Muslim community.

#### THE HIERARCHY

Regardless of the modernist element's baseless claim on the issue of "the Hierarchy of Ulama", the fact remains that the Ulama are the guardians of the Shariah. The Ulama are the institution which safeguards the Shariah. It is the sacred institution which has existed from the time of Rasulullah (sallallahu alayhi wasallam) and it will endure until the Last Day. Regarding this sacred Hierarchy which is chagrin to the modernists, Rasulullah (sallallahu alayhi wasallam) said:

"There will always remain a group my Ummah who will fight on the Haqq. Those who oppose them and those who do not aid them will not be able to harm them until the arrival of the Command of Allah (i.e. Qiyaamah)."

The Qur'aan confirms this Hierarchy. The Hadith confirms this Hierarchy. The Fourteen hundred year history of Islam confirms this Hierarchy. But, these modernists who lack in entirety in the Shariah seek to deny this Islamic institution and then to substitute it with their own baatil, 'hierarchy' which will embark on the process of dismantling the Divine Shariah. But, never can they succeed.

#### CONCLUSION

The MPLB does not represent Islam. It does not represent the Muslim community. It will not be acceptable to the Muslim community of South Africa. It has no mandate from either the Shariah or community to seek to represent us.

Issued by;

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#### NASEEHAT TO THE JAMIATS

23rd Rabiul Akhir 1415 30th September 1994

Jamiatul Ulama Natal Jamiatul Ulama Transvaal

#### Respected Ulama,

It has indeed come as a sad surprise to us to learn of the participation of the two Jamiats on the Muslim Personal Law Board which is a body composed in the main of modernist, anti-Sunnah, anti-Shariah elements.

The very composition of the body with its vociferous modernist female element makes the participation of the Jamiats untenable. These elements will only use the Jamiats to gain recognition and with the witting or unwitting connivance of the Jamiats will the baatil elements seek to impose their un-Islamic views on the community by having same accepted by the government.

It is our sincere and honest appraisal that the Jamiats have grievously erred in their decision to sit on this un-Islamic body. A great disservice is being rendered to the Cause of Haqq by the Jamiats' participation.

Mufti Salejee of Isipingo Beach has prepared a paper emphasising the dangers of the Ulama participating in collusion with the anti-Sunnah elements. We are sure that you have a copy of his Naseehat.

We urge the Jamiats to reconsider their stand and withdraw from the alliance of baatil. In so doing we are sure that you will be gaining the Pleasure of Allah Ta'ala. Your duty is to throw in your lot with the forces of Haqq, not to strengthen the hand of the people of baatil especially at this juncture when there is a concerted attempt by the modernist lobby to reinterpret the Qur'aan and the Shariah.

We make dua that Allah Ta'ala will show you the correct option. It is imperative that the Jamiats operate independently from the platform of the Shariah, not from the platform of the Ahl-e-Baatil

#### MUJLISUL ULAMA OF S.A.

We had foreseen with clarity of vision that the MPLB would soon disintegrate. Within a few months of our advice and admonition, the

MPLB disbanded during March 1995. The degree and the intensity of the opposition of the vast majority of the Muslim community had led to the disbandment of the MPLB and to the stalling for two decades of this unwanted process.

It is no fault of the government that legislation in this regard has to date not been formulated. It is the Muslim community itself which is averse to the MMB (Muslim Marriages Bill). In fact, any imposition of an Act to specifically regulate Muslim marriages is discriminatory and unconstitutional. The current Marriages Act is adequate for such Muslims who require legal recognition for their marriages.

In paragraph 11 of her affidavit, Aunt Jennifer LynnWilliams of the legal bureau of Aunts she represents, states: "Both the interim Constitution and s 15(3) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") expressly permitted legislation recognizing, subject to the Constitution, marriages concluded under any tradition......I submit in doing so the Constitution again acknowledged the need for such legislation."

While the Constitution 'permits' the formulation of 'such legislation', it does not oblige either the government to gratuitously formulate such legislation, nor does it impose on the followers of any tradition or religion to petition the government for the enactment of a law to recognize their religious marriages. The fortuitous juxtaposition of some Ulama in the MPL/MMB exercises of futility provided a feast of insipid, unrepresentative conferences and severe confrontations within the Muslim community, which ultimately established the aversion for and rejection of these unwanted MPL initiatives.

This scenario in the Muslim community constitutes a formidable barrier for the government to embark on any swift action which the legal aunts and modernist deviate muslims expect of the authorities regarding the enactment of an Act recognizing Muslim religious marriages. The protracted and indecisive trajectory of MPL/MMB

over two decades is no fault of the government. There is simply no consensus in the Muslim community on this issue. In fact, talk of consensus should be set aside as a mirage, for the overwhelming majority of the Ulama and the vast majority of the Muslim masses are in confrontation and rejection of MPL/MMB. In the light of this scenario, the following comment of the honourable Judge Rogers is improper:

"I venture to suggest, though, that if significant progress in the legislative process has not been made by August 2014 the one point that is unlikely to be received with judicial sympathy is that the national executive has not had enough time to bring appropriate legislation before Parliament."

It is clear that the honourbale judge is pathetically unaware of the situation on the ground as it exists in the Muslim community. Besides the time factor, the government is placed in an unenviable position by the rejection of the imagined 'appropriate legislation'. As far as the Muslim community is concerned, MPL legislation is grossly inappropriate in the light of the Shariah, hence it is our submission that the government should once and for all cancel and dump the MMB initiative. It is unworkable and unacceptable to Muslims.

The Constitution does not oblige the government to enact into law what the legal aunts are clamouring for. The clamour for legal recognition of Muslim marriages has hardly any support in the Muslim community. At the same time, the variety of matrimonial systems provided by the law serves the needs of such Muslims who are desirous of legal recognition. Those who do not desire legal recognition — and they are the vast majority — are snug in the recognition the Shariah offers their marriages. Recognition in the Heavens is adequate for the vast majority of Muslims.

It is illogic to contend that the government has failed to provide legal recognition when such recognition is available right now without the existence of any MPL measure. Any Muslim desirous of

legal recognition may adopt any one of the matrimonial regimes. Muslims who follow the Shariah will obviously opt for the matrimonial system which allows them to regulate the consequence of their marriage according to the Shariah, and which does not proscribe them from Islamic Inheritance. That system is the Antenuptial Contract which excludes the Accrual Clause.

The perception that the government is dragging its feet and is at fault in this regard – a perception which the Aunts legal forum endeavours to convey – is palpably erroneous.

In its paragraph 12, the WCL states: "In 1998 President Mandela met with prominent Muslim clergy resulting in renewed fervour for recognition of MPL."

That 'prominent Muslim clergy" was known to be 'prominent' in some circles. But their 'prominence' does not make them the representatives of the whole Muslim community. The greater part of the Muslim Clergy remained outside the pale of such dialogue. Despite the 'renewed fervour', the process was again swiftly terminated due to the severe opposition of the community.

After detailing the historical trajectory of the MPL process, Aunt Jennifer states in her paragraph No.17:

"Thereafter a further process of extensive public consultation and comment was undertaken by the MOJCD. The "extensive public comment" comprised of submissions mainly from Ulama institutions (Islamic clergy), human rights organizations and women' rights organizations, including the WLC. This process of consultation took place over a period of three years."

With each "extensive public consultation", Muslim opposition to the MMB gained momentum. How is the government expected to enact a discriminatory law for imposition on a Muslim community which rejects the measure? The MMB is discriminatory and unconstitutional in that it purports to be a religious law to be

imposed exclusively on a Muslim community averse to it. The matriarchal 'sympathy' which the WLC proffers to the Muslim community is misdirected, unwanted and spurned by the Muslim community. We are not in need of the legal Aunts to dictate to us what is good and bad for the Muslim community. There is no matriarchal role for the WLC in the Muslim community.

In paragraph 19, Aunt Jennifer of the WLC avers:

"Since the establishment of the WLC in 1997 there has been a steady stream of Muslim women who have consulted us for advice and assistance in relation to MPL matters."

This averment is misleading. The issues of consultation relate to practical acts of injustice, perceived or real. These are unrelated to MPL issues. A woman is perhaps unjustly deprived of her inheritance or she may believe so; or she is dissatisfied with the Shariah's dispensation relevant to maintenance for the post-divorce period; or she is dissatisfied with the Shariah's laws of custody of minors; or her greed constrains her to renege from her Islamic religion for the sake of usurping half of her ex-husband's estate with the aid of the secular court; etc., etc.

These are not MPL issues. Even if the hated MMB is enacted into law, these matters of contention will remain and the courts will always be called on to adjudicate the developing disputes. MMB is not a panacea for human greed, injustice and villainy. It provides no solution for the type of issues with which the Aunts legal body had dealt. In the final analysis the court will have to decide the issue if a woman, justly or unjustly, takes the route to the secular court in violation of Islamic tenets to which she is obliged to submit.

Undoubtedly, there are some cases where women are unjustly dispossessed and their rights denied, but the majority of cases pertain to women of weak faith – woman who discard their Islamic conscience and seek the aid of the courts to usurp what does not Islamically belong to them.

For such women the simple solution is to ensure that their marriages are registered in terms of the matrimonial system which satisfies most their avarice. The WLC and organizations of this ilk should go on a campaign to educate women of their secular constitutional rights and advise them of the 'best' matrimonial regime to opt for when they get married. It is grossly silly and abhorrent for the WLC to seek transmogrification of the Shariah under the deceptive guise of recognition of Muslim marriages. Such recognition is unwanted by the Muslim community.

MMB does not provide for Islamic inheritance laws. In fact, the MMB is cluttered with un-Islamic provisions. Under no circumstances is such an invective bill acceptable to the Muslim community.

The Aunt of the WLC further states in her paragraph 19:

"The issues presented by these women show that in the Muslim community, which like our other communities remains remarkably patriarchal......"

That Islam has ordained a patriarchal social system for Muslims, there is no gainsaying. This patriarchal system cannot be replaced by the matriarchy contemplated by the legal Aunts. 'Muslim' women who are averse to Islam's patriarchal system of life can avail themselves of their secular constitutional rights by adopting any of the matrimonial systems offered by the law of the land, and in this way they may take their path to Jahanam as we say in Islamic parlance for such deviation. Thus, the simple solution for women who are antagonistic to the Shariah's patriarchal system, is to barter away their Imaan and adopt any one of the secular matrimonial regimes which in their opinion will best placate their avaricious objectives. After all, this is their constitutional right and the Constitution is the great 'god' of those who renounce the Shariah.

Patriarchy or matriarchy, MMB or no MMB, the courts will always be beset with matrimonial disputes. There is no Act of Law which is

a panacea for the ills and emotional disturbances and intellectual disequilibrium of people. The twaddle for MMB and legal recognition of Muslim marriages is a red herring and a deception peddled for achieving the objective of undermining the Shariah.

Commenting on the condition of Muslim women, Aunt Jennifer states: "They are often socially vulnerable and in many instances the victims of deep patterns of disadvantage."

The "deep patterns of disadvantage" are in fact the consequences of the adoption of western culture by Muslims. Women are NOT vulnerable in a true Islamic social system of life. They are victims of vulnerability in the beastly western culture. The responsibility of maintaining and supporting women devolves on all the *Asbaat* relatives of women (i.e. the males on the father's side). However, western culture has eroded the Islamic attitudes of Muslims, hence the 'patterns of disadvantage'.

Furthermore, does the legal Aunts want us to believe that there are no matrimonial disputes and that women suffer no disadvantage in non-Muslim secular society, where marriages are regulated by the many Acts of law? Are there no matrimonial disputes which the courts have to adjudicate? Is the so-called vulnerability and abuse of women confined to Muslim society? The attribution of women's 'vulnerability' to non-recognition of marriages and to Islamic patriarchy is a canard designed to camouflage the sinister agenda of undermining Islam by means of Islamically named legislation which would serve the purpose of abrogating the patriarchal social system of the Shariah. It is precisely for this reason that the Muslim community harbours grave reservations about any attempt to secularize the tenets of Islam. It is indeed bizarre to think or even expect the Ulama to accommodate any proposal which threatens the inviolable Shariah of Islam, and the MMB is precisely that threat.

Commenting on the case of Faro vs Binghan and Others, one legal entity makes the following stupid comment of kufr:

"In accordance with existing law, a dissolution of an Islamic marriage in a manner recognized by the Islamic faith results in the woman no longer being a surviving spouse for purposes of the intestate Succession Act and the Maintenance of Surviving Spouses Act.

This is what the case exposed. The facts of this case affords an alarming illustration of a woman who is a wife according to vulnerability."

This legal moron (and this is not a reference to Aunt Jennifer) who happens to be a murtad, gives an illustration of what is required of the courts. The courts will be expected to interpret the provisions of MMB to harmonize them with the Constitution. Despite the marriage having effectively terminated in terms of the Shariah, the modernists, deviates and murtads desire that the woman continues to be recognized a 'wife' for inheritance in terms of kufr law. Thus, MMB will open the Shariah widely for misinterpretation, dilution and mutilation, and all of it in the name of the Shariah since the kufr bill is termed 'Muslim'.

In her paragraph 57, legal Aunt Jennifer states: "It is evident from the aforegoing that there is a long history of repeated promises having been made in relation to the MMB and its predecessors. However, despite this protracted history no progress has been made in relation to the promulgation of legislation dealing with the issue of Muslim marriages over a period of more than 19 years."

The Aunt's intransigence is staggering. Despite being a 'legal' Aunt she fails to understand the government's dilemma germane to MMB. The government is faced with the intensive opposition of the vast majority of the Muslim community to MMB. Firstly, it is discriminatory to impose a selective law on a community which is averse to it. MMB targets only the Muslim community. But the Muslim community rejects it. It is therefore unconstitutional to impose on a section of the population an unwanted law which is not applicable to the rest of the citizenry.

Secondly, MMB is cluttered with provisions which are in conflict with the constitution. Thirdly, there is ample scope within the current dispensation to accord legal recognition to Muslim marriages. Fourthly, for the accommodation of polygynous Muslim marriages, some amendments to the existing Marriages Act could be effected. Fifthly, for purposes of registration several matrimonial regimes are available. Thus, there is no obstacle debarring Muslims from the acquisition of legal recognition without the need for the confounded MMB.

Muslims are averse to MMB because behind the clamour for MMB is discernable the echo of kufr which the courts will be expected to perpetrate by submitting the Shariah to the Constitution. Muslims are not prepared of their own accord to allow the fundamentalist religious ethos of the Shariah to be extinguished by the liberal and godless ethos of the Constitution. We cannot be a party to undermining the Shariah. Muslims who crave for legal recognition regardless of being in violation of Islamic tenets are constitutionally at liberty to take the route to Jahannam. The legal Aunts constitute an important cog in the machinery to undermine Islam.

It will be eternally lamentable if the government grants preference to a non-entity such as the WLC over the demands and religious desires of an entire community. The government should also take note that the small group of so-called 'prominent' clergy is in reality a conventicle out of alignment with the mainstream Muslim community. The innumerable letters and petitions of protest against MMB which the government has received from Muslims of every strata establish with clarity and emphasis the wishes and demands of the Muslim community. For the proper administration of justice, the wishes of the Muslim community may not be simply scanned, canned into oblivion and dismissed. Any such maladministration will surely present the government with a crisis which will have to be played out in the constitutional court.

While the Ulama are not averse to recognition of Muslim marriages, the demand is to abstain from interference with the Shariah, and that

for purposes of recognition MMB is not a requisite. We repeat that the existing laws provide adequate scope for legal recognition of Muslim marriages. It is precisely to give practical expression to this fact that currently the Home Affairs Ministry has introduced its initiative of registering Muslim marriage officers *en masse*.

In her paragraph 59, Aunt Jennifer says: "A court, under the Constitution, to respect, protect, promote and fulfil the rights in the Bill of Rights cannot abdicate its responsibilities by once again accepting allegations of imminent legislative reform given the numerous instances where undertakings made in the past by the legislature to that effect have not materialized."

The court is in no position to order the legislature to promulgate MMB. The constitution does not oblige the courts to issue any such order. The simple issue pertains to legal recognition of Muslim marriages. The current dispensation does not deny such recognition. Skulls are indeed dense for failing to absorb this simple reality. The government is not denying legal recognition for Muslim marriages. Muslims who are interested in legal recognition should explain why they are not making use of the current law for gaining recognition just as all others of the population are doing. What makes MMB so imperative for the award of legal recognition? Those who clamour for legal recognition have no logical argument for their insistence on the promulgation of MMB.

Since the Court could not make the order the WLC sought, the judge commented in his judgment:

"For obvious reasons a court would be most reluctant to make orders affecting the substantive law in this area. It is a sensitive subject requiring widespread consultation. .....Ms Bawa acknowledged that the orders sought in prayers B7 and B8 would be very blunt instruments. They may give considerable offence to sectors of the Islamic community. ...............I express no opinion as to whether, in the absence of satisfactory progress in the

enactment of legislation by the time of the next hearing, a court should grant relief and if so as to what form the relief should take."

With regard to MMB, the WLC is dwelling in a realm of self-imposed deception. These legal aunts believe that they have the right to impose their whimsical fancy on an entire community which is violently averse to the kufr MMB. Indeed these legal aunts are lost in their subjective hallucination.

#### LEGAL RECOGNITION OPTIONS

The contention that the marriages of Muslims are denied legal recognition is a canard peddled deceptively or ignorantly. This deception belies the outer facade of altruism which ostensibly accompanies the modernist clamour for recognition of Muslim marriages which has become a monotonous sermon dinned into the ears of a Muslim community hostile to the MMB device fabricated to undermine the Shariah.

The following are the existing legal options available to all South Africans, including Muslims:

#### (1) Community of Property

In these marriages, the estates of the husband and wife are fused together, and they become co-owners of all their assets regardless of whether the assets were acquired prior to the marriage or after the marriage. Islamically, this regime is haraam.

### (2) Out of community of property without the accrual system (Antenuptial Contract excluding the Accrual Clause)

Under this regime, the parties remain in the same position as they were before the marriage. Each party keeps the property they owned prior to the marriage. Upon dissolution of marriage by divorce, the parties retain ownership of their separate estates..

# (3) Out of community of property with the accrual system (Antenuptial Contract which does not exclude the Accrual Clause)

During the subsistence of the marriage, the husband and wife retain ownership of their assets. However, when the marriage is dissolved, the parties share in the growth of their estates.

This system is also haraam.

## (4) Out of community of property with the retention of community of profit or loss

The parties retain separate ownership of the assets they owned prior to the marriage. However, any assets acquired during the subsistence of the marriage are jointly owned by the husband and wife.

This regime is also haraam.

#### (5) The Shariah System

Abstention from adoption of any of the legal options enumerated above, and total submission to the Law of Allah Ta'ala.

Most Muslims intentionally opt for the fifth system, namely, the Shariah. Should any conscientious Muslim desire legal recognition for any need, he may adopt the second system.

Those who despite professing to be Muslim, and who require legal recognition, but are dissatisfied with systems No.2 and No.5, are constitutionally free to plod the Path of Jahannam by adopting any of the haraam systems they desire.

It should now be manifest that there exists ample scope in the law for recognition of Muslim marriages. Thus, the clamour for 'legal recognition' is a massive deception to hoodwink ignorant and unwary Muslims – to stampede them into acceptance of the kufr MMB.