

Why your marriage could be rewriting your will

A landmark Constitutional Court ruling on 21 January has brought much-needed clarity to how debt and assets are shared within a marriage, particularly where customary and civil marriages intersect.

By [Ken Newport](#), issued by [Capital Legacy](#) 22 Jan 2026



The judgment deals with an issue many people misunderstand: how and when spouses can change their matrimonial property regime, and what that means for asset ownership, wills and estate administration.

What did the Constitutional Court decide?

The case involved a couple who first entered into a customary marriage, and later concluded a civil marriage with an antenuptial contract intended to place the marriage out of community of property. When the marriage ended, the validity of that antenuptial contract was challenged on the basis that it effectively stripped the wife of her rights to assets that had been part of the joint estate created by the initial customary marriage.

The Constitutional Court confirmed that:

- Entering into a civil marriage does not cancel an existing customary marriage.
- Instead, the civil marriage incorporates the customary marriage and its legal consequences.
- The financial consequences of a customary marriage cannot be changed later by simply signing an antenuptial contract, unless this is done with proper legal safeguards, including court approval.

In simple terms: You cannot retrospectively change the financial consequences of your marriage without following the correct legal process. This ruling provides important protection, particularly for spouses who may otherwise unknowingly lose their rights to shared assets.

What does this mean for your marriage?

Many couples assume that signing an antenuptial contract at any point will redefine their financial arrangements and protect both parties. This judgment makes it clear that:

- Timing matters and antenuptial contracts should be signed before marriage.
- If circumstances change after marriage, the law requires judicial oversight to ensure fairness.

This reduces the risk of future disputes and protects both spouses' interests.

Why this matters for wills and estate planning

From an estate-planning perspective, marital property regimes are critical. Your marital regime determines which assets form part of your estate and what belongs to your spouse. Getting this wrong can lead to delays, disputes and unintended consequences.

- **When considering marriage:** Understanding whether you are marrying in or out of community of property, and how customary marriages are treated, can have lifelong financial consequences.
- **When drafting a will:** Under South African law, your marital regime takes precedence over your will. This means a will must align with the marriage regime, it cannot contradict it.
- **When winding up an estate:** Uncertainty around marital regimes is a common cause of estate delay and family conflict during the estate administration process. So, executors need to establish clear asset ownership at the date of death.

The takeaway

Understanding your marriage regime, documenting it correctly, and ensuring your will reflects those arrangements can spare your family significant stress after you pass away.

If your circumstances have changed, or if you are unsure of how your marriage affects your estate, it may be time for a review.

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