

## Ministry's deadline miss fails to impress top court

The Justice Ministry's failure to meet a two-year deadline to change the law to protect women in polygamous marriages has not impressed the Constitutional Court, which had ordered the Ministry to amend the Recognition of Customary Marriages Act (RCMA) to ensure the equitable distribution of assets should a spouse in a polygamous marriage die, notes [Legalbrief](#). The court dismissed an application by Justice Minister Ronald Lamola for a year-long extension to finalise the law. Lamola had applied for the extension six weeks ago, says a [TimesLIVE](#) report. He provided several reasons for the failure to change the legislation, including that 2018 and 2019 were difficult years in the legislative process due to the national elections. **He said the elections led to inevitable interruptions and changed the ordinary deadlines for government departments to submit Bills to be passed.** Lamola said the bulk of the work had been done, and the process now largely rested with Parliament. A few loose ends which needed to be tied up by his department included consultations with the National House of Traditional Leaders, given public interest in the Bill.

*The court said it had given sufficient time for the amendments to be made.* Significantly, the court observed that extending the period of suspension would serve no useful purpose because the interim regime flowing from the order of 30 November 2017 would apply whether there is an extension or not. It referred to the 2017 judgment, which had ordered what should happen should the executive fail to deliver. 'This court (had) ordered that in the event that Parliament failed to address the defect, this regime would continue to apply after the period of suspension,' the latest Constitutional Court ruling read, notes [TimesLIVE](#). The regime referred to states: 'Wives and husbands will have joint and equal ownership and other rights to, and joint and equal rights of management and control over, marital property.' This ruling had been delivered following the court's findings that the law that governed matrimonial property in customary marriages essentially discriminated against certain categories of women and was therefore unconstitutional. Section 7(1) of the RCMA of 1998 provides that wives who entered into customary marriages before the Act was passed do not have marital property rights. **In the 2017 judgment by Justice Mbuyiseli Madlanga, the court said the effect of section 7(1) was to perpetuate inequality between husbands and wives in the case of marriages entered before the 1998 Act.** 'The situation of wives in pre-Act polygamous customary marriages is one of lack of ownership and control of property within the marriage.' Madlanga had said this discrimination limited the right to human dignity of wives in pre-Act polygamous customary marriages.