



CIVIL MARRIAGES PERFORMED BY SOMEONE WHO IS NOT A MARRIAGE OFFICER

The Legal Assistance Centre has received information about some instances where civil marriages are being solemnized by someone who is not actually a marriage officer. This column will look at the consequences of this practice.

Solemnization of a marriage refers to the formalities where the marriage officer - after checking that both parties are eligible to get married - asks the questions which result in the answers “I do” and pronounces the couple to be husband and wife. This must take place in front of two adult witnesses, and everyone involved must sign the marriage register – the couple, the marriage officer and the witnesses.

The relevant law is the Marriage Act 25 of 1961. It says: “A marriage may be solemnized by a marriage officer only.” This means that the marriage officer is responsible not only for the paperwork, but also for conducting the marriage ceremony. This is important because marriage officers are trained to know the rules about who is eligible to get married, how to make sure that there is free consent to the marriage by both spouses and the steps needed for the couple to select the marital property regime they want.

So who is a marriage officer? A marriage officer is either a magistrate, or a person holding a responsible position in a religious denomination who has been formally designated as a marriage officer by the Ministry of Home Affairs and Immigration. This designation is made in writing, so in cases of doubt, you can ask your pastor to show you the certificate which makes him or her a marriage officer.

What happens if you have a marriage ceremony, but the marriage officer did not personally solemnize the marriage? This means that the marriage did not take place properly and so it does not really exist. But there are a few exceptions provided for in the Marriage Act.

Firstly, suppose that the person who presided at the marriage thought in good faith that he or she was really a marriage officer. That person can go to the ministry and ask to be retroactively designated as a marriage officer for the time period in which he or she has been solemnising marriages.

Secondly, the couple who thought in good faith they were really getting married can ask the Ministry to retroactively designate the person who presided over the marriage ceremony as a marriage officer for just that one marriage. The Ministry may investigate the situation before agreeing to do this.

Otherwise, the marriage is not valid. The parties are still single. They can go to the High Court and request an order confirming that they are not really married. Such a court order merely places on record the fact that the marriage never existed. This can provide certainty and prevent doubt or confusion. But the court does not have the power to transform the marriage into a valid marriage if the steps for retroactive designation of the marriage officer were not put into action.

If one or both of the parties entered into the marriage in good faith, the court has the power to adjust the affairs between them to prevent hardship or unfairness - such as providing for a fair division of the property acquired by the couple while they thought they were actually married.

If you think that you were married by someone who was not really a marriage officer, you should take steps to sort the matter out right away. Otherwise, when one spouse dies or seeks a divorce, the problem may emerge at that stage and cause all sorts of confusion.

You should also note that it is a criminal offence for someone to falsely pretend to be a marriage officer. If you know of instances where this is taking place, you should inform the Ministry.

The Ministry of Home Affairs and Immigration is in the process of preparing a new Marriage Bill for consideration by Parliament. One possible approach under discussion is to allow only members of the public service to be marriage officers in future, not pastors or other religious officials. Pastors would still be able to conduct a ceremony which blesses the marriage, but the legal formalities would have to be concluded by a magistrate or a member of the public service who has been designated as a marriage officer. The theory is that this approach might help to prevent some of the problems currently arising where marriage officers do not carry out their duties properly. Keep an eye out for further discussions on this proposal if you want to make your views known!

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