"In Which the Partners Undertook Reciprocal Duties of Support" – A Discussion of the Phrase as Used in *Bwanya v Master of the High Court, Cape Town*

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Abstract

In December 2021 the Constitutional Court delivered judgment in *Bwanya v Master of the High Court, Cape Town.* The court ruled that survivors of life-partnerships "in which the partners undertook reciprocal duties of support" would be entitled to claim benefits under the *Maintenance of Surviving Spouses Act* (the MSSA) and the *Intestate Succession Act* (the ISA). This case note focusses on the phrase "in which the partners undertook reciprocal duties of support." It examines the jurisprudential development of the phrase through the case law. It considers whether reliance on the phrase is likely to present an obstacle to potential claimants or whether the phrase can be interpreted in a way that broadens the protection provided by the MSSA and ISA so as to ensure that all vulnerable partners can be protected.

The note suggests that the optimal way in which to interpret the requirement that the life-partners had undertaken reciprocal duties of support would be to focus on the claimant's needs and financial dependence and to assess how the law can provide protection and redress to those who have incurred relationship-induced dependence because of the particular form and nature of the reciprocal support provided in the intimate relationship. Previous court judgments have noted the typically gendered nature of the contributions made by family members. The law must ensure that it furthers the constitutional goal of achieving substantive equality between men and women, while also acknowledging and responding to the intersectional forms that discrimination and disadvantage assumes.

Keywords

Bwanya v Master; intestate succession; maintenance; life-partnerships.

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1 Introduction

In December 2021 the Constitutional Court delivered judgment in *Bwanya v Master of the High Court, Cape Town.*[1] The court ruled that survivors of life-partnerships "in which the partners undertook reciprocal duties of support" would be entitled to claim benefits under the *Maintenance of Surviving Spouses Act*[2] (the MSSA) and the *Intestate Succession Act*[3] (the ISA). This case note focusses on the phrase "in which the partners undertook reciprocal duties of support." It examines the jurisprudential development of the phrase through the case law. It considers whether reliance on the phrase is likely to present an obstacle to potential claimants or whether the phrase can be interpreted in a way that broadens the protection provided by the MSSA and ISA to ensure that all vulnerable partners can be protected.

2 History of the *Bwanya* matter

The uncontroverted facts of the *Bwanya* matter were that the applicant, Ms Bwanya, and the deceased, Mr Ruch, had been cohabiting for a period of almost two years from 2014 until Mr Ruch's death in April 2016.[4] Their friends and family were aware of the relationship. The couple were planning to marry and had even discussed having children together. The couple had supported each other – Mr Ruch had provided Ms Bwanya with financial support of various kinds, while Ms Bwanya "provided him with love, care, emotional support and companionship."[5] Sadly, Mr Ruch died suddenly two months before a planned visit to Zimbabwe to negotiate *lobolo* with Ms Bwanya's family. Mr Ruch's only testate heir (his mother) had predeceased him and Mr Ruch thus died intestate. Ms Bwanya instituted claims against the deceased estate in terms of the ISA and the MSSA. Both claims involved a challenge to the constitutional validity of the Acts concerned and they were ultimately considered by the Constitutional Court even though a settlement had been reached with Ms Bwanya before litigation commenced.[6]

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1 *Bwanya v Master of the High Court, Cape Town* 2022 3 SA 250 (CC) (hereafter *Bwanya* CC).

2 *Maintenance of Surviving Spouses Act* 27 of 1990 (hereafter the MSSA).

3 *Intestate Succession Act* 81 of 1987 (hereafter the ISA).

4 The facts are set out in paras 3 to 7 of the Constitutional Court judgment (*Bwanya*).

5 *Bwanya* CC para 5.

6 *Bwanya* CC para 10.

The wording of Ms Bwanya's claims was very specific. Her application used similar wording for her constitutional challenges to the ISA and the MSSA. Ms Bwanya claimed that the definition of "spouse" in section 1 of the ISA and the MSSA was unconstitutional and invalid because it did not include the phrase "or partner in a permanent opposite-sex life partnership in which the partners have undertaken reciprocal duties of support".[7] In her challenge to the MSSA, Ms Bwanya further claimed that the definition of "marriage" was unconstitutional and invalid because it did not include the phrase "permanent opposite-sex life partnership in which the partners have undertaken reciprocal duties of support."[8]

The wording of Ms Bwanya's challenge to the ISA was modelled deliberately on the wording used in *Gory v Kolver*[9] and *Laubscher v Duplan,*[10] where the Constitutional Court had extended benefits under the ISA to partners "in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support."[11] The ISA challenge in *Bwanya* was based on the ruling in *Laubscher* and complained specifically that it would be unfair discrimination on the grounds of sexual orientation to exclude unmarried opposite-sex life-partners from benefits that had already been extended to unmarried same-sex life-partners. The Western Cape High Court agreed that failure to extend the ISA benefit to heterosexual life-partners would be unfair discrimination on the grounds of sexual orientation,[12] and this reasoning was endorsed in the Constitutional Court.[13]

Ms Bwanya's challenge to the MSSA also incorporated the phrase "have undertaken reciprocal duties of support." However, Ms Bwanya's high court challenge included an argument similar to that which had been relied on in *Volks v Robinson*:[14] Ms Bwanya argued that the MSSA was unconstitutional because it failed to offer protection to permanent life-partners who had been

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7 Ms Bwanya's claims are set out in para 2 of the high court judgment, *Bwanya v The Master of the High Court* 2021 1 SA 138 (WCC) (hereafter *Bwanya* WCC).

8 *Bwanya* WCC para 2.

9 *Gory v Kolver (Starke Intervening)* 2007 4 SA 97 (CC) (hereafter *Gory* CC).

10 *Laubscher v Duplan* 2017 2 SA 264 (CC) (hereafter *Laubscher*).

11 See *Gory* CC para 43 and *Laubscher* para 2.

12 *Bwanya* WCC para 168.

13 See the discussion in *Bwanya* CC paras 85-87. For academic commentary anticipating this kind of outcome following the *Laubscher* decision, see for example Kruuse 2009 *SAJHR* and Smith and Heaton 2012 *THRHR.* The Constitutional Court majority in *Laubscher* distinguished between the maintenance claim in *Volks v Robinson* 2005 5 BCLR 446 (CC) and the claim under the ISA in *Gory* CC. The high court in *Bwanya* was thus able to assume that the ISA was not impacted by *Volks*. Also see footnote 19 below for commentary that the *Volks* precedent was also a barrier to the extension of benefits under the ISA to heterosexual life partners.

14 *Volks v Robinson* 2005 5 BCLR 446 (CC) (hereafter *Volks*).

involved in relationships substantially identical to marriage, and that the Act thus discriminated on the grounds of marital status.[15] The Western Cape Division of the High Court was unable to entertain this challenge because it was bound by the precedent set in *Volks*.[16] In the *Volks* case the Constitutional Court had decided that the MSSA did not unfairly discriminate against survivors of permanent life-partnerships even though the legislation provided protection to surviving spouses of marriages but did not provide protection for surviving permanent life-partners. The *Volks* court held that the exclusion of permanent life-partners from the protection of the MSSA was not *unfair* discrimination as prohibited by section 9(3) of the Constitution.[17] Ms Bwanya thus appealed to the Constitutional Court to overturn its own precedent.

3 Overturning the *Volks* precedent

The Constitutional Court, the majority judgment per Madlanga J (Khampepe J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ and Tshiqi J concurring) stressed the importance of precedent: "the doctrine of precedent is a core component of the rule of law without which deciding legal issues would be directionless and hazardous."[18]

The court was mindful that the precedent set in *Volks* was directly applicable to the MSSA matter before it.[19] The court would be able to rule in Ms

15 *Bwanya* WCC para 2, particularly 2.1 and 2.2.1.

16 *Bwanya* WCC para 56.

17 *Constitution of the Republic of South Africa*, 1996. The court's final decision appears at *Volks* para 60 of the majority judgment. The *Volks* decision has provoked an enormous amount of scholarly criticism and commentary. See for example, Lind 2005 *AJ*; Smith 2010 *PELJ*; Albertyn 2007 *SAJHR*; Bonthuys 2008 *Can J Women & L*; Kruuse 2009 *SAJHR*; De Vos and Barnard 2007 *SALJ*; Meyerson 2010 *CCR*.

18 *Bwanya* para 46 citing *Camps Bay Ratepayers' and Residents' Association v Harrison* 2011 4 SA 42 (CC) (hereafter *Camps Bay*) para 28.

19 It is probable that the court's ruling on the ISA was also subject to the *Volks* precedent and that extending the ISA to include heterosexual life-partners also required the court to overturn the *Volks* precedent. The Constitutional Court majority in *Laubscher* distinguished between the maintenance claim in *Volks* and the claim under the ISA in *Gory* CC. In his dissenting judgment in *Laubscher*, Froneman J remarked that he found this distinction unpersuasive because the claims under the MSSA and the ISA are both ultimately based on a reciprocal support duty (the existence of which was part of the reasoning in *Gory* CC). See *Laubscher* para 77. The high court in *Bwanya* was thus able to assume that the ISA was not impacted by *Volks*. For commentary on why the ISA was also affected by the ruling in *Volks*, see Smith 2018 *THRHR* 152. Indeed, the *Gory* CC judgment itself referred to *Volks* as an authority which would preclude operation of the ISA for heterosexual life-partners (para 29 and note 34). Also see Osman 2021 *SALJ* 527 criticising the *Bwanya* high court judgment for its failure to realise that the benefits under the ISA are the same as those under the MSSA in that both are based on status relationships. Mochela and Smith have argued that the right to inherit intestate in

Bwanya's favour on the question of the unconstitutionality of the MSSA only if the court overturned the precedent it had set in *Volks*.[20] The court was clear that it could overturn its precedent only if it was certain that the previous decision was "clearly wrong".[21]

The core of the *Volks* precedent was that it was not unfair to discriminate between spouses who were formally married and unmarried life-partners in substantially identical circumstances. The *Volks* majority justified this in part by arguing that unmarried life-partners have chosen to "not marry" and had thus deliberately placed themselves outside of the law's protection.[22]

In proving that the *Volks* decision was clearly wrong, the *Bwanya* court focussed first on whether everyone is really able to *choose* to not marry. The court held that the "question of choice" was an empirical matter of fact rather than law and the court was not bound by the *Volks* conclusions on this factual question.[23] Further, that the court now had additional factual information that had not been available to the court when deciding *Volks*. In this regard, the court relied on evidence presented by the Women's Legal Centre Trust as *amicus curiae*.[24] The court found this evidence compelling, noting that: Many women end up "trapped" in life-partnerships. They lack the bargaining power to convince their partners to marry them. They lack the economic independence to leave their partner and start over. Thus, in many permanent life partnerships "the choice not to marry is illusory".[25]

The court was dubious that the question of choice was the correct question to ask because permanent life partners who freely and deliberately choose not to marry are also entitled to the law's protection of their chosen family form,[26] but dealt with the question nonetheless because "choice" was core to the reasoning in *Volks*.

The *Bwanya* majority argued that the second issue on which the *Volks* precedent had become "clearly wrong" was the *Volks* interpretation of the

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terms of the ISA would fall within the shadow of the *Volks* precedent because intestate succession is based on a status relationship. Like the right to reciprocal support, the right to intestate succession is an invariable consequence of marriage (Mochela and Smith 2020 *TSAR* 488). Froneman J's dissenting judgment in the *Laubscher* case pointed out that the ISA was in the shadow of *Volks.*

20 *Bwanya* CC para 46.

21 *Bwanya* CC para 46 citing *Camps Bay* para 28.

22 *Volks* paras 58, 91-93.

23 *Bwanya* CC para 61.

24 *Bwanya* CC para 62.

25 *Bwanya* CC para 62. Mogoeng CJ in his dissent questioned whether this conclusion was correct (paras 119-129).

26 *Bwanya* CC paras 67-68.

nature of the claim that arose under the MSSA. The *Volks* majority had ruled that the MSSA merely extended an existing maintenance duty. It did not create a new one. The existing maintenance duty was an invariable consequence of marriage that arose by automatic operation of law. All married spouses had reciprocal support duties while they were alive and the MSSA merely extended this existing obligation beyond the death of the support-providing spouse.[27] As the *Volks* court put it, section 2(1) of the MSSA "seeks to regulate the consequences of marriage and speaks predominantly to those who wish to be married."[28] The *Volks* decision also relied on the reasoning that the law did not impose a similar automatic reciprocal support duty on unmarried partners in life-partnerships.[29] The MSSA therefore extended an automatic support duty that was "uniquely attached to marriage" and in this context it could "not be deemed to be unfair."[30]

The *Bwanya* majority argued that this reasoning should now be considered incorrect in the light of legal developments since the *Volks* case was decided. In this regard the court relied on the Supreme Court of Appeal decision in *Paixão v Road Accident Fund*.[31] The *Paixão* matter concerned a delictual claim under the dependants' action. In dependants' action claims the plaintiff must prove that they had a legally enforceable right to claim maintenance from the deceased.[32] The Supreme Court of Appeal held that the deceased had indeed had a legally enforceable duty to support the claimant even though the parties were in an unmarried life-partnership. The enforceable duty arose from a tacit contract for reciprocal support, which the court inferred from the couple's conduct and surrounding circumstances.[33]

In the *Bwanya* matter, the court argued that *Paixão* was not ultimately based on contract. Instead, the core of the Supreme Court of Appeal's decision was the court's view that "[t]he proper question to ask is whether the facts establish a legally enforceable duty of support arising out of a relationship akin to marriage."[34] In this regard, the *Bwanya* majority argued: "The fact that the duty of support arose from an agreement took a back seat."[35] The

27 *Volks* para 39.
28 *Volks* para 39.
29 *Volks* para 56.
30 *Volks* para 56.
31 *Paixão v Road Accident Fund* 2012 6 SA 377 (SCA) (hereafter *Paixão*).
32 *Paixão* para 12.
33 *Paixão* paras 19-21.
34 *Paixão* para 39, quoted in *Bwanya* CC para 71.
35 *Bwanya* CC para 71.

majority argued that this was clear because the Supreme Court of Appeal would not have supported the delictual claim had the contract for reciprocal support been concluded merely between two friends who were not in a permanent life-partnership – it was the "familial and spouse-like relationship that made it necessary that the right be afforded legal protection."[36]

The *Bwanya* majority thus concluded that it was no longer correct in law to draw a distinction between reciprocal support duties that arose by autonomic operation of law as an invariable consequence of marriage and support duties that arose by agreement in the context of permanent life-partners.[37]

The court's reliance on the *Paixão* precedent appears almost like some sort of intricate tango between the Constitutional Court and the Supreme Court of Appeal. The *Paixão* court was aware of the *Volks* precedent and took care to distinguish between the dependants' action before it and the MSSA matter in the *Volks* case,[38] a distinction which enabled the court to avoid the constitutional issue in *Volks*.[39] The court then adopted a very disciplined approach to the dependants' action, following its own precedent in S*antam Bpk v Henery*,[40] where it had emphasised that the plaintiff in a dependants' action claim was required to prove that the deceased had owed him or her a duty of support which was legally enforceable.[41] In *Paixão* the court found that such an enforceable support duty had been created by the tacit contract for reciprocal support. This finding was a crucial and necessary element in the court's reasoning. It was the emphasis on the contract that enabled the court to distinguish between its judgment and the *Volks* precedent.[42]

The *Bwanya* court argued that this crucial element took a "back seat" in the *Paixão* ruling. However, this was much later in the *Paixão* judgment, and in the context of investigating another required element for the dependants' action. The *Paixão* court held that the reciprocal contract merely created an enforceable duty between the partners themselves.[43] A delictual claim further required that the contractual right to support was "worthy of protection" in the sense of grounding a claim for delictual damages from a

36 *Bwanya* CC para 71.
37 *Bwanya* CC para 71.
38 *Paixão* paras 25-27.
39 *Paixão* para 38.
40 S*antam Bpk v Henery* 1999 3 SA 421 (SCA).
41 *Paixão* para 12.
42 On this point, also see Bonthuys 2018 (1) *PELJ* 18. Also see Smith and Heaton 2012 *THRHR* 476 pointing out how other dependants' action cases have been required to focus on the contractual duty for support in order to avoid the *Volks* precedent.
43 *Paixão* paras 22- 23.

third party.[44] This is determined by the *boni mores*.[45] It is in this context that the *Paixão* court emphasised the familial nature of the relationship, and particularly stressed the growing community acceptance of life-partnerships as a commonplace family form.[46] This enabled the court to conclude that the "general sense of justice of the community" demanded that the dependants' action protection afforded by the common law be extended to heterosexual life partners who had concluded a contract for reciprocal support.[47]

Of course, the core ruling in *Volks* was "the law may in appropriate circumstances accord benefits to married people which it does not accord to unmarried people."[48] As noted in *Bwanya*:

> At issue before us and in *Volks* itself is exactly why in *some* (not necessarily *all*) instances some rights and obligations should attach exclusively to marriage. It is not an answer to say that is because the people who enjoy the rights or bear the obligations are in a marriage.[49]

Bwanya overturned the *Volks* ruling on the MSSA and did indeed recognise that the reciprocal duty of support might be based on an agreement and need not necessarily be based on an invariable consequence of marriage.[50] As the court put it:

> … it can no longer be fitting to distinguish the duty of support existing in the two categories of familial relationships (i.e. marriage relationship and permanent life partnership) purely on the basis that one arises by operation of law and the other arises from agreement.[51]

Indeed, the *Bwanya* judgment ruled that "denial of the section 2(1) maintenance benefit to permanent life partners who had undertaken duties of reciprocal support constitutes unfair discrimination."[52] Further, the *Bwanya* court explicitly relied upon and endorsed previous court decisions confirming that "manifestations of families are many and varied and all are worthy of respect and legal protection."[53] The court considered the factual circumstances of life-partners and concluded that partners in this family

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44 *Paixão* para 23.
45 *Paixão* para 13.
46 *Paixão* paras 31-36.
47 *Paixão* para 37. Also see Smith and Heaton 2012 *THRHR* 476-478 pointing out that the dependants' action requires two separate investigations, but that these two distinct steps are not always clearly distinguished in the case law.
48 *Volks* para 54.
49 *Bwanya* CC para 40.
50 *Bwanya* CC para 71.
51 *Bwanya* CC para 71.
52 *Bwanya* CC para 73.
53 *Bwanya* CC para 32.

form required and were entitled to the law's protection.[54] The court's ruling extended protection under the ISA and the MSSA to life-partners who "undertook reciprocal duties of support".

4 Undertook duties of reciprocal support as used in the case law

The word "undertake" is inherently ambiguous. The first definition of the word provided in the *Concise Oxford English Dictionary* is "bind oneself to perform", which suggests a contractual commitment or undertaking. However, a further definition provided is "enter upon (work, enterprise, responsibility)" which suggests merely that a person performs activities in fact (*de facto*) while not necessarily binding himself or herself to these activities. It appears from an overview of the life-partnership cases where the phrase has been used that the courts have used the word to mean "performance" in some cases, while apparently meaning "contractual commitment" in others.

In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*,[55] for example, the court included "whether and to what extent one partner provides financial support for the other" as one of several factors that might indicate the existence of a permanent same-sex life-partnership.[56] The court held that a life-partnership could be identified by examining a range of surrounding factors, which might include:

> … the respective ages of the partners; the duration of the partnership; whether the partners took part in a ceremony manifesting their intention to enter into a permanent partnership, what the nature of that ceremony was and who attended it; how the partnership is viewed by the relations and friends of the partners; whether the partners share a common abode; whether the partners own or lease the common abode jointly; whether and to what extent the partners share responsibility for living expenses and the upkeep of the joint home; whether and to what extent one partner provides financial support for the other; whether and to what extent the partners have made provision for one another in relation to medical, pension and related benefits; whether there is a partnership agreement and what its contents are; and whether and to what extent the partners have made provision in their wills for one another.[57]

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54 See the discussion in *Bwanya* CC paras 53-55.

55 *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 2 SA 1 (CC) (hereafter *National Coalition*).

56 *National Coalition* para 88. This case concerned the constitutional validity of s 25 of the *Aliens Control Act* 96 of 1991 and was not concerned with any kind of financial claim between the partners or a financial claim against a third party.

57 *National Coalition* para 88.

In *Langemaat v Minister of Safety and Security*[58] the court considered whether a lesbian partner should be accepted as a dependant on the police medical aid scheme Polmed. When considering whether the parties had reciprocal support duties, the court held that: "Parties to a same-sex union, which has existed for years in a common home, must surely owe a duty of support, in all senses, to each other."[59] The court did not require that the parties had subjectively assumed contractual obligations. Instead, the court seemed to suggest that the support duty arose automatically because the parties had lived together for a long period. In *Satchwell v President*[60] the high court followed the *Langemaat* approach. The court held that the argument that "the duty of support only arises in the context of the conventional marriage is not sustainable."[61] The court quoted from *Langemaat* at length in support of the conclusion that support obligations arise automatically where partners have lived together for a long period.[62] However, this finding was not important for the court's final order. As requested by the plaintiff the court ordered that sections 8 and 9 of the *Judges' Remuneration and Conditions of Employment Act*[63] and accompanying regulations be amended by reading in the words "or partner in a permanent same-sex life partnership" after the word "spouse" and made no mention of reciprocal support duties.[64]

It is significant that all three cases involved same-sex couples, who were not permitted to marry at that time (before the passage of the *Civil Union Act*).[65] In all three cases the courts examined whether the parties had been in a relationship akin to marriage. The courts concluded that the relationships concerned were substantially identical to marriage and the parties were thus entitled to the same legal protection as that afforded to married couples.[66] The provision of reciprocal support was one of the factors that the courts considered when concluding that the relationships were akin to marriage, but it was not necessarily a decisive factor. Because the relationships concerned were akin to marriage, the courts ruled that the usual consequences of marriage should ensue from the relationships

58 *Langemaat v Minister of Safety and Security* 1998 3 SA 312 (T) (hereafter *Langemaat*).
59 *Langemaat* 316H.
60 *Satchwell v President of the Republic of South Africa* 2001 12 BCLR 1284 (T) (hereafter *Satchwell* T).
61 *Satchwell* T para 15.
62 *Satchwell* T para 16.
63 *Judges' Remuneration and Conditions of Employment Act* 88 of 1989.
64 *Satchwell* T para 33.
65 *Civil Union Act* 17 of 2006.
66 See for example *Langemaat* 316F/G-G/H.

concerned and that the parties were entitled to the same legal benefits as those available to married spouses.

In this way the courts understood that a same-sex life-partnership should be recognised as a "status relationship" similar to the common law status-relationship marriage, where the status "married spouse" automatically gives rise to invariable rights and duties for the spouses. A core feature of this jurisprudence was that same-sex couples were not permitted to marry and that failure to extend marriage-like benefits to same-sex partners who were in marriage-like relationships constituted unfair discrimination on the intersecting grounds of marital status and sexual orientation.[67]

However, use of the word "undertook" seems to have taken on a new meaning in the Constitutional Court *Satchwell* judgment,[68] which seems to have required more than mere "performance" of reciprocal support. Madala J appeared to require a subjective contractual undertaking for reciprocal support and to reject the notion that a support duty would arise automatically when parties had cohabited for a long period. For Bonthuys,[69] the crucial portion of the judgment was the following:

> Inasmuch as the provisions in question afford benefits to spouses but not to same-sex partners who have established a permanent life relationship similar in other respects to marriage, including accepting the duty to support one another, such provisions constitute unfair discrimination.
>
> I should emphasise, however, that section 9 [of the Constitution] … cannot impose obligations towards partners where those partners themselves have failed to undertake such obligations.[70]

It appears that in *Satchwell* the court was able to infer a tacit contractual commitment for reciprocal support. This was crucial to the court's final order, which specifically extended the spousal benefits under the *Judges' Remuneration and Conditions of Employment Act*[71] by including "a partner, in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support."[72]

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67 *National Coalition* para 40.
68 *Satchwell v President of the Republic of South Africa* 2002 6 SA 1 (CC) (hereafter *Satchwell* CC).
69 Bonthuys 2004 *SALJ* 879. Also see the discussion by Goldblatt 2003 *SAJHR* 121.
70 *Satchwell* CC paras 23-24 quoted in Bonthuys 2004 *SALJ* 884 (emphasis provided by Bonthuys).
71 *Judges' Remuneration and Conditions of Employment Act* 88 of 1989.
72 *Satchwell* CC para 37.

The phrase "have undertaken reciprocal duties of support" was used subsequently in challenges to the ISA. In the *Gory* case[73] the applicant had specifically sought inclusion of the words "or partner in a same-sex partnership in which the partners have undertaken reciprocal duties of support" to be read into the section, after the word "spouse" wherever it appeared in section 1(1) of the *Intestate Succession Act*. He sought further a declaratory order that "the applicant and the deceased were, at the time of death of the deceased, partners in a same-sex life partnership in which they had undertaken reciprocal duties of support."[74] The high court concluded: "I have no hesitation to find that they assumed reciprocal duties of support"[75] based on the evidence that the parties had demonstrated their commitment to the relationship: the couple shared a common home and a joint household, both had contributed to the bond and the rates and both had contributed to the purchase of household necessaries. Furthermore, the deceased had given the applicant a wedding ring – clearly the couple wanted everyone to know that they were committed to each other.[76] The Constitutional Court in *Gory* did not investigate the support duty but relied on the high court's finding that the partners had "undertaken reciprocal duties of support".[77] The Constitutional Court ordered that section 1(1) of the ISA should be changed so that the word "spouse" be read to include the words "or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support."[78]

Famously, the *Gory* court further held that this change to the ISA should remain effective even after the anticipated recognition of same-sex marriages, unless specifically repealed by Parliament.[79] The first such case heard after the *Civil Union Act*[80] came into operation was *Laubscher v*

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73 *Gory v Kolver* 2006 2 All SA 640 (T) (hereafter *Gory* T).

74 *Gory* T para 3.

75 *Gory* T para 18.

76 The facts on which the court relied are set out in para 18 of the high court judgment.

77 *Gory* CC para 2.

78 *Gory* CC para 66. In this regard, it should be noted that the dissent by Froneman J in *Laubscher* para 77 refers to *Gory* CC as requiring "factual duty of support".

79 *Gory* CC para 29. This part of the ruling has been controversial. Fronemen J in his dissenting judgment in *Laubscher* remarked that *Gory* CC para 29 was "not based on any substantive reasoning justifying the conclusions expressed in them" (*Laubscher* para 67) and that if it were interpreted to mean that benefits to unmarried same-sex couples must persist even after commencement of the *Civil Union Act*, then the *Gory* CC court had erred in "'legislating' too widely when fashioning a reading-in remedy" (*Laubscher* para 70). For academic commentary on *Gory* CC, see for example De Vos and Barnard 2007 *SALJ* 823; Picarra 2007 *SAJHR* 565; Kruuse 2013 *International Survey of Family Law* 343-362; Meyerson 2010 *CCR* 307.

80 *Civil Union Act* 17 of 2006.

Duplan,[81] in which the court applied the ISA in the form drawn up in *Gory*[82] and ordered that an unmarried same-sex life-partner "in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support" should inherit despite having had the legal opportunity to marry.[83]

In *Bwanya* the Western Cape High Court extended this protection to an unmarried heterosexual life-partner on the grounds that failure to do so would be unfair discrimination on the grounds of sexual orientation. In this context the court ruled that the words “same-sex” be removed from the wording, but the court retained the wording "in which the parties have undertaken reciprocal support duties". In the *Bwanya* Constitutional Court judgment, the court confirmed the finding on the ISA and also used the phrase in the context of the MSSA.

5 Should a subjective contractual undertaking be required from life-partners?

The amendments to the ISA and MSSA ordered by the Constitutional Court in *Bwanya* use the wording "in which the parties undertook duties of reciprocal support". As outlined above, previous courts have used the phrase to mean "performance" of reciprocal support duties, but more recent judgments appear to require a subjective assumption of a contractual duty.

The *Bwanya* high court judgment referred to Clark's *Family Law Service*[84] where Schäfer observes that in the context of same-sex life-partnerships the courts sometimes appear to require the voluntary assumption of a contractual support duty to qualify for legal protection, while in other judgments the courts do not appear to rely on contract. In this regard Schäfer concludes that in the context of pension benefits, the dependant's action, and spousal rights under the ISA, it appears that courts will require that the partners had entered into a contract for the provision of reciprocal support.[85]

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81 *Laubscher v Duplan* 2017 2 SA 264 (CC).

82 As set out by the court in *Laubscher* para 37.

83 *Laubscher* para 55.

84 Schäfer in Clark *Family Law Service* R7 (the court's reference to Part R24 appears to be incorrect).

85 *Ibid*, citing *Satchwell*, *Du Plessis v Road Accident Fund* 2004 1 SA 359 (SCA) and *Gory*. In the context of the ISA, Smith has argued that the existence of the contract (even tacitly undertaken) is necessary "in determining whether the claimant's need was within sufficient proximity of the other life partner's estate" (Smith 2010 *PELJ* 260).

Commentators have expressed concern about a requirement for contractual undertaking as a condition for life-partners to enjoy legal protection. They have expressed concern that vulnerable partners may lack the bargaining power to insist on some kind of contract to regulate the life-partnership.[86] Goldblatt points out that these are precisely the people who most require the law's protection.[87] For many commentators the Constitutional Court's "acknowledgment and protection of new family forms should have led it to conclude that a permanent same-sex life partnership creates a legal duty of support in the same way that marriage does", without requiring a contractual commitment for support.[88] Bonthuys has warned that too much emphasis on a contractual undertaking might make it more difficult for dependants to claim maintenance – tacit contracts (and their terms) can be particularly difficult to prove.[89]

However, many commentators have been relieved at the apparent willingness of the courts to infer the existence of a tacit contract for reciprocal support.[90] To some extent it would appear that if the parties have been in a life-partnership and have in fact provided reciprocal support for an extended period, the court is likely to conclude that there was some kind of tacit contract for reciprocal support. Smith has argued that a "contract" for reciprocal support would invariably be created if the parties to a relationship have in fact provided each other with support (either financial or support of other kinds from a non-breadwinner)[91] and in this manner have demonstrated commitment through the fact of their reciprocal support of these kinds.[92]

Paixão and *Satchwell* are examples of cases where the court examined a range of surrounding circumstances and inferred from these facts that the

86 See for example Meyerson 2010 *CCR* 296.
87 Goldblatt 2003 *SAJHR* 122.
88 Goldblatt 2003 *SAJHR* 122. There is significant support for this approach in the legal literature. See for example Bonthuys 2004 *SALJ* 879; Clark 2002 *SALJ* 634; Goldblatt 2003 *SALJ*; Sinclair and Heaton *Law of Marriage* 296-299; Sinclair and Bonthuys 2004 *Ann Surv SA L* 115.
89 Bonthuys 2018 (2) *PELJ* 13-14.
90 See for example Smith 2010 *PELJ* 267.
91 Many commentators have relied on the common law rule as set out by Sinclair and Heaton in *Law of Marriage* 442 fn. 90 confirming that the reciprocal support duty in a marriage does not necessarily imply that both parties make financial contributions. If there is a sole breadwinner the financial support is provided by this party, but the other party will contribute reciprocal support in other ways, such as caregiving.
92 Smith 2010 *PELJ* 249. Also see Bonthuys 2018 (1) *PELJ* 16 arguing that the high court in *Robinson v Volks* 2004 6 SA 288 (C) had concluded that the fact of sharing resources over time was an indication that the parties had committed themselves to providing ongoing support in the future.

partners had entered into a tacit contract for reciprocal support. In *Butters v Mncora*[93] the court examined the surrounding circumstances and inferred that the partners had entered into a tacit contract for the creation of a universal partnership and a consequent sharing of the partnership property. While commentators have welcomed these developments,[94] some have expressed concern that courts might not always draw this inference[95] or that the facts relied upon by the courts would not usually be sufficient to infer that the parties had subjectively bound themselves in contract.[96]

With regard to the reliance on contract, it is useful to contrast the decisions in the two *Volks* cases and to come back to *Paixão* in this context. The high court judgment *Robinson v Volks*[97] was based on early cases involving same-sex life-partnerships (such as *National Coalition*). In *Robinson v Volks* the high court ruled in favour of Mrs Robinson's argument that her life-partnership relationship was akin to marriage and should have the same legal consequences. As discussed above, the Constitutional Court rejected this argument.

In *Volks* the Women's Legal Centre (WLC) had deliberately *not* argued that a support obligation might have arisen through a tacit contract. The WLC was clear that they sought the recognition of a heterosexual life-partnership as a status-relationship giving rise to automatic consequences (as had happened for same-sex life-partnerships in *National Coalition* and other cases). Indeed, the WLC had specifically argued that the Constitutional Court ruling in *Satchwell*

> … was not correct because family law should not be governed by contractual principles and the common law should instead be developed to give rise to an automatic legal duty of support between the parties to permanent life partnerships.[98]

The contract argument was thus not relied upon in *Volks* but could possibly have been successful if it had been raised at that time.[99] The *Bwanya* ruling,

93 *Butters v Mncora* 2012 4 SA 1 (SCA).
94 See for example Barratt 2015 *Stell LR*.
95 See for example Sloth-Nielsen and Van Heerden 2014 *IJLPF* 104, who note "the split decision in the Supreme Court of Appeal on what we regard as quite solid facts, illustrates the weighty effect of this burden of proof" for the existence of the tacit contract in a life-partnership context.
96 Bonthuys 2004 *SALJ* 885.
97 *Robinson v Volks* 2004 6 SA 288 (C).
98 *Volks* para 140.
99 See for example the discussion of this line of reasoning in Smith 2010 *PELJ* 250.

based on contract, thus relied on a line of reasoning which was not explored in *Volks*.

Instead, the *Bwanya* judgment relied on *Paixão*, where the court had indeed focussed on the contract for reciprocal support and, aware of the *Volks* precedent, had deliberately avoided a line of reasoning in which the support obligation arose automatically from the family relationship of the parties. Of course, the *Bwanya* judgment also emphasised those parts of *Paixão* which had noted the family-like nature of the life-partnership, its acceptance by the community and the need to protect this commonplace family form.

The *Bwanya* ruling does not explicitly explain whether the "undertaking" of reciprocal support duties should be understood as a contractual undertaking but this seems a plausible interpretation given the court's reference to "agreement".[100] In *Satchwell* the Constitutional Court required that the deceased had subjectively assumed support obligations because the court could not otherwise impose such obligations.[101] In *Bwanya* the court is clear that the MSSA can apply only where the deceased owed the survivor a duty of support while they were still alive. When the *Bwanya* court ruled that the support duty concerned could be based on an "agreement" and need not be based on the status-relationship marriage,[102] this created the impression that use of the word "undertook" in the final order carried the sense of "bind oneself to perform".

However, the court's reliance on *Paixão* also created the impression that the contract for reciprocal support would be fairly readily inferred from a couple's history and surrounding circumstances. The existence of factual reciprocal support and interdependence (factual "performance" of reciprocal support) is likely to lead a court to conclude that the partners have subjectively entered into a binding (tacit) contract of this kind. The phrase "undertook" reciprocal support duties thus means both "performance" and "contract" at the same time.[103] The fact of providing reciprocal support can be established by looking at the facts of what the parties have done throughout their relationship. It is this factual history that provides evidence

100 See for example, *Bwanya* CC para 71.

101 *Satchwell* CC para 24 as quoted above.

102 *Bwanya* CC para 71.

103 Bonthuys has argued that the phrase "undertook reciprocal support" still retains "a degree of residual ambiguity" in that courts have tended to examine factors which may indicate that parties have subjectively and deliberately bound themselves to a contract for reciprocal support, but have also examined factors that include community perceptions of the relationship as a committed life-partnership (Bonthuys 2018 (1) *PELJ* 19 and followed by in-depth examples 20-21).

of the parties' commitment, and it is this commitment that in itself creates a contractual duty.[104]

It seems that in practice there might be little difference between the status-relationship model that the WLC argued for in *Volks*[105] and the contract-based model suggested by *Satchwell* and probably *Bwanya*. The status-based model does not have a materially different outcome: in the status-model the court must first establish the existence of a permanent life-partnership that should be recognised for the purposes of the status. In this regard the court would consider the kind of factors set out in the *National Coalition* case,[106] which include the fact of reciprocal support, among others. In the status model if the court concludes that there is a life-partnership then one of the automatic consequences will be the reciprocal support duty. However, the contract model will tend to provide the same outcome: the court would examine the factual circumstances (for example the factors in *National Coalition*) but instead of using the factors to identify the status-relationship "life-partnership" the court would rely on the factors to determine if the parties had concluded a tacit contract for reciprocal support. This, too, would give rise to a support obligation.

Thus the "additional step" of seeking the tacit contract for reciprocal support replaces the alternative step of assessing whether the relationship should be recognised as a permanent life-partnership with automatic consequences. It is probable that this would make little difference in practice. The "contract approach" might also allay the concerns of those who resist recognising automatic marriage-like consequences arising from non-marital relationships.[107]

In *Bwanya* the court discusses whether there could be an evidentiary problem with regard to proving the existence of the life-partnership.[108] The court concluded that this would not present an "insurmountable" challenge and referred to the *National Coalition* case as an example of the kinds of factors that might indicate the existence of the life-partnership.[109] As

104 See the extended argument in Smith 2010 *PELJ* (especially 249-257) arguing that this kind of contract had been created in *Volks*.

105 *Volks* para 140.

106 *National Coalition* para 88, as quoted at the start of section 4 above.

107 See for example the dissenting judgment by Mogoeng CJ in the *Bwanya* case, who held that matrimonial benefits under the common law could be extended only to those in life-partnerships "characterised by a reciprocal duty of support" (*Bwanya* CC para 146).

108 *Bwanya* CC para 75.

109 *Bwanya* CC para 75. This investigation would also allay concerns such as those expressed by Mogoeng CJ in his dissent, who asked about how and when a life-

suggested above, examination of these factors is likely to also lead to the conclusion that the parties had "undertaken reciprocal support duties" in the sense of both factual performance and tacit contract.

6 Focus on dependence and vulnerability

The *Bwanya* judgment gave significant attention to the ways in which succession law and maintenance law protect the most vulnerable members of the family. To some extent this discussion on vulnerability and dependence was used to provide background and context for the core decision, which required that the deceased "undertook" a duty to support the claimant while he was still alive. This note has explored whether this should be understood as a contractual obligation.

However, it would probably be more useful to focus on the claimant's needs, dependence and vulnerability rather than searching for a contract. The "undertaking" of reciprocal support duties (whether financial or in the form of caring work) can also be understood as a "marker" which alerts us to the possibility that one of the parties might be left economically vulnerable at the termination of the relationship. As the *Bwanya* court noted, family members are entitled to the law's protection, regardless of the form and shape of the family involved.[110] Indeed, the *Bwanya* judgment quoted from several previous Constitutional Court judgments which have stressed the constitutional obligation to provide legal protection to those who are most vulnerable at the termination of a dependence-inducing relationship.

6.1 Relationship-induced dependence

The *Volks* minority dissent by Mokgoro and O'Regan JJ provided a classic overview of what is meant by the phrase "relationship induced dependence". As the judges pointed out, people who assume female gender roles in a household and devote their time to caring for the household, the young, the old and the sick, will be less able to participate in the remunerated economy. The caring and nurturing roles that they assume in the family will have the consequence that they will be less able to

partnership would be created and what consequences would result. (*Bwanya* CC paras 115-118).

110 *Bwanya* CC para 32.

accumulate wealth or gain valuable education or work experience.[111] At the end of the relationship they might be left "poor and dependent".[112]

6.2 The law's existing response to relationship-induced dependence

For married spouses the law has responded to such relationship-induced dependence,[113] most obviously in the *Divorce Act*.[114] A court may grant ongoing spousal maintenance after divorce if the court deems this just after considering factors such as "the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce."[115] The factors listed track relationship-induced dependence.[116]

The MSSA has a similar objective. The Act was promulgated to ensure that surviving spouses were not left without support upon the termination of the marriage. The core objective was to respond to vulnerability and need.[117] It has been argued that the ISA also responds to relationship-induced dependence – the *Bwanya* judgment followed *Daniels v Campbell* in arguing that "the right of a spouse to inherit on intestacy may be interpreted to be 'need-based.'"[118]

6.3 The constitutional obligation to respond to relationship-induced dependence

Courts have observed that such relationship-induced dependence will fall upon those who perform stereotypically female gender roles in the household. Empirically, most of the people concerned will be women.[119] The *Bwanya* court quoted from *Daniels* in noting that "[t]he reality has been and

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111 *Volks* para 110.

112 As observed by Moseneke DCJ *Gumede (Born Shange) v President of the Republic of South Africa* 2009 3 SA 152 (CC) para 36. There is extensive academic commentary on the gendered nature of relationship-induced dependence. See for example Meyerson 2010 *CCR* 295-296. See Bonthuys 2018 (1) *PELJ* 9 for a discussion of the particular vulnerability of women in female-headed households who rely on remittances from migrant intimate partners.

113 *Volks* para 111.

114 *Divorce Act* 70 of 1979.

115 *Divorce Act* 70 of 1979 s 7(2).

116 See the discussion in *Kooverjee v Kooverjee* 2006 6 SA 127 (C) and *Bannatyne v Bannatyne (Commission for Gender Equality as Amicus Curiae)* 2003 2 SA 363 (CC).

117 See the discussion in *Bwanya* CC paras 36 and 41.

118 *Bwanya* CC para 90, citing Smith 2016 *SALJ* 307-308.

119 The empirical evidence presented by the Women's Legal Centre in the *Bwanya* CC matter confirmed this situation and was accepted by the court.

still in large measure continues to be that in our patriarchal culture men find it easier than women to receive income and acquire property."[120] As the *Bwanya* court pointed out, women in dependence-inducing relationships are a vulnerable group, and "this vulnerable group is deserving of legal protection."[121] Indeed, in *Daniels* the court had stressed the constitutional requirement to provide such legal protection:

> The value of non-sexism is foundational to our Constitution and requires a hard look at the reality of the lives that women have been compelled to lead by law and legally-backed social practices. This, in turn, necessitates acknowledging the constitutional goal of achieving substantive equality between men and women.[122]

The attainment of substantive equality requires the law to respond to the lived realities of those who are disadvantaged and vulnerable because of their sex or gender.[123] If the law fails to provide adequate protection for those who have been left poor and dependent because of their relationship, then the law will discriminate unfairly against a group who are already disadvantaged, marginalised and vulnerable.[124]

Bonthuys has stressed the intersectional forms that discrimination and disadvantage may take and has warned that it would be inappropriate to focus only on one factor in an essentialist manner.[125] Failure to provide an appropriate legal remedy to those left destitute and vulnerable at the end of the relationship might constitute unfair discrimination on a number of intersecting grounds.[126] Some of the most vulnerable families are households headed by females who rely on remittances from migrant partners and we should be wary of subconsciously requiring families to live in forms that resemble the "traditional" common law marriage.[127] For historical and economic reasons, many of those who have entered into some form of life-partnership arrangement do not cohabit, but relationships of interdependence might arise in these circumstances too.[128] Relationship-induced dependence may also result from polygynous relationships.[129] The

120 *Bwanya* CC para 88 quoting from *Daniels v Campbell* 2004 5 SA 331 (CC) (hereafter *Daniels*) para 22.
121 *Bwanya* CC para 88.
122 *Daniels* para 22.
123 See the discussion of substantive equality in Albertyn 2007 *SAJHR*.
124 See *Daniels* para 22 as quoted in *Bwanya* CC para 88.
125 See the discussion in Bonthuys 2018 (2) *PELJ* 6-7.
126 The *Bwanya* CC judgment notes this, with specific attention to the vulnerabilities of those in the LGBTQ+ community (paras 86-87).
127 See Meyerson 2010 *CCR* 295 warning against "marriage centrism". Also see De Vos 2004 *SAJHR* 182-183.
128 See for example the discussion in Bonthuys 2018 (1) *PELJ* 6-7.
129 See Osman 2021 *SALJ* 532-534.

Bwanya court quoted from *Dawood* in recognising that "families come in many shapes and sizes"[130] and noted that "there is no question that all categories of families are definitely deserving of legal protection."[131]

6.4 How focus on the "assumption of reciprocal support duties" can be used as a signal that the court must respond to relationship-induced dependence

Both the ISA and MSSA seek to protect vulnerable family members who have incurred relationship dependence. In assessing whether a particular claimant is worthy of the law's protection, the focus should be on the history of the relationship that induced the dependence, so as to ensure that economically vulnerable partners are "not unfairly taken advantage of".[132] The sorts of factors that a court might examine as proving relationship-induced dependence in an intimate partnership could include factors similar to those listed in section 7(2) of the *Divorce Act*, particularly "duration of relationships, the birth and care of children, and financial dependence."[133]

The Constitutional Court ruling in *Bwanya* specially limited the MSSA claim to surviving partners who had "not received an equitable share in the deceased partner's estate."[134] This was perhaps unnecessary because a claimant under the MSSA must demonstrate need, and their resources and sources of income will be considered as part of this claim. The MSSA specifically provides that the court must consider "the existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage"[135] as well as "the standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse."[136] Like section 7(2) of the *Divorce Act*, the factors listed in section 3 of the MSSA track elements of relationship-induced disadvantage (for example, the duration of the relationship and the survivor's earning capacity).

A focus on these factors in the context of a broader focus on dependence and economic vulnerability should inform our understanding of the

130 *Bwanya* CC para 52 quoting from *Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs* 2000 3 SA 936 (CC) para 31.

131 *Bwanya* CC para 53.

132 This quotation is from Skweyiya J in *Volks* para 65, arguing that Parliament should pass legislation to prevent this outcome.

133 Bonthuys 2018 (1) *PELJ* 25.

134 Point 2 of the court's order in *Bwanya* CC para 95.

135 MSSA s 3(a).

136 MSSA s 3(b).

"undertaking" of reciprocal support. It is this reciprocal "undertaking" that has created the relationship-induced dependence. One partner has undertaken the nurturing work and has therefore become financially dependent. The law must provide redress and legal protection for those left economically vulnerable because of the roles they assumed in the reciprocal undertaking.

The Constitutional Court judgment in *Satchwell* demonstrated a reluctance to impose obligations on those who have not subjectively bound themselves to such obligations, and the ruling in *Bwanya* could be interpreted as requiring a similar contractual commitment.[137] It should be noted that when marriages are terminated by divorce, wealthier spouses cannot "opt out" of paying ongoing maintenance if the court deems it just to make a maintenance order in terms of section 7(2) of the *Divorce Act*. The court will examine the history of the relationship and the dependence that it has induced. Courts should have similar discretion in terms of the MSSA. If the law is to provide protection to vulnerable parties at the termination of the relationship, the law must provide redress because the relationship has induced dependence and disadvantage, and not because the economically advantaged party has subjectively bound themselves to not exploit their partner.[138]

7 Conclusion

The "protective rationale of family law"[139] buttressed by the constitutional goal of achieving substantive equality[140] requires that economically vulnerable dependent parties should not be left impoverished at the termination of dependence-inducing relationships. The use of the phrase "in which the partners undertook duties of reciprocal support" can best be understood as requiring investigation into the facts of the relationship to assess whether one of the parties has become economically vulnerable

137 See the discussion above. It should be noted that in his dissenting judgment, Japhta J stressed the importance of the *pacta sunt servanda* principle, and argued that the parties to an agreement may decide for themselves if they wish their reciprocal support arrangement to end (*Bwanya* CC para 172). He held that it would not be appropriate for the court to impose a duty on the deceased estate where the parties themselves had not subjectively agreed to an extension of the support duty beyond death – this "would amount to the imposition of the will of one party upon the other". Quoting from Ngcobo J *Volks* para 94.

138 See Meyerson 2010 *CCR* 297 for some discussion of this issue.

139 Meyerson 2010 *CCR* 312.

140 *Daniels* para 22.

because he or she has provided support in the form of care-work and has consequently become dependent on the other party's financial support.

The optimal way in which to interpret the requirement that the life-partners had undertaken reciprocal duties of support would be to focus on the claimant's needs and financial dependence and to assess how the law can provide protection and redress to those who have incurred relationship-induced dependence because of the particular form and nature of the reciprocal support provided in the intimate relationship. Such redress would be through use of the existing legislative machinery, the ISA, the MSSA extended to unmarried life-partners who have incurred relationship-induced support. The law must ensure that it furthers the constitutional goal of achieving substantive equality between men and women, while also acknowledging and responding to the intersectional forms that discrimination and disadvantage assume.

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Maintenance of Surviving Spouses Act 27 of 1990

List of Abbreviations

AJ	Acta Juridica
Ann Surv SA L	Annual Survey of South African Law
Can J Women & L	Canadian Journal of Women and the Law
CCR	Constitutional Court Review
IJLPF	International Journal of Law, Policy and the Family
ISA	Intestate Succession Act 81 of 1987
MSSA	Maintenance of Surviving Spouses Act 27 of 1990
PELJ	Potchefstroom Electronic Law Journal
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal
Stell LR	Stellenbosch Law Review
THRHR	Tydskrif vir die Hedendaagse Romeins-Hollandse Reg

TSAR	Tydskrif vir die Suid-Afrikaanse Reg
WLC	Women's Legal Centre