LRC
Legal Resources Centre

Ukulingana kumabhinqa antsundu kwimitshato yenkqubo endala

Ipapashwe yiLegal Resources Centre, Agasti 2021

Intshayelelo (cover page)

INkundla yoMgaqo-siseko iye yathi ukufumana umhlaba kungoyena ndoqo wokufumana namanye amalungelo akumgaqo-siseko. Oku kunjalo ngokukhethekileyo xa kufikelelwa ekufumaneni ilungelo lokulingana ngokuphathelele ipropati yomtshato.

Amabhinqa amaninzi ashiywa ekwimeko emaxongo ngokwezoqoqosho xa imitshato yawo ipheliswa kukufa okanye uqhawulo-mtshato. Le mpapasho ijoliswe kumabhinqa aye angena kwimitshato eqhelekileyo yaseAfrika ngaphambi kowe-1988 okanye imitshato yesintu ngaphambi kuka-2000.

Ibalaselisa utshintsho oluziswa ngumthetho okhusela amalungelo aloo mabhinqa anawo kwipropati yomtshato.

Ibiyintoni Ingxaki?

Imigudu yobukoloniyali nexesha lengcinezelo yathobela amabhinqa ekubeni ahlale ekumgangatho wabantwana, ahlalele ukuzithoba kuqala kootata bawo, abantakwawo aze azithobe kubayeni noonyana bawo. Oku kuye kwanegalelo eliqatha kumalungelo amabhinqa anawo kwipropati nokhuseleko lomhlaba.

Noko ke, oku akusenjalo ngenxa yokutshintsha komthetho okubangelwe yimiceli-mngeni yakutshanje kwezomthetho. Imiceli-mngeni emithathu ebekwe yiLegal Resources Centre kumatyala kaGumede, uRamuhovhi noSithole yacel' umngeni imithetho eyayicalula ibutho elithile lamabhinqa akhulileyo atshatileyo angama-Afrika ngenxa yohlanga, isini neminyaka yobudala.

AMABHINQA ACHAPHAZELEKAYO AKWIBUTHO LAMABHINQA ANGAMA-AFRIKA AWAZALWA, AKHULA AZA ATSHATA NGEXESHA LENGCINEZELO – ixesha apho imithetho yayiwathintela ukuba afumane inkululeko yokuhamba, imfundo nelungelo lokuba ngabanini bepropati.

La mabhinqa ayedla ngokujamelana nocalucalulo nkalo zonke yaye ayedla ngokushiywa esesichengeni xa imitshato yawo eqhelekileyo kunye naleyo ysintu iphela. Oku kuye kwanefuthe kwilungelo lawo lokuphathwa ngesidima, ukuba nendawo yokuhlala nokhuseleko lwawo. Imiceli-mngeni yezomthetho neRCMA Amendment Act esandul' ukupasiswa yipalamente iphelisa olu calucalulo.

IMithetho YeNkqubo Entsha: IRecognition of Customary Marriages Act 120 ka-1998

I-Recognition of Customary Marriages Act (RCMA) yamiselwa ngowama-2000 ukuze kulungiswe ukungabi nabulungisa okwakuthwelwe ngamabhinqa angama-Afrika kwixa elidluleyo. ICandelo 2 leRCMA liyawugqala umtshato ongumtshato osemthethweni ngokuvumelana nomthetho wesintu.

'UMTHETHO WESINTU' UCHAZWA "njengezithethe nokusetyenziswa ngokwemveli okwenziwa phakathi kwabantu abaNtsundu baseMzantsi Afrika neziyinxalenye yenkcubeko yabo bantu."

I-The RCMA ayipheleli nje ekugqaleni ngokusemthethweni imitshato yesintu kodwa ibethelela ukulingana namandla abayeni nabafazi babo kwimitshato yesintu. Ngenxa yoko, i-RCMA, iye yakuphelisa ukuba namandla komyeni ngaphezu kwenkosikazi yakhe yaza yavakalisa ukuba banesidima namandla alinganayo emtshatweni.

NOKO KE, AMALUNGISELELO ATHILE E-RCMA AYE AKHUTHAZA UCALUCALULO. ICANDELO 7 LE-RCMA LATHI:

(1) Imiphumo yawo umtshato wesintu ongenelwe ngaphambi kokuqalisa kwalo Mthetho iyaqhubeka ilawulwa ngumthetho wesintu.

(2) Umtshato wesintu ongenelwe emva kokuqalisa kwalo Mthetho apho iqabane lingengomlingane kuwo nawuphi omnye umtshato wesintu okhoyo, ngumtshato apho yonke into eninayo iyeyenu nobabini kuquka ingeniso nelahleko phakathi kwamaqabane, ngaphandle kokuba loo miphumo ngokukhethekileyo iye yasuswa liqabane kwisivumelwano somtshato esilawula inkqubo yepropati yomtshato wawo.

Oku kwakuthetha ukuba kwiimeko ezininzi imitshato eyayingenelwa ngokuqhelekileyo ngaphambi kokuqalisa kwe-RCMA yayisekelwe ekuthini izinto eninazo asizozenu nobabini.

Amabhinqa kwakufuneka eze nesicelo senkundla ukuze acele ukwahlulelana ngepropati xa umtshato uphela. Noko ke, uninzi lweli butho lamabhinqa lwalungenayo imali yokukhangela le nkqubo.

Amatyala Enkundla Okulwa Noku Kungabi Nabulungisa

ELIZABETH GUMEDE NXAMNYE NOMONGAMELI WERIPHABLIKI YOMZANTSI AFRIKA (2008)

UMnu noNkoskz Gumede bangenela umtshato wesintu ngowe-1968 KwaZulu-Natal. Ebudeni bokutshata kwabo, uNkoskz Gumede wayengaqeshwanga kodwa wayegcine ikhaya yaye engumnyamekeli oyintloko wabantwana. Ipropati yentsapho yathengwa nguMnu Gumede. Ngo-2003, uMnu Gumede waqhawula umtshato noNkoskz Gumede.

Njengoko abakwaGumede babetshate ngowe-1968, ngaphambi kokuqalisa kwe-RCMA, uNkoskz Gumede wachatshazelwa ngokuthe ngqo licandelo 7(1) le-RCMA elathi umtshato wakhe uya kulawulwa ngumthetho wesintu. KwaZulu-Natal, umthetho wesintu wenziwa ikhowudi kwiKwaZulu Act neNatal Code.

ICandelo 20 leKwaZulu Act necandelo 20 leNatal Code lathi intloko-ntsapho, umyeni ngumnini wayo yonke ipropati yentsapho, yaye umfazi akanabango kwipropati ebudeni bomtshato okanye xa kuphele umtshato.

Ukongezelela, icandelo 22 lethe Natal Code lalungiselela ukuba “abahlali” bomzi ngokuphathelele imiba yentsapho babengaphatsi kolawulo lwentloko-ntsapho abamele bonke “bazithobe kuyo.”

I-LRC YAFAKA ISICELO EGAMENI LIKANKOSKZ GUMEDE ICEL’ UMNGENI UKUFANELEKA NGOKOMGAQO SISEKO KWECANDELO 7 LE-RCMA, imi ngelithi uNkoskz Gumede uye wacalulwa ngokungenabulungisa ngokungakwazi ukufumana nokungakwazi ukulawula ipropati yentsapho kuba loo nto imshiye esesichengeni yaye engenakhaya ebudaleni ngoxa ebetshatile nasemva kokuba uphelile umtshato wakhe wesintu. Isicelo eyasifaka kwiNkundla Ephakamileyo sakhatywa ngurhulumente.

Urhulumente yena wayemi ngelithi isicelo sabo basingxamele ngenxa yokuba inkundla yoqhawulo-mtshato inegunya, ngaphantsi kwecandelo 8(4)(a) le-RCMA, lokuthatha ipropati kwelinye iqabane iyinike elinye ukuba ubulungisa nokulingana kunyanzelisa njalo

NOKO KE, INKUNDLA YAFUMANISA UKUBA UKUKWAZI UKUMELA UKWABIWA KWEPROPATI XA KUQHAWULWA UMTSHATO AKULUTHETHELELI UCALUCALULO NGOKWESINI OLUNGENABULUNGISA, ngenxa yokuba akukulungisi ukucalulwa kwamabhinqa ngoxa etshatile, yaye le ndoda nebhinqa abalingani, ngokuphathelele ipropati, kwinkundla yoqhawulo-mtshato. Loo nto yayiya kuthetha ukuba onke amabhinqa akwimeko efana nekaNkoskz Gumede ebeya kunyanzeleka ukuba anyamezele amadabi angenalusini, abiza imali eninzi namade oqhawulo-mtshato ukuze afumane ipropati – ngaphandle kokufumana inzuzo yokuba izinto zamaqabane awo ibe zezawo.

INkundla yoMgaqo-siseko yaqinisekisa ukuba iCandelo 7 leRCMA liyacalucalula ngokwesini, ngenxa yokuba ngamabhinqa kuphela angamaxhoba eziphumo zemithetho enokungalingani. Umphumo wolo calucalulo wawukukuba uNkoskz Gumede namabhinqa akwimeko efana neyakhe ayegqalwa njengangakulungelanga ukuba neepropati aze azilawule yaye ngaloo ndlela aye abekelwa bucala kumsebenzi woqoqosho oyinzuzo.

Inkundla yafumanisa ukuba inkqubo yamalungelo omtshato phantsi komthetho wesintu ebudeni bobukho bomtshato njengoko ifakwe kwikhowudi yeNatal Code neKwaZulu Act ayihambisani nezizinyanzeliso zoMgaqo-siseko. Ubunganga bamadoda, nokubekelwa bucala komfazi kubunini okanye ukulawulwa kwepropati yentsapho kuyamthoba kuze kumbeke esichengeni umfazi.

Inkundla yavakalisa ukuba iCandelo 7(1) leRCMA njengelikhabanayo noMgaqo-siseko nelingekho mthethweni ukusa kumkhamo wokuba amalungiselelo alo anxulumene nemitshato yesintu enamaqabane ngamanye kuphela. Yaphinda yavakalisa amacandelo ahambisana nalo eKwaZulu Act neNatal Code of Zulu law njengangahambisaniyo noMgaqo-siseko nangekho mthethweni.

URAMUHOVHI NABANYE NXAMNYE NOMONGAMELI WERIPHABLIKI YOMZANTSI AFRIKA (2017)

KuRamuhovhi, iLRC yayimele uNkoskz Thokozani Maphumulo – ummangali ongenelelayo owayengumfazi wesibini kumtshato wesintu wesithembu ngaphambi kwe-RCMA.

UNkoskz Maphumulo wayejongene nokukhutshwa emzini wakhe emva kokusweleka komyeni wakhe kuba umyeni wakhe wayebhale ukuba izinto zakhe ze zinikwe unyana wakhe omkhulu kumfazi wakhe wokuqala – ezi zinto zaziquka indlu uNkoskz Maphumulo awayehlala kuyo kangangeminyaka emininzi eyayibhaliswe ngegama lomyeni wakhe.

Ngoku iNkundla yoMgaqo-siseko yavakalisa icandelo 7(1) le-RCMA lingahambisani noMgaqo-siseko njengoko lisetyenziswa kwimitshato yesintu yesithembu kodwa yasibekela ecaleni isindululo sokungabikho mthethweni kangangeenyanga ezingama-24 ekwathi ngazo iPalamente yanikwa ithuba lokulungisa umthetho

NGELI THUBA LOKUBEKELWA BUCALA, KWAKHUTSHWA LO MYALELO ULANDELAYO:

(a) Abafazi namadoda baya kuba ngabanini ababambiseneyo nabalinganayo namanye amalungelo kunye namanye amalungelo ngokubambisana nalinganayo okuphatha nokulawula ipropati yomtshato, yaye la malungelo aya kuqheliselwa ngale ndlela ilandelayo:

(i) ngokunxulumene nayo yonke ipropati eyindlu, ngomyeni nomfazi wendlu ebandakanyekileyo, ngokubambisana yaye nangeminqweno emihle yendlu yentsapho ebunjwa yindlu ebandakanyekileyo; kunye

(ii) ngokunxulumene nayo yonke ipropati yentsapho, ngomyeni nabo bonke abafazi ngokubambisana yaye nangeminqweno emihle yayo yonke intsapho ebunjwa zizindlu ezahlukeneyo.

(b) Iqabane ngalinye linelungelo elikhethekileyo kwipropati yakhe.

NGELOKUTHIBAZA IFUTHE LALO MYALELO KWABANYE ABANTU ABABANDAKANYEKILEYO, umyalelo wokungabi semthethweni awukwenzi kungabikho mthethweni ukutshintshwa kwezinto zomntu oswelekileyo eziye zachazwa kwilifa okanye ukudluliselwa kwepropati yomtshato, ngaphandle kokuba lowo uyidluliselweyo ebesazi ukuba ipropati ekuthethwa ngayo ibicelwe umngeni ngokwezomthetho.

IMEKO ZIKANKOSKZ MAPHUMULO ZAZINGAHLUKANGA.

Zininzi iimeko apho kuye kwasweleka umyeni womtshato wesintu ongaphambi kwe-RCMA waza umfazi omnye okanye abangakumbi “wagxothwa” waza wavalelwa ukuba azuze kwizinto aye, njengoNkoskz Maphumulo - wanegalelo ekuzakheni kunye neqabane lakhe ebudeni beminyaka yokutshata kwabo. INkundla yoMgaqo-siseko kunye ne-RCMA Amendment Act echazwe kwiphepha 6 lale mpapasho, izama ukuchaza apho imi khona.

Ucalucalulo Kwimitshato Eqhelekileyo Yama-Afrika

Amabhinqa aNtsundu atshate ngaphambi kowe-1988 ngaphantsi komthetho oqhelekileyo ngenxa yemithetho yexesha lengcinezelo, i-Black Administration Act 38 of 1927 (BAA).

Lo Mthetho wachaza ukuba imeko eqhelekileyo yemitshato phakathi kwezibini eziNtsundu wawubonisa ukuba izinto zomntu otshate naye asizozakho. Nakuba yashenxswayo i-BAA, ifuthe layo elimandla kubomi bamabhinqa laqhubeka likho kwiMatrimonial Property Act de ukucel' umngeni kukaNkoskz Sithole kwayilugisa le meko ekugqibeleni ngo-2021.

UAGNES SITHOLE NEKOMISHONI YOKULINGANA NGOKWESINI NXAMNYE NOGIDEON SITHOLE (2021)

Kwityala likaSithole, i-LRC yamela umfazi ongasebenziyo oneminyaka engama-72, uNkoskz Sithole owayetshate nomyeni wakhe ngowe-1972 ngokuvumelana neBlack Administration Act. Imeko eqhelekileyo ngaphantsi kwe-BAA yayikukuba izinto elinazo elinye iqabane asizozenu nobabini. Le nto yayisebenza kwizibini eziNtsundu kuphela.

Ngowe-1988 i-Matrimonial Property Act yayishenxisa le nxalenye ye-BAA yaza yafaka icandelo elahlukileyo elijongene nemitshato yabaNtsundu. Yayivumea izibini eziNtsundu ezazitshate phantsi kwemeko yokuba izinto elinazo elinye iqabane asizozenu nobabini ukuba zibe nethuba lokutshintsha imo yazo yomtshato kwisithuba seminyaka emibini ukususela ngowe-1988.

Zazimele zikwenze oku ngesivumelwano esibhaliweyo ubuncinane ngaphambi kowe-1990. Amabhinqa ayengayazi into yokuba anokukwazi ukutshintsha imeeko yawo yomtshato, okanye ukuba,okanye ukuba ayekwenza oko, kwakukho imiqobo eyahlukeneyo eyayiwathintela ukuba enze oko. Kwezinye iintlanga, iimeko eqhelekileyo yomtshato ezaziyifumana ngokuzenzekelayo kukuba izinto zelinye iqabane zezenu nobabini.

KWIMEKO KANKOSKZ SITHOLE, wayikhulisa intsapho yakhe waza wasebenzisa yonke imali yakhe yokuthengisa impahla ukuze ahlawulele imfundo yabantwana bakhe. Umiyeni wakhe wayithenga yedwa indlu eyayihlala kuyo le ntsapho, yaza yabhaliswa ngegama lalo myeni.

UNkoskz Sithole njengamanye amabhinqa amaninzi akazange ayitshintshe imo yakhe yomtshato emva kowe-1988, ngoko yahlala kwimo yokuba izinto zelinye iqabane asizozenu nobabini. Wathi xa uqhawulwa umtshato, umyeni wakhe wasongela ngokuthengisa indlu yentsapho. UNkoskz Sithole wayesesichengeni sokungabi nandlu ukuba inkundla yayingenelelanga.

INkundla yoMgaqo-siseko yavakalisa icandelo 21(2)(a) leMatrimonial Property Act lichasene nomgaqo-siseko yaye lingekho mthethweni njengoko likhuthaza ucalucalulo oluyilwe yi-BAA. Inkundla yayalela ukuba yonke imitshato yabantu abaNtsundu esekelwe ekuthini izinto zelinye iqabane asizozenu nobabini yangaphambi kotshintsho lowe-1988 ngokuzenzekelayo itshintshele ekuthini izinto zelinye iqabane zezenu nobabini.

Kuqikelelwa ukuba amalunga **NAMA-400 000 AMABHINQA AKWIMEKO EFANAYO** nekaNkoskz Sithole.

Ukutshintshwa kweRCMA

NgoMeyi 2021, iRecognition of Customary Marriages Amendment Act yaqalisa ngaloo ndlela ibangela kubekho imiyalelo kaGumede noRamuhovhi.

LO MTHETHO ULITSHINTSHA NGALE NDLELA ILANDELAYO ICANDELO 7 LE-RCMA:

(a) Imiphumo yobukho bomtshato wesintu apho umntu eliqabane kumtshato wesintu ongaphezu komnye, nowangenelwa ngaphambi kokuqalisa kwalo Mthetho ithi amaqabane kuloo mtshato amele asebenze kunye yaye ayalingana

(i) Ngokobunini namanye amalungelo; kunye
(ii) Namalungelo okulawula nokuphatha, ipropati yomtshato.

(b) Amalungelo abhalwe kwisiqendu (a) amele aqheliselwe

(i) ngokunxulumene nayo yonke ipropati eyindlu, ngomyeni nomfazi wendlu ebandakanyekileyo, ngokubambisana yaye nangeminqweno emihle yendlu yentsapho ebunjwa yindlu ebandakanyekileyo; kunye

(ii) ngokunxulumene nayo yonke ipropati yentsapho, ngomyeni nabo bonke abafazi ngokubambisana yaye nangeminqweno emihle yayo yonke intsapho ebunjwa zizindlu ezahlukeneyo.

(c) Iqabane ngalinye linelungelo elikhethekileyo kwipropati yakhe.

(d) Ngenjongo yeli candelo lingaphantsi amabinzana “ipropati yomtshato”, “ipropati yendlu”, “ipropati yentsapho” kunye “nepropati yentsapho” anentsingiselo ayinikiweyo kumthetho wesintu.

KANTI LO MTHETHO USUSA AMAGAMA ATHI "ONGENELWE EMVA KOKUQALISA KWALO MTHETHO" KWICANDELO 7(2) LE-RCMA UKUZE NGOKU AFUNDEKE NGOLU HLOBO:

Umtshato wesintu apho iqabane lingenomlingane kuwo nawuphi na omnye omnye umtshato wesintu okhoyo, ngumtshato apho yonke into eninayo iyeyenu nobabini kuquka ingeniso nelahleko phakathi kwamaqabane, ngaphandle kokuba loo miphumo ngokukhethekileyo iye yasuswa ngamaqabane kwisivumelwano somtshato esilawula inkqubo yepropati yomtshato wawo.

La malungiselelo angasentla awakwenzi kungabi semthethweni ukutshintshwa kwezinto zomntu oswelekileyo eziye zachazwa kwilifa okanye ukudluliselwa kwepropati yomtshato okuye kwenzeka ngaphambi kokuqalisa kweAmendment Act (logama nje lomntu iza kudluliselwa kuye ipropati yomtshato engazi ukuba ipropati yomtshato icelwa umngeni ngokwezomthetho).

Athetha Ukuthini La Matyala?

EMzantsi Afrika, ukudibana kohlanga, isini, umgangatho nenkqubo yocalucalulo kuphumela ekufikeleleni ngokwahlukeneyo kwipropati, iiaseti nokhuseleko. Into ethi izinto zelinye iqabane zezenu nobabini ivula ithuba lokulunga kwezinto nokulingana namabhinqa okunesihlahla.

Ukufumana umhlaba nepropati kubalulekile ukuze kukhuselwe inkululeko yezoqoqosho, iziko elinye namandla okuzithemba.

La matyala mathathu edibene aye aqinisekisa amabhinqa aNtsundu ukuba izinto zelinye iqabane zezenu nobabini, yomeleza ilungelo analo lokukhuselwa komhlaba wawo nenkululeko yezoqoqosho ngokuqinisekisa ukuba umyeni nomfazi/abafazi bakhe kwimitshato yenkqubo yakudala eneqabane elinye okanye amaninzi babelana ngokulinganayo ngelungelo lobunini namanye amalungelo kwipropati yentsapho nepropati yendlu.

Imibuzo Edla Ngokubuzwa

01

Ndanditshate ngaphambi kowe-1988 ngaphantsi kweBlack Administration Act yaye andizange ndiyitshintshe imo yomtshato wam. Kuya kwenzeka ntoni kumzi wethu xa mna nomyeni wam sinokuqhawula umtshato okanye asweleke?

Ukususela ngo-2021, imitshato engaphantsi kwe-BAA isekelwe kwinto ethi izinto zelinye iqabane zezenu nobabini, nto leyo ethetha ukuba ngamnye kuni ninomyeni wakho ungumnini we-50% wekhaya lenu, kwakunye nayo nayiphi na enye ipropati. Oku kuquka iimoto, izinto zendlu, nkqu nemali yomhlala-phantsi. Ukuba wena nomyeni wakho niqhawula umtshato, uya kukwazi ukufumana i-50%, okanye isiqingatha sekhaya, kwakunye nayo nayiphi na enye ipropati eninayo nobabini.

02

Ndandikumtshato wesintu, kodwa wawungabhaliswanga. Ngaba ndisenalo ilungelo kwipropati ebhaliswe ngegama lomyeni wam xa sinokuqhawula umtshato?

Ewe, imitshato yesintu engabhaliswanga iyagqalwa ngumthetho. Ukuba ubutshate ngokuvumelana nomthetho wesintu ngokuzenzekelayo umtshato wakho usekelwe ekuthini izinto zelinye iqabane zezenu nobabini ngaphandle kokuba uye wangena kwisivumelwano somtshato esikubekela ecaleni ukuba izinto zelinye iqabane zezenu nobabini. Oku kuthetha ukuba unelungelo lokufumana isiqingatha sepropati yomtshato, kwanokuba ibhaliswe ngegama lomyeni wakho.

03

Abantwana bomyeni wam bomtshato wakhe wangaphambili bazama ukundikhupha endlini yam, ndingenza ntoni?

Akakho umntu omele akhutshwe endlini ngaphandle komyalelo wenkundla. Ukuba ubungomnye wabafazi abaliqela kumtshato wesintu wesithembu yaye ubuhlala kwindlu eyahlukileyo kunye nomyeni wakho nentsapho yakho, unelungelo lokufumana isiqingatha sendlu yakho, yaye awunakukhutshwa. Ipropati yendlu inokusetyenziselwa eyona nzuzo ibalulekileyo yentsapho. Cela iingcebiso zomthetho ukuba ufumana nawaphi na amaxwebhu asenkundleni asongela ngokukukhupha endlini yakho.

Abaqhagamshelwa Abaluncedo

Ukuba uwela kulo naluphi na kwezi zintlu zingentla, yaye ucinga ukuba uphathwa ngokungenabulungisa, **ngezantsi kukho abaqhagamshelwa onokuthetha nabo ukuze bakuncede**.

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