

04 November 2022

NO MARRIAGE – NO DIVORCE

In the case of Botha v Steyn (13326/2014) [2021] ZAKZDHC 23 Ms. Botha and Mr. Steyn, both South Africans, held a marriage ceremony in London, England in 2007 for all their friends and family. At the end of 2009 Ms. Botha applied for a decree of divorce. However, Mr. Steyn contested that they were not legally married.

To comply with the UK laws for a valid marriage, the marriage must be registered and a non-religious marriage must be signed in the presence of a registrar, or the couple has to attend to the publication of notices for a religious marriage. The parties did not comply with any of the aforementioned formalities, and therefore it was found that the ceremony did not result in a valid and binding marriage.

The court held that where there is no valid marriage to begin with, there are no grounds for an application for divorce and no protection and consequences in terms of the Marriage Act can be relied upon.

One must always ensure that the correct marital status is captured on any agreement