

# Quest for women's access to equal justice



## Analysis

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WHEN Virginia Sarrahwitz bought a house in 2002, it was more than an investment. It was a safe haven for herself, her daughter and granddaughter. But what should have been a joyous occasion was instead the start of a long fight for property rights, a fight that lasted three years, only ending in June this year.

Her story is a timely reminder this Women's Month, that equality is only made real when women have equal access to justice. Women are more vulnerable to having their rights violated and are often marginalised when attempting to access these rights. According to UN Women, eight in 10 women worldwide do not have access to their country's formal justice system.

Traditionally, women in South Africa were denied access to property rights under customary law as they were generally regarded as legal minors under the guardianship of their father, husband or brother.

Although women's rights to equality and property rights have been protected by the Constitution since 1996, many women still face social and legal obstacles accessing and using property.

Many of the cases handled by Legal Aid South Africa's Civil and Impact Litigation units reflect this struggle. This is one of the many reasons we work to strengthen the legal status of women through lobbying and influencing legislative policy, to ensure they receive equal protection under the legal system.

Legal Aid seeks out high impact cases – such as Virginia Sarrahwitz's – that can set the groundwork to help many marginalised groups by impacting the community at large.

Sarrahwitz's story started in September 2002 when she borrowed R40 000 from her employer to buy a home. Two years passed without the transfer of the property. The delay, she discovered, was due to R2 800 unpaid municipal rates. She paid the account but discovered that the money was allocated to one of the seller's other accounts.



**PERSISTENT STRUGGLES:** Women still face obstacles to acquiring and utilising property despite their rights being recognised and protected by the Constitution. PICTURE: SHUTTERSTOCK

Worse, when the seller's estate was sequestrated, the house formed part of the estate in terms of common law. So the trustee refused to sign over the property to her.

With legal representation, Sarrahwitz approached the Eastern Cape High Court to force the trustee to register the property in her name in terms of sections 21 and 22 of the Land Act. However, the court found that it was common law and not the Land Act that regulated the transfer of property. It held that a purchaser who had paid full price for a residential property was not entitled to have it transferred to her. The application was dismissed with costs.

Frustrated, Sarrahwitz approached Legal Aid's Impact Litigation unit, which took the case to the Supreme Court of Appeal. When the court ruled her prospects of success were low, she took the matter to the Constitutional Court.

There we argued that common law was inconsistent with the Constitution and violated her right of access to adequate housing, right to dignity and the right to equality.

Sarrahwitz held the Alienation of the Land Act had been enacted to protect instalment property buyers but did not provide protection for vulnerable buyers who had paid full purchase price. The court found that this was indeed an inconsistency, was unconstitutional and therefore invalid. After 13 years of legal battles, Sarrahwitz eventually became the proud owner of her property.

Lorraine Sophie Botha's case is another example of the unit's commitment to protect the rights of the vulnerable. In November 2003 Botha entered into a contract with a trust to purchase a property for R240 000, payable in R4 000 monthly instalments.

In March 2009 the trust brought an application to cancel the contract and evict Botha from the property from which she operated her small business. She was in R40 000 arrears and was in breach of the contract.

The Impact Litigation unit funded the case at the Constitutional Court to test the provisions of the Alienation of Land Act 68 of 1981 against the values of the Constitution. The court found that Botha was entitled to the

## Key points

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transfer; helping her secure her business.

Access to legal aid in family law matters is a key component to achieving women's equality in South Africa. Women are usually the most affected groups in civil conflicts such as divorce and land disputes.

A Community Agency for Social Enquiry 2011 report found that women are often evicted when their marriages break down or end; divorced or widowed women are often unwelcome and sent away when they return to their natal homes; single women in particular struggle to access residential land and married women are treated as not worthy of having land or property rights.

Civil legal matters are a priority in realising everyone's human rights.

When Sarrahwitz finally registered the Booysen's Park house in her name in June 2015, she had a single thought: "It's been a long road. I am happy it is at an end."

For Legal Aid South Africa, it's a road we're willing to take every day to protect the rights of South Africa's most vulnerable.

This is Women's Month – we need to acknowledge that real equality cannot be realised without equal access to justice. Mpho Phasha is communications executive for Legal Aid South Africa. Follow Legal Aid on Twitter @LegalAidSAI or visit [www.legal-aid.co.za](http://www.legal-aid.co.za)