IKOMISHONI YOKWENZA INGUQU KWIMITHETHO YASEMZANTSI-AFRIKA: IPHEPHA 35: IPHULO 144: KUPHONONONGWA UKUBA KUNOKWENZEKA NA IDITYANISWE IBE NGUMTHETHO OMNYE WEPALAMENTE IMITHETHO ENGOMTSHATO: IMIBUZO

A. Imibuzo malunga nokuba kunokwenzeka na kubekho umthetho omnye odibanisa yonke imithetho engomtshato okanye engabantu abathandanayo

1.46 Ngeminyaka yoo-1990 iKomishoni Yokwenza iNguqu kwiMithetho yaseMzantsi-Afrika (iKomishoni) yaqwalasela into yokuba kuyafuneka ngokwesiqendu 30 nesama-31 soMqulu wamaLungelo ukuba idityaniswe ndawonye imithetho yepalamente engomtshato. Ukuba amalungelo asisiseko ayefunisa ukuba imithetho yepalamente yahlukane ngelo xesha, abathumeli-zimvo bacinga ukuba yintoni etshintshileyo ngoku?[1]

1.47 Ngaba uMzantsi-Afrika kufuneka uqhubeke unemithetho engafaniyo yeentlobo ezingafaniyo zemitshato?

1.48 Buhle buni nabubi buni obunokubakho xa unokuba mnye umthetho wepalamente odibanisa yonke eminye imithetho ochaza iimfuneko ezifanayo kuzo zonke iintlobo zemitshato?

1.49 Buhle buni nabubi buni obunokubakho xa kunokubakho umthetho wepalamente omnye oqulethe zonke iimfuneko ezingafaniyo zayo yonke imitshato?

1.50 Ukuba uthi ubekho umthetho wepalamente odibanisa yonke okanye oqulethe yonke, ngaba loo mthetho mawuqulathe imitshato kuphela kuze kubekho omnye umthetho osecaleni oqulethe abathandanayo, okanye loo mthetho mawuqulathe kokubini abatshatileyo nabathandanayo? Kuya kuba nabuhle buni nabubi buni ukwenza ngenye yezi ndlela?

1.51 Ukuba kuthi kubekho umthetho wepalamente odibanisa yonke okanye oqulethe yonke, ngaba kufuneka uxele kuphela iimfuneko zemitshato esemthethweni nezabathandanayo, okanye kufuneka uxele neziphumo ezingokomthetho zokuthandana kwabo bantu ezisebenza ngalo lonke ixesha besathandana neziphumo zaxa besahlukana? Kuya kuba nabuhle buni nabubi buni ukwenza ngenye yezi ndlela?

B. Imibuzo ngokuchazwa kwegama elithi umtshato

2.3 Umthetho wepalamente ocetywayo mawulichaze njani igama elithi umtshato?

2.4 I*Recognition of Customary Marriages Act* (uMthetho Wokwamkelwa Kwemitshato Yesintu) uvumela isithembu, noMthetho Oyilwayo Wemitshato YamaMuslim uyasivumela isithembu. Ngaba umthetho ocetywayo wepalamenye kufuneka usivumele isithembu, ukuba kunjalo, njani?

2.5 Kukuthandana okunjani okunokuthi kwenze ukuba abo bathandanayo nabo bakhuselwe ngumthetho ngokomthetho wepalamente oqulethe yonke eminye?

C. Imibuzo engemvume nokukulungela ukutshata

2.17 Ngaba umqathango ofunwa yimithetho engaqingqwanga yipalamente nomqathango

[1] Amanani eziqendu alapha anto-nye namanani eziqendu akwiPhepha 35.

ofunwa ngumthetho wepalamente osetyenziselwa ukuqonda ukuba umntu ukulungele na ukutshata ofunisa ukuba bobabini abatshatayo babe ndawonye xa kubotshwa iqhina lomtshato, ngaba loo mthetho wanele okanye kukho imfuneko yokuba kwenziwe inguqu kumthetho waseMzantsi-Afrika?

2.18 Ngaba abathumeli-zimvo babona efanele avunyelwe ummeli othunyiweyo ukuba amele otshatayo emtshatweni?

2.19 Ngaba iyaxhaswa na into yokuba kuqulunqwe imithetho yepalamente enik' ingqalelo eyaneleyo ngokuzimela nokunik' imvume ekuthathweni kwezigqibo ngomtshato?

2.20 Ngaba umthetho wepalamente ocetywayo kufuneka ufune ngokuthe ngqo ukuba abatshatayo babe bayaphila ngokwasengqondweni ukuze bangenele umtshato njengoko ifuna ngolo hlobo *iMarriage Act* (uMthetho woMtshato) yaseAustralia?

2.21 Ngaba kufuneka imvume yomfazi wokuqala xa indoda ifuna ukuthatha umfazi wesibini?

D. Imibuzo ngeyona minyaka yobudala iphantsi anokutshata xa ekuyo umntu

2.28 Ngaba abachaphazelekayo bayavuma na ukuba ukungafani kwe*Marriage Act* ne*Recognition of Marriages Act* ne*Civil Union Act* malunga neminyaka yobudala ephantsi anokuthi atshate xa ekuyo umntu, kufuneka kulungiswe?

2.29 Ngaba abathumeli-zimvo bayayivuma into yokuba uMzantsi-Afrika unyanzelekile ukuba wenze okufunwa zizivumelwano zamazwe ngamazwe nezengingqi ngaphandle kokuba kuqingqwe unyaka wobudala ofanayo oli-18 kuzo zonke iimeko ukuze kufumaneke imvume evela kubazali, kwiinkundla, okanye nakweliphi na igosa ngenjongo yokuthintela ukutshatiswa kwabantwana okanye ukuthandana kwabo?

E. Imibuzo ngokukhutshwa kwesaziso okanye ngeemfuneko zephepha-mvume lomtshato

2.32 Ngaba abathumeli-zimvo bayavumelana nokuba kuphindwe kukhutshwe isaziso, kukhutshwe namaphepha-mvume omtshato eMzantsi-Afrika?

2.33 Ngaba abathumeli-zimvo bacinga ukuba ukukhutshwa kwesaziso okanye ukukhutshwa kwephepha-mvume lomtshato kuza kuncedisa ekubeni urhulumehte abe nelizwi ekubotshweni kweqhina lemitshato?

2.34 Ukuba impendulo ngu-ewe, makubhalwe ntoni kwisaziso eso?

F. Imibuzo ngendima yabatshatisi

2.41 Siqaphela ukuba i*Marriage Act* neminye imithetho yepalamente ithetha ngamagosa malunga nokubotshwa kwamaqhina emitshato. Ngaba abathumeli-zimvo bayakuxhasa ukubandakanyeka kwabatshatisi namanye amagosa ekubotshweni kwemitshato nasekubhalisweni kwazo zonke iintlobo zemitshato?

2.42 Ukuba abathumeli-zimvo bayakuxhasa ukubandakanyeka kwabatshatisi, mazithini iimfuneko zokubandakanyeka kwabo?

2.43 Ukuba abatshatisi basafanele babandakanyeke ekubotshweni kwamaqhina omtshato, mawube yintoni umsebenzi wabo: kukuwubhalisa umtshato, kukuncedisa ekubhalisweni kwawo okanye kukwenza nantoni na enye enika ubungqina bokuba kutshatiwe ngenjongo yokuba waziwe emthethweni?

G. Imibuzo ngokubhaliswa komtshato

2.63 Sitshilo apha ngentla ukuba iSebe leMicimbi Yasekhaya liyakuxhasa ukubhaliswa kwayo yonke imitshato. Ngaba abathumeli-zimvo bayakuxhasa ukubhaliswa kwemitshato?

2.64 Ngaba ukungawubhalisi umtshato kumele kuwenze ube ngophuthileyo?

2.65 Ukuba umtshato usengaba semthethweni nangona ungabhaliswanga, ngaba kumele kubekho iindlela ezizezinye zokungqina ubukho bawo? Makube zeziphi ezo ndlela?

2.66 Ngaba kumele kube yimfuneko ukuba umtshato ubhaliswe ngabo bobabini abatshatayo, okanye unokubhaliswa ngomnye wabo? Ukuba unokubhaliswa ngomnye wabo, yingcombolo ethini neenkqubo ezinjani ezinokufuneka ukuthintela ukubhaliswa kwemitshato engekhoyo?

2.67 Ngaba abatshatileyo kufanele bavumeleke ukuwubhalisa umtshato wabo nanini na emva kokuba betshatile? Buhle buni nabubi buni obunokubakho ekuvumeleni ukubhaliswa nangaliphi na ixesha ngaphambi kokuba uphele umtshato?

2.68 Ngaba abathandanayo bamele babhaliswe ukuze babe namalungelo angokomthetho, okanye ukubhalisa kumele kube kokokuvelisa nje ubungqina bokuba ngenene bayathandana? Okanye makungabi yomfuneko konke-konke ukubhalisa kwabathandanayo?

2.69 Ukuba abathandanayo bamele babhaliswe, ngcombolo ni emayifuneke yaye kungaba yeyiphi eyona ndlela yokubhalisa elungileyo?

2.70 Ukuba ukubhaliswa kwabathandanayo kwenzelwa nje ukuvelisa ubungqina bokuba ngenene bayathandana, zeziphi ezinye iindlela emazibekho zokungqina ukuthandana kwabo, kwaye bungqina buni omabuthathwe njengobungqina obububo bokuthandana kwabo?

2.71 Ngaba zikho ezinye izinto malunga nokubhaliswa kwemitshato abathumeli-zimvo abanqwenela ukuzivelisa ezifuna ukuqwalaselwa ngokubhekele phaya?

H. Imibuzo ngemisitho yemitshato nangendlela emiselweyo okanye evunyiweyo yokutshata

2.77 Kwisicelo seSebe leMicimbi Yasekhaya sokuba kwenziwe olu phononongo kuthiwa urhulumente akamele abe nomdla kwindlela eziqhutywa ngayo izithethe ezingokonqulo okanye ezingokwenkcubeko kumsitho womtshato. I*Marriage Act* ne*Civil Union Act* zixela iindlela emazisetyenziswe xa kuqhutywa imisitho ethile yomtshato. Ngaba niyavuma bathumeli-zimvo? Ukuba anivumi, anivumi ngasizathu sini?

2.78 Ngaba abathumeli-zimvo bacinga ukuba ukuba nendlela emiselweyo yokutshata kuyancedisa ekuwenzeni umtshato ube ngoluqilima emthethweni, ukuba kunjalo, njani?

I. Imibuzo ngeziphumo zomtshato

2.86 Ukuba iyaxhaswa eyokuba kubekho umthetho wepalamente omnye okanye oqulethe yonke eminye, mawuthini loo mthetho malunga nempahla yasemtshatweni, kwaye uza kuyichaphazela njani imithetho yepalamente ekhoyo?

2.87 Zithini iimbono zabathumeli-zimvo malunga nokuba iziphumo zayo yonke imitshato nezokuthandana kwabantu zilawulwe ngumthetho wepalamente omnye womtshato okanye ngumthetho wepalamente oqulethe yonke eminye?

2.88 Abathumeli-zimvo bacelwa ukuba baphinde kwakhona babonise ukuba zikho kusini na ezinye izinto malunga nempahla yasemtshatweni emaziqwalaselwe yiKomishoni.

J. Imibuzo ngokondla iqabane lomtshato

2.100 Kwixesha elidlulileyo kuye kwamemelelwa ukuba kondliwe iqabane nakwiimeko apho kungekho mtshato usemthethweni kube kungekho nto inyanzelisayo evela emthethweni ethi makukhutshwe isondlo. Ngaba umthetho kufuneka ukwenze kube luxanduva ngokomthetho wepalamente ukuba omnye ondle omnye kubantu abangatshatanga?

2.101 Ngaba uxanduva lokondla kufuneka lunabele nakwiimeko apho omnye wabathandanayo ekwathandana nomnye okanye ethandana nomntu otshatileyo? IKomishoni iza kwenza ngako konke ukuba izimvo zabathumeli-zimvo ziqwalaselwe xa kuphononongwa, noba kuqwalaselwa ngokutsha umbandela wesondlo okanye umthetho ongempahla yasemtshatweni.

K. Umbuzo ngezivumelwano zangaphambi komtshato nokusebenzisa kwenkundla okwayo ukuqonda ekukhupheni imiyalelo enobulungisa

2.107 Ngaba umthetho wepalamente omnye umele uthethe ngokubotshwa kwezivumelwano zangaphambi komtshato, uthethe nangokubhaliswa kwazo nangokunyanzeliswa kwazo?

L. Umbuzo ngokupheliswa kwekhonkco labathandanayo kungayiwanga nkundleni nokusonjululwa kweembambano ngeendlela ezizezinye kwimicimbi yemizi

2.114 Njengoko iKomishoni iqhuba uphononongo olujoliswe ekusombululweni kweembambano, kucacile ukuba iKomishoni le akufuneki iphinda-phinde ukwenza into enye kwimizamo yayo, koko kufuneka ibusebenzise ubuncwane bayo ngeyona ndlela eya kuba luncedo. Ukuba abathumeli-zimvo banezimvo malunga nendlela anokusetyenziswa ngayo amacebo okusombulula iimbambano ekusombululeni iimbambano zemizi, bacelwa ukuba bathumele izimvo zabo kwiKomishoni ukuze ziqwalaselwe njengenxalenye yolunye uphononongo olusele luqhutywa yiKomishoni. Izimvo ziya kuqwalaselwa kolo phononongo.

M. Imibuzo ngemitshato ekhoyo

2.120 Abathumeli-zimvo bayacelwa ukuba bacebise ukuba yeyiphi eyona ndlela yokuthintela ukubotshwa kwemitshato engekhoyo nendlela yokuqubisana nayo emva kokuba ibotshiwe.