

In South Africa women can use the Bill of Rights to challenge discrimination. Cathi Albertyn looks at how. Zolile and Nthabiseng were married by a magistrate 38 years ago. For 30 years they lived in a house rented from Soweto Council. The house is in Zolile's name, although they both contributed to the payment.

When Zolile died Nthabiseng had to see to matters. She went to the Department of Home Affairs to register his death. Because Zolile had not made a will, Nthabiseng was told to take her eldest son to the magistrate so that her husband's estate (belongings), including the house, could be transferred to the son. This is what faces many African women who marry in civil law. After their husbands die they are told that customary inheritance applies to them. This means the eldest son inherits the property and the widow has no rights. One of the worst things which happens is that many women lose their homes to their sons. The new Bill of Rights says all people are equal no matter their race, sex, gender, religion, language, belief or disability. It also says no person should suffer discrimination because of his or her race, sex or gender. It can be said that the Black

Administration Act (which upholds customary law on inheritance) violates women's human rights of equality and freedom from discrimination. Foremost, the law violates women's rights to equality because it puts women in a disadvantageous position, by not accepting women's rights to inherit from their husbands. The law often has a terrible result - like women being forced to give up their homes. Secondly, the law discriminates against women because it treats them unfairly. In this case it discriminates on the basis of sex and race. It puts African women in a worse position than men. White, Indian and 'coloured' women who may marry out of community of property are entitled to inherit at least R125000 of their husband's property when he dies without leaving a will. This law is called the Law of Intestate Succession, intestate means when you die without leaving a will.

What practical steps can Nthabiseng take to challenge these violations of her human rights? First, she can ask the Minister of Justice to allow the Law of Intestate to apply to her. Or she can get her sons to sign a sworn statement saying they do not want the house. The magistrate can then

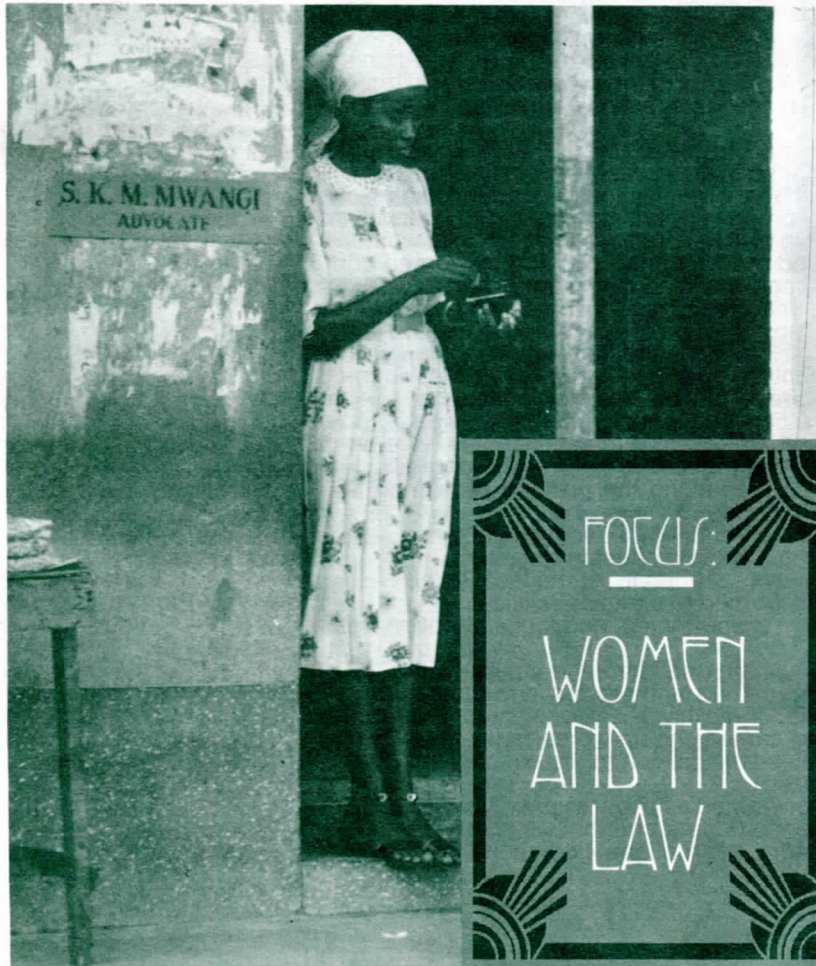
transfer the property to her. The problem with these solutions is they do not challenge the law. They depend on the goodness and kindness of the minister or Nthabiseng's sons if they decide not to help, she is still left without the house.

Nthabiseng can get together with other women in the same position and organise with women's organisations to lobby the government to change the law. This can work well and is a cheaper than using the courts.

Nthabiseng may also try legal ways of changing the law by taking her case to the Constitutional Court. She can ask the court to strike the law down as being a violation of her human rights. If the law is struck down, the Law of Intestate Succession will apply to her. Once the Human Rights Commission is established, Nthabiseng would also be able to lay a complaint with the commission.

It is up to us to challenge violations of our human rights and insist that the government acts to end them. s.

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WHY LOSE YOUR HOUSE BECAUSE YOU'RE A WOMAN?

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