



Reversing the name tradition: A critical analysis of husbands adopting wives' surnames in South Africa

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ABSTRACT

The purpose of this study was to critically investigate the norm of husbands adopting their wives' surnames. The article analyses naming practices through feminist legal theory, as well as traditional, ancient, and patriarchal perspectives. The methodology used in this study was a qualitative, interpretive approach. By dissecting the roots of surname succession and its origins in patriarchal structures, the paper examines how reversing this custom serves as a symbolic indication of gender equality. The study argues that integrating multicultural case studies and legal frameworks highlights the intricate interplay among individual autonomy, social norms, and institutional limitations. The researchers recommended that an all-inclusive approach is needed to address the changing dynamics between customary law and surname traditions in South Africa. Additionally, it is equally important to respect cultural practices while embracing legal progress. The study contributes to scholarship by highlighting the complexities of diverse South African cultures. While in some communities, it may be accepted for a husband to adopt his wife's surname, in others, it is not.

Keywords: Names, Clan names, Surname inheritance, Patriarchy, Feminist legal theory.

INTRODUCTION

Diko illustrates that the practice of giving personal names and the associated naming practices are common cultural traditions worldwide.¹ This means that all societies across the globe use names as unique tags for individuals and associated occurrences. However, the criteria for selecting and the meanings attributed to these names vary between societies and cultures.² For instance, the primary contrast between African and Western practices of personal naming predominantly lies in the underlying reasons for giving names. In Western cultures, selecting a personal name typically involves individuals perusing a list of names and choosing one that appeals to them, often without regard to its meaning.³ It follows that in Western cultures, a name primarily functions as a label or identifier, with little inherent

¹ Mlamli Diko, "The Sociocultural Significance of Naming Practices among the AmaXhosa," *Nomina Africana: Journal of African Onomastics* 38, no. 1 (October 2024): 2, <https://doi.org/10.2989/NA.2024.38.1.1.1379>; Mokgale Makgopa and Temba T. Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-Cultural Perspective," *Studia Historiae Ecclesiasticae* 47, no. 3 (January 25, 2022): 1, <https://doi.org/10.25159/2412-4265/8010>.

² Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2; Makgopa and Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-cultural Perspective," 2.

³ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2.

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importance.⁴ In the process, framing these naming practices as primarily arbitrary and lacking intrinsic meaning downplays the plurality of naming traditions and individual experiences across different societies.⁵

In contrast, as Diko argues, these Western naming practices are not entirely applicable in Africa, especially in indigenous African societies, where their adoption is often regarded as cultural appropriation.⁶ In African societies, names carry profound cultural and historical significance. It follows that, in African cultures, personal names and the naming customs they entail provide valuable insights into the social and cultural structures of different communities.⁷

These names are regarded as messages the name-giver gives to society through the person who carries the name.⁸ Therefore, when one is given a specific name, it is envisaged that one will live according to the meaning and expectations of that name and continue to be constructively part of society through the name they carry.⁹ To an African, a name is akin to an archive that reveals an individual's or a family's history,¹⁰ culture, and heritage at a particular time and place. In general, names are essential to human identity and social structure.¹¹ They serve as markers of ancestral legacy, familial connections and personal attributes.¹² For instance, Diko, Makgopa and Rugwiji argue that personal names are unique to each individual.¹³ They can be chosen for various reasons, including family history, birth circumstances, or personal preferences.¹⁴ Common amaXhosa personal names, for instance, include Siyabulela ('we are grateful'), Lungelo ('right', morally or legally), Nomxolisi ('the one who comforts'), Themba ('hope'), Nosipho ('gift') and many others.¹⁵ Therefore, the study submits that, unlike Western cultures, where names are regarded as labels or identifiers, in African societies, names have meanings and profound cultural and historical importance.

Similarly, in African societies, many surnames and their associated clan names¹⁶ carry historical significance, traced back to notable figures, events, or migrations.¹⁷ Surnames and associated clan names also signify social identity and status. Consequently, one's surname and clan name serve as markers of one's place in the broader social fabric, influencing relationships, opportunities, and perceptions within and beyond that community.¹⁸ Therefore, these surnames and their associated clan names are more than individual tags; they reflect one's place in the larger social structure of the society.¹⁹ The paper will therefore argue that, for this reason, it would be difficult for an African man to abandon his surname and adopt his wife's, unlike in Western cultures, where this seems easy.

⁴ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2, argues that personal names are essentially arbitrary words, akin to common nouns like 'grass', or 'trains'.

⁵ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2.

⁶ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2; Busi Makoni, Sinfree Makoni, and Pedzisai Mashiri, "Naming Practices and Language Planning in Zimbabwe," *Current Issues in Language Planning* 8, no. 3 (2007): 437, <https://doi.org/10.2167/cilp126.0>; Themba Moyo, "Naming Practices in Colonial and Post-Colonial Malawi," *Inkanyiso, Jnl Hum & Soc Sci* 4, no. 1 (December 30, 2012): 11, <https://doi.org/10.4102/ink.v4i1.266>.

⁷ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2.

⁸ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2; Makoni, Makoni, and Mashiri, "Naming Practices and Language Planning in Zimbabwe," 450.

⁹ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 2; Makoni, Makoni, and Mashiri, "Naming Practices and Language Planning in Zimbabwe," 450.

¹⁰ Makgopa and Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-Cultural Perspective," 2.

¹¹ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 3; Makgopa and Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-cultural Perspective," 1.

¹² Babalo Kundlwana, Samson Nambai Asoba and Nteboheng Patricia Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," *Journal of Ecohumanism* 4, no. 4 (2025): 2622; Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 3.

¹³ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 12; Makgopa and Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-cultural Perspective," 1.

¹⁴ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 12; Makgopa and Rugwiji, "Naming Patterns among Northern Sotho, Xitsonga and Tshivenda Communities of SA: Religio-cultural Perspective," 2.

¹⁵ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 12.

¹⁶ P. J. Jonas, "Clanship as a Cognitive Orientation in Xhosa World-View" *S. Afr. J.: Ethnol* 9, no. 2 (1986): 60.

¹⁷ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

¹⁸ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

¹⁹ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

It follows, therefore, that resistance among many Africans to men adopting their wives' surnames is rooted in tradition, ancient social frameworks, and other social factors.²⁰ In most African communities, surnames are not just markers; they are powerful symbols of ancestry, heritage, and family values.²¹ Customarily, African cultures are mainly patrilineal,²² meaning that family names, property, and identity are passed down the male line. A man adopting his wife's surname is often viewed as disrupting this ancestry. It is seen as severing ties with his ancestral roots and undermining his role as the bearer of the family name.²³

The study argues that another factor that determines who would adopt the surname of the other in African societies is the payment of lobola, known by various names, including *lobolo*, *bohali*, *bogadi*, and others. *Lobola* is a traditional custom in many African cultures, where women typically adopt their husband's surname after marriage.²⁴ *Lobola* has also been understood as a payment for children within a lineage.²⁵ It results in the absolute transfer of rights in a woman's procreative capacity from her family to her husband's family. In Lesotho, it is said that 'the child belongs to the cattle' (*'ngoana ke oa likhomo'*) and in Zimbabwe, 'cattle beget children'.²⁶

The paper submits that, in African societies where husbands typically pay lobola for their wives, cultural norms hold that the wife adopts the husband's surname after marriage, not the other way around. In African culture, therefore, for a husband to adopt his wife's surname is something unheard of. The children also adopt their father's surname.²⁷ However, it is important to note that in African societies, although the wife adopts her husband's surname after marriage, she usually retains her clan's name.²⁸

Legislation has consistently reinforced patriarchal surname customs.²⁹ Before recent reforms, South African law did not allow men to adopt their wives' surnames, reflecting deep gender biases. This changed following the Constitutional Court's decision in *Jordaan and Others v Minister of Home Affairs and Another*³⁰ (*Jordan* case), which declared the restriction unconstitutional. However, the ruling sparked backlash from traditional leaders and cultural structures.

The study, therefore, seeks to critically explore the practice of husbands adopting their wives' surnames. The various findings and recommendations are captured in the following sections. The paper adopts feminist legal theory as its theoretical foundation, as discussed below.

Feminist Legal Theory

Feminist legal theory is the study of the relationship between women and the law.³¹ Perhaps feminist legal theory can be defined as work on women and law that reaches concrete normative conclusions on specific policy issues, such as abortion, affirmative action, marital naming, and gender equality.³² In

²⁰ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2633; Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

²¹ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

²² Jonas, "Clanship as a Cognitive Orientation in Xhosa World-view," 60.

²³ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 8.

²⁴ Simon Majadibodu, "'Un-African': Anger over ConCourt Ruling Allowing Husbands to Adopt Wives' Surnames," n.d., <https://iol.co.za/news/south-africa/2025-09-12-un-african-anger-over-concourt-ruling-allowing-husbands-to-adopt-wives-surnames/>.

²⁵ Nicola Ansell, "'Because It's Our Culture!' (Re)Negotiating the Meaning of Lobola in Southern African Secondary Schools," *Journal of Southern African Studies* 27, no. 4 (December 2001): 702, <https://doi.org/10.1080/03057070120090691>.

²⁶ Ansell, "'Because it's our culture!' (Re)Negotiating the Meaning of Lobola in Southern African Secondary Schools," 702.

²⁷ *Jordaan and Others v Minister of Home Affairs and Another* 2025 (6) SA 323 (CC) (hereinafter *Jordaan and Others v Minister of Home Affairs and Another*) para 23, where the Constitutional Court pointed out that: "In many African cultures, women retained their birth names after marriage, and children took their mother's clan name." Although the study agrees with the Constitutional Court's view that, in many African cultures, women retained their birth names and children often took their mother's clan name. However, the paper argues that in many African traditions, this normally occurs when the husband has not paid either lobola or damages (*inhlawulo*) to the mother's family. On the other hand, the researchers differ with the Court in that, in many African cultures, where the husband or father of the child has paid lobola or damages to the wife or mother's family, the children take their father's clan name.

²⁸ *Jordaan and Others v Minister of Home Affairs and Another*.

²⁹ Section 26(1) of the Births and Deaths Registration Act 51 of 1992 (hereinafter Birth and Death Registration Act).

³⁰ *Jordaan and Others v Minister of Home Affairs and Another*.

³¹ Gary S Lawson, "Feminist Legal Theories," *Harvard Journal of Law & Public Policy* 18, no. 2 (1995): 326.

³² Lawson, "Feminist Legal Theories" 330.

other words, an article or idea is an instance of feminist legal theory if it endorses or entails a set of conclusions that corresponds to a ‘checklist’ of conclusions that constitute the feminist enterprise.³³

Feminist theory rhetoric is one body of persuasive action and discourse that can be categorised under the expanded definition of rhetoric, in that rhetorical practice now differs methodologically from the traditional format of an expert lecturing to an audience.³⁴

Marital naming would appear to be of interest to feminists. It can also be a way for women to rhetorically express their positions on the traditional implications of marriage, the role of a wife, and women's rights more generally.³⁵ Taking this position at the very beginning of a new family unit may be important to women because it is perhaps in the family and other intimate relationships that gender is still accepted, even ideologically, as a reasonable and legitimate basis for the distribution of rights, power, privilege, and responsibilities. A woman who makes a non-traditional choice is saying that she will not accept the traditional role assigned to her by society, and one might expect that she will not perpetuate the teaching of traditional gender roles to her children, should she choose to have them.³⁶

The paper submits, therefore, that anyone who studies women and the law, in any way, is engaged in feminist legal theory.

METHODOLOGY

This study adopted a qualitative, interpretive method. A qualitative approach facilitates a thorough examination of the values, perceptions, and practical experiences surrounding marital naming. A comparative approach was used, with South Africa as the prime focus. Comparative perceptions were drawn from other societies undergoing similar changes, including Western and other African cultures.

DISCUSSION

*The Constitution*³⁷

The equality clause, entrenched in Section 9 of the Constitution, played a crucial role in the Constitutional Court’s judgment allowing men to adopt their spouses’ surnames.³⁸ Section 26 of the Births and Deaths Registration Act (the Births and Deaths Registration Act)³⁹ allowed women to change their surnames upon marriage but did not extend the same right to men, effectively reinforcing patriarchal norms.⁴⁰

*The Jordaan case*⁴¹

In *the Jordaan* case, a married couple sought to have the husband adopt his wife’s surname.⁴² The couple also had a child, whom they preferred to bear their mother’s surname, “Jordaan”.⁴³ They were advised by the Department of Home Affairs (the Department) that only a female spouse may change her surname, not a male spouse.⁴⁴ Subsequently, the Department denied their application, prompting them to file an application with the Constitutional Court. In its judgment, the Court declared the existing law unconstitutional, ruling that it unfairly discriminated on the grounds of gender.⁴⁵

³³ Lawson, “Feminist Legal Theories” 330.

³⁴ Mary-Rebecca Ebeling, “Women’s Marital Surname Choice And The Rhetorical Act” (University of Rhode Island, 2005), 15, <https://doi.org/10.23860/thesis-ebeling-mary-rebecca-2005>.

³⁵ Ebeling, “Women’s Marital Surname Choice and the Rhetorical Act” 18.

³⁶ Ebeling, “Women’s Marital Surname Choice and the Rhetorical Act” 18.

³⁷ The Constitution of the Republic of South Africa 1996 (hereinafter the Constitution).

³⁸ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC).

³⁹ Section 26(1) of the Births and Deaths Registration Act.

⁴⁰ See *Jordaan and Others v Minister of Home Affairs and Another* paras 40 and 85, where the Constitutional Court found that Section 26 of the Births and Deaths Registration Act violated the equality guarantee of the Bill of Rights. The Court therefore declared Section 26 invalid. It ordered Parliament to remedy the defects by amending or passing new legislation within 24 months to ensure that all persons are afforded the right to assume another surname.

⁴¹ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC).

⁴² *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC), para 10.

⁴³ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC), para 10.

⁴⁴ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC), para 11.

⁴⁵ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC), para 85.

The study submits that the ruling now allows men to legally adopt their wives' surname. Additionally, this is a blow to patriarchy, which favoured that women should be the ones who adopted their husbands' surnames.

African culture of surnames and clan names

In African cultures, people are typically identified by their surnames and their associated clan names, which are passed down from one generation to the next.⁴⁶ In an African society, therefore, a man's clan name links him to his paternal ancestors and clan.⁴⁷ The Nguni-speaking groups, for instance, maintain a patrilineal system in which surnames and clan names are passed down through the male line.⁴⁸

Traditional leaders and cultural custodians, particularly Contralesa, strongly opposed the ruling in the *Jordaan* case that allowed men to adopt their wives' surnames, arguing that it undermines African customs and could erode the moral fabric of society.⁴⁹ In African cultures, the husband's surname represents social identity and status.⁵⁰

The study submits that changing this custom could invite social stigma.⁵¹ Additionally, in all African societies, adopting a husband's wife's surname is unknown.

South African women's perceptions of husbands adopting their wives' surnames

Although the *Jordaan* case's decision was celebrated by advocates for gender equality and feminists, many women embedded in traditional African culture articulated discomfort or even opposition to the idea of their husbands taking their surnames.⁵²

The surname was described as an essential link to one's ancestors and clan; a man changing his surname may be seen as severing ties with his paternal ancestors.⁵³ Women who uphold these traditions often resist such changes, fearing disruption of household spiritual harmony or of rituals that depend on ancestral naming.⁵⁴ Legal advancements and shifting social expectations are reshaping naming practices in marriage.⁵⁵ However, many African women remain reluctant to have their husbands adopt their surnames. Women's perspectives are shaped by cultural pride, spiritual beliefs, and social dynamics that extend beyond legal frameworks.⁵⁶ Some cultural experts, such as Professor Mazibuko, argued that the ruling in the *Jordaan* case may cause confusion about ancestral rights.⁵⁷

The views of African women on husbands adopting their surnames are suggested to highlight a complex balance between cultural tradition and gender equality.⁵⁸

The paper submits that for some, the practice is resisted due to deep ancestral and cultural ties, while others welcome it as a gesture of mutual respect and partnership.⁵⁹ Furthermore, although legal reforms have opened the door to such changes, societal acceptance remains inconsistent.

⁴⁶ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

⁴⁷ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 8.

⁴⁸ Jonas, "Clanship as a Cognitive Orientation in Xhosa World-view," 60.

⁴⁹ Siphso Jack, "Controversy Erupts over South Africa's Constitutional Court Ruling on Surname Adoption," IOL, n.d. <https://iol.co.za/dailynews/news/2025-09-14-controversy-erupts-over-south-africas-constitutional-court-ruling-on-surname-adoption/>.

⁵⁰ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

⁵¹ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁵² Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁵³ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁵⁴ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2634; Diko, *The Sociocultural Significance of Naming Practices among the amaXhosa*, 11.

⁵⁵ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2635.

⁵⁶ Majadibodu, "Un-African: Anger over ConCourt Ruling Allowing Husbands to Adopt Wives' Surnames."

⁵⁷ Majadibodu, "Un-African: Anger over ConCourt Ruling Allowing Husbands to Adopt Wives' Surnames."

⁵⁸ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2626.

⁵⁹ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

Tradition of surnames in marriages and the *Jordaan* case

The custom of the wife taking the husband's surname existed in Roman-Dutch law and was subsequently introduced into South African common law.⁶⁰ The reverse practice, in which a husband assumes his wife's surname, has been uncommon and traditionally unfamiliar. Though recent legal and social developments, most notably the *Jordaan* case ruling, have begun to challenge this surname tradition and its patriarchy.⁶¹ Until recently, South African law reflected this gendered tradition.⁶²

Despite this legal victory, cultural attitudes among South Africans remain divided.⁶³ The surname continues to function as a symbol of male authority and familial continuity, and altering this tradition is seen by many as a challenge to established gender roles. Public reactions to the *Jordaan* case ruling reflected a generational divide: while some feminists praised the decision as a step toward achieving gender equality, others expressed concern that it would undermine cultural values and family cohesion.⁶⁴

The study submits that South African communities are said to have traditionally upheld patriarchal marital naming practices. However, the legal reforms and evolving social norms are creating space for more egalitarian approaches.⁶⁵ Additionally, the time of change differs between regions and generations. However, the debate around naming practices is becoming increasingly inclusive and reflective of modern constitutional values.

Opposition against husbands adopting their wives' surnames after marriage

The view that a husband should assume his wife's surname after marriage remains contentious in many South African societies, particularly among those who value traditional, cultural, and spiritual values.⁶⁶ Although recent legal reforms have made this option available, opposition continues due to deeply rooted beliefs and social norms.⁶⁷ One of the most prominent arguments against this practice is the destabilisation of patriarchal order.⁶⁸ A man's surname is not just a personal identifier but a symbol of lineage, continuity, and ancestral pride. Changing it to reflect his wife's family name is often seen as breaking the ancestral chain, dishonouring forebears, or abandoning spiritual obligations to the paternal line.⁶⁹ Traditional leaders and elders of the community have expressed concern that allowing men to take their wives' surnames undermines long-standing customs and threatens the stability of family structures.⁷⁰ The Congress of Traditional Leaders of South Africa (Contralesa), for example, publicly criticised the *Jordaan* case ruling that legalised this practice. They argued that it contradicts African values and erodes the symbolic leadership role traditionally held by men.⁷¹

A man who changes his surname may disrupt the spiritual harmony rooted in lineage, affecting how he is received in communal rites or ancestral observances.⁷² In societies where masculinity is

⁶⁰ *Jordaan v Minister of Home Affairs 2025 (3) SA 411 (CC)*, para 25.

⁶¹ *Jordaan v Minister of Home Affairs 2025 (3) SA 411 (CC)*.

⁶² Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2621.

⁶³ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁶⁴ Majadibodu, "'Un-African': Anger over ConCourt Ruling Allowing Husbands to Adopt Wives' Surnames."

⁶⁵ *Jordaan v Minister of Home Affairs 2025 (3) SA 411 (CC)*.

⁶⁶ Majadibodu, "'Un-African': Anger over ConCourt Ruling Allowing Husbands to Adopt Wives' Surnames."

⁶⁷ *Jordaan v Minister of Home Affairs 2025 (3) SA 411 (CC)*.

⁶⁸ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁶⁹ Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7; Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁷⁰ Jack, "Controversy Erupts over South Africa's Constitutional Court Ruling on Surname Adoption."

⁷¹ Sbusiso Gwala, "What's in a Name? The Constitutional Court Rules on Surnames," *Mail & Guardian Thought Leader*, 26 September 2025; and the *Jordaan* case.

⁷² Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627; Diko, "The Sociocultural Significance of Naming Practices among the amaXhosa," 7.

equated with lineage and leadership, a man adopting his wife's surname may be perceived as relinquishing his traditional role, potentially inviting ridicule or social exclusion.⁷³

Before the *Jordaan* case ruling, South African law allowed women to change their surnames upon marriage but required men to undergo a separate, more complex process.⁷⁴ This legal irregularity reflected and prolonged the assumption that surname changes were a female privilege, further entrenching gendered expectations.⁷⁵ Fears about society's identity and record-keeping add another layer of opposition. In many African cultures, surnames and their associated clan names are used to trace lineage, resolve disputes, and maintain social cohesion.⁷⁶

The paper submits that a man changing his surname may be seen as blurring these records or distancing himself from his community, especially in contexts where unwritten history and naming practices are observed.

Key feminist arguments in favour of husbands taking their wives' surnames and the *Jordaan* case

The strongest feminist argument for husbands assuming their wives' surnames is the notion of gender equality. Mncube argues that the Constitutional Court's ruling in *Jordaan* stands as a watershed moment in South Africa's ongoing pursuit of gender equality within family law.⁷⁷ This judgment confronted a deeply established legal framework that imposed automatic surname changes in marriage exclusively on women, thereby embedding gendered assumptions rooted in patriarchy.⁷⁸ By affirming the right of both spouses, regardless of gender, to assume each other's surnames on equal terms, the court recognised autonomy and equality in the formation of family identity.⁷⁹

The Constitutional Court's decision not only rectified legal disproportionateness but also affirmed that equality under the law must translate into everyday choices.⁸⁰

The *Jordaan* case ruling marked a profound advancement aligned with South Africa's constitutional project to eradicate historical discrimination and enable genuine, equitable choices within family life.⁸¹ It affirms that equality extends beyond formal legal provisions to influence norms around partnership, parenting, and identity. Striking down legal barriers limiting men's ability to adopt a spouse's surname dismantles a subtle but powerful form of institutional patriarchy.⁸²

The study submits that the Constitutional Court ruling in *Jordaan's* case struck a blow to patriarchy by allowing husbands to adopt their wives' surnames. Additionally, the Court's ruling is a fair judgment because it allowed husbands who wanted to adopt their wives' surnames to do so. It is also fair in that husbands who are unwilling to adopt their wives' surnames for cultural reasons are allowed to retain their own surnames.

RECOMMENDATIONS

The study recommends an all-inclusive approach to managing the changing dynamics between customary law and surname traditions in South Africa. Community dialogues and workshops should be held by justice state departments and civil society organisations to raise public awareness of legal

⁷³ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2627.

⁷⁴ Births and Deaths Registration Act 51 of 1992.

⁷⁵ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2626.

⁷⁶ Diko, *The Sociocultural Significance of Naming Practices among the amaXhosa*, 7.

⁷⁷ Sinethemba Mncube, "Breaking Patriarchal Chains-A Constitutional Court's Landmark Judgement *Jordaan* and Others v Minister of Home Affairs and Another" *De Rebus* (March 2026): 40.

⁷⁸ Kundlwana, Asoba and Mefi, "Exploring South African Perspectives on Husbands Adopting their Wife's Surname in Marriage: The Case of OR Tambo District Municipality in the Eastern Cape," 2626.

⁷⁹ Mncube, "Breaking Patriarchal Chains-A Constitutional Court's Landmark Judgement *Jordaan* and Others v Minister of Home Affairs and Another 2025 (6) SA 323 (CC)," 40; Diko, *The Sociocultural Significance of Naming Practices among the amaXhosa*, 12, who observes that in African contexts, naming conventions were often shaped by colonial legal systems that imposed rigid gender roles.

⁸⁰ *Jordaan v Minister of Home Affairs* 2025 (3) SA 411 (CC).

⁸¹ Mncube, "Breaking Patriarchal Chains-A Constitutional Court's Landmark Judgement *Jordaan* and Others v Minister of Home Affairs and Another 2025 (6) SA 323 (CC)," 41.

⁸² Mncube, "Breaking Patriarchal Chains-A Constitutional Court's Landmark Judgement *Jordaan* and Others v Minister of Home Affairs and Another 2025 (6) SA 323 (CC)," 41.

changes, such as the *Jordaan*'s case ruling. It is similarly important to respect cultural traditions while embracing legal processes and the rule of law. Traditional leaders should therefore be engaged to play a positive role in guiding communities through these legal processes. The religious leaders should also be involved in informing communities about the new legal changes and in encouraging their embrace. Married couples should also be encouraged and supported in exercising their rights to choose surnames based on mutual respect and personal preferences.

CONCLUSION

The question of husbands adopting their wives' surnames in South Africa sits at the crossroads of law, culture, and identity. For generations, customary law and social expectations reinforced patriarchal naming traditions. Women were expected to assume their husband's surname as a sign of marital unity and preservation of lineage. These practices, rooted in ancestral pride and spiritual continuity, have made surname reversal difficult to accept in many communities.

A major shift occurred in *the Jordaan case*, recognising men's equal right to adopt their wives' surnames and dealing a blow to patriarchy. By invalidating discriminatory provisions in the Births and Deaths Registration Act, the Constitutional Court challenged colonial and patriarchal assumptions and aligned naming practices with constitutional principles of dignity and equality. However, legal reform has not automatically translated into social acceptance. Traditional leaders, cultural custodians, and many women continue to voice concerns, underscoring the tension between constitutional equality and cultural continuity.

Resistance remains strongest in communities where surnames are sacred links to ancestry and masculinity is closely tied to lineage and leadership. Fears of spiritual disruption, social stigma, and administrative complications highlight the depth of attachment to patrilineal naming. At the same time, growing support among younger, urban, and educated South Africans signals a shift toward egalitarian partnerships. Couples are increasingly experimenting with hyphenated surnames or even creating new family names as expressions of mutual respect and shared identity. Ultimately, the surname that a couple chooses should reflect their shared identity rather than outdated norms.

The debate is not simply about names. It is about redefining gender roles, cultural continuity, and constitutional equality in a transforming society. South Africa's challenge is to balance respect for heritage with the promise of equality, ensuring that marital naming practices evolve in ways that honour both tradition and progress. Genuine transformation will depend on dialogue among government leaders, traditional leaders, religious leaders, communities, gender-equality advocates and feminists. Naming traditions should evolve to reflect both heritage and equality, enriching identity through mutual respect rather than constraining it by patriarchal expectations.

This study shows that surname practices in South Africa are shaped by a complex interplay of law, culture, and identity. Legal reforms have created space for gender-neutral naming rights, but cultural acceptance remains uneven. The practice of husbands adopting wives' surnames continues to be contested, reflecting broader tensions between tradition and constitutional equality.

The paper concludes that whilst the Constitution in its preamble recognises that "We, the people of South Africa... united in our diversity," this principle is well reflected in *Jordaan*'s case.⁸³ The ruling in this case demonstrated that, while to some South Africans it is easier for a husband to adopt his wife's surname, to others it is difficult because such a practice is unheard of in these traditional communities. However, all these diverse views and cultures are acceptable under our Constitution, as enshrined in the principle of unity in diversity.

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