



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister for Justice and Constitutional Development v Nyathi and Others

**CCT 53/09
[2009] ZACC 29**

Date of Judgment: 9 October 2009

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This case concerns an application made by the Minister for Justice and Constitutional Development for this Court to extend the suspension order of invalidity made in the case of *Nyathi v MEC for Health, Gauteng and Another* 2005 (5) SA 94 (CC) handed down on 2 June 2008. That order declared constitutionally invalid section 3 of the State Liability Act 20 of 1957, a provision which prohibits parties to whom debts are owed by the state from executing against or attaching state assets for the satisfaction of judgment debts. The order of invalidity was, however, suspended until 2 June 2009 so as to allow Parliament to enact legislation for the effective enforcement of judgment debts against the state.

After considering written and oral argument this Court made an order on 31 August 2009 further suspending the declaration of invalidity until 31 August 2011. In that order the Court invited the parties to the matter as well as the Minister for Finance to submit written submissions on why the Court should not order an interim solution pending the enactment of remedial legislation which allows for a tailored attachment and execution procedure against state movable assets or an alternative interim order. The order also indicated that a judgment with reasons would follow in due course. The judgment handed down today provides these reasons. It also provides for an interim order that will regulate the satisfaction of judgment debts against the state until 31 August 2011 or until remedial legislation is enacted, whichever occurs first.

The Minister for Finance made submissions to the effect that judgment creditors should approach the national or provincial treasury for the satisfaction of their judgment debts, in the event that the relevant state department fails to do so. The amount paid by treasury would then be set off against the budget allocation of the relevant department for the current or future financial year against the relevant vote. These submissions together with

aspects of the submissions of the amici curiae and the intervening party were incorporated into the Court's proposed interim order of 31 August 2009.

Writing for a unanimous Court, Mokgoro J held that in view of the fact that the State Liability Bill together with the 18th Constitutional Amendment Bill had already been published for public comment and that the public participation process had already begun, an order of extension should be granted to allow for this process to be completed. A suspension period of two years was granted in view of the complexity of the issues and the extensive public debates anticipated. The effect of this order is that the attachment and execution of movable state assets would be permitted in the event that the relevant treasury failed to satisfy the judgment debt within the period prescribed in this Court's order.