



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Deliwe Muriel Njongi v Member of the Executive Council, Department of Welfare,  
Eastern Cape**

**Case CCT 37/07**

**Medium Neutral Citation [2008] ZACC 4**

**Date of Judgment: 28 March 2008**

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### MEDIA SUMMARY

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*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.*

The Department of Welfare of the Eastern Cape stopped payment of a disability grant in 1997 to Mrs Deliwe Muriel Njongi without any notice to her. She re-applied for her grant. The Department resumed payment of her pension in July 2000 and paid her an amount of R1 100 as back-pay. Mrs Njongi was owed a further R15 200 back-pay. Eventually in 2004, more than three years after payments resumed, she applied to the Port Elizabeth High Court for an order setting aside the Department's decision to stop her grant and for full reinstatement of that grant. After the case started, the Department paid her an additional R9 400, leaving a balance of R5 800.

The Department contended that Mrs Njongi's claim had prescribed in terms of the Prescription Act. The High Court rejected the claim and held that prescription could only run after the Department's decision to cease payments had been set aside. The High Court set aside the Department's decision and ordered it to pay to Mrs Njongi the arrears and interest.

The Full Court of the Eastern Cape Provincial Division upset the High Court decision and held that the debt had prescribed because it arose more than three years before Mrs Njongi brought the case. The Full Court held that prescription continued to run even though the decision had not been set aside.

Yacoob J, writing for a unanimous court, expressed doubt about whether prescription could run at all if the debt was a social grant but presumed that prescription could apply. The Court held that prescription would begin to run only once that decision was set aside by a court or disavowed by the decision-maker. Accordingly, prescription did not run against Mrs Njongi.

During oral argument the Court became concerned about the decision to oppose Mrs Njongi's case and about the way in which the case was conducted. The Chief Justice later issued directions asking those responsible to provide information about this. That information was provided.

Yacoob J, in discussing the conduct of the Provincial Government, held that:

- a) the State was obliged to take a conscious moral decision whether to take the prescription point in every case separately;
- b) the decision to take the point of prescription was unconscionable in this case because no account had been taken of, amongst other things, Mrs Njongi's poverty, her lack of education, the fact that she had 100% disability, the fact that the Department's decision to stop the pension was unlawful and the cost to the Department in opposing the case; and
- c) the Provincial Government should therefore pay Mrs Njongi's costs in the High Court, the Full Court, the Supreme Court of Appeal and in this Court on the punitive scale of attorney and client.

The Department was also ordered to pay the sum of R5 800 and plus interest.