



**LAW SOCIETY**  
OF SOUTH AFRICA

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**LAW SOCIETY OPPOSES GOVERNMENT'S REQUEST TO DELAY CITIZENS' RIGHTS TO SEIZE STATE PROPERTY IF COSTS ORDERS AGAINST THE STATE REMAIN UNPAID**

The Law Society of South Africa (LSSA) yesterday applied to the Constitutional Court to be admitted as a party to the proceedings in which the Minister of Justice and Constitutional Development has requested the Court to allow the State to delay, for another year, citizens' rights to seize State property if costs orders against the State remain unpaid. The Justice Department has asked the Court for the extension of time while it seeks to implement an amended State Liability Act.

'Attorneys represent the vast majority of persons who litigate against the State. The LSSA is bringing the application because the rights of attorneys' clients and would-be clients are profoundly affected by the continuous failure on the part of the State to satisfy Court Orders. The LSSA is acting in the interests of the broader public since many people who have unsettled orders for payments of amounts for damages and costs against the State are indigent or may not have the resources to act in their own names against the State,' say LSSA Co-Chairpersons Thoba Poyo-Dlwati and Henri van Rooyen.

On 2 June 2008, in the matter of *Dingaen Hendrik Nyathi v The MEC, Department of Health, Gauteng and Others*, the Constitutional Court declared section 3 of the State Liability Act, which prohibits the execution, attachment or like process against a State Defendant or Respondent or against any property of the State for the satisfaction of judgment debts, to be unconstitutional. The declaration of unconstitutionality was, however, suspended by the court for a year to enable Parliament to pass the relevant rectifying legislation. Last month the Minister of Justice and Constitutional Development applied to the Constitutional Court to extend the period for a further year – until the end of May 2010 – to allow the Department to finalise the amending legislation and have it passed by Parliament.

The LSSA maintains in its application that 'the evil of non-compliance with regard to Court Orders will persist until such time as creditors are allowed to levy execution in satisfaction of their judgment debts against the property of the State'. It indicates that, if the Department is granted an extension of time, the dereliction of duty by certain State officials will continue and Court Orders will continue to be ignored with impunity.

The LSSA points out that, on a daily basis, attorneys have to answer questions from dissatisfied clients as to why their judgment debts against the State remain unpaid. Some clients even threaten to take the law into their own hands.

As regards the Bills to amend the offending legislation, the LSSA indicates that the Department of Justice and Constitutional Development had started drafting a State Liability Bill as far back as 2003, but had not yet succeeded in drafting an acceptable Bill that could be enacted by Parliament. According to the LSSA, the draft Bills being envisaged by the Justice Department 'display an utter lack of appreciation for the real problems that practitioners and judgment creditors experience' and would lead to chaos if enacted in their present form.

***ISSUED ON BEHALF OF THE CO-CHAIRPERSONS OF THE LAW SOCIETY OF SOUTH AFRICA***

by Barbara Whittle, Communication Manager, Law Society of South Africa

Tel: (012) 366 8800 or 083 380 1307

E-mail: [barbara@lssa.org.za](mailto:barbara@lssa.org.za) Website: [www.lssa.org.za](http://www.lssa.org.za)

**Editor's note:**

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 18 600 attorneys and 4 800 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.