



**LAW SOCIETY**  
OF SOUTH AFRICA  
**PRESS RELEASE**

**14 October 2009: For immediate release**

**LAW SOCIETY WELCOMES CONSTITUTIONAL COURT JUDGMENT ENSURING  
SPEEDY AND EFFECTIVE ENFORCEMENT OF JUDGMENT DEBTS AGAINST  
GOVERNMENT DEPARTMENTS**

The Law Society of South Africa (LSSA) welcomes the judgment passed by the Constitutional Court on Friday, 9 October 2009, which provides for members of the public to obtain the settlement of judgment orders against national or provincial governments within a maximum of 75 days. In the event that the relevant government department and treasury fail to satisfy the judgment debt within this period, the attachment and execution of movable State assets is permitted.

The Co-Chairpersons of the LSSA, Thoba Poyo-Dlwati and Henri van Rooyen echo Justice Yvonne Mokgoro's view and trust that the procedure outlined by the Constitutional Court will 'foster compliance within the defaulting departments and avoid attachment and execution of State property. At the same time, it provides a more cost effective and expeditious avenue for judgment creditors seeking to enforce judgment debts. It is hoped that judgment debts will be satisfied at the first instance and judgment creditors will never need to resort to the attachment and execution of State assets. To have to do so would be unfortunate.'

'The LSSA appreciates the fact that the Constitutional Court was required on the one hand to protect the rights of judgment creditors – particularly people who lack access to legal resources – and ensure that they can obtain effective and speedy relief, and on the other hand to protect vital State assets. The interim procedure ordered by the court attempts to do this. We trust that national and provincial departments, including the Treasury, will commit themselves to comply with the Constitutional Court's order,' say the Co-Chairpersons.

The interim procedure – which will remain in force for two years or until the unconstitutional aspects of the State Liability Act are amended (whichever is the soonest) – is as follows: Should the judgment debt remain unpaid 30 days after the date of judgment, the judgment creditor may serve notice on the relevant officials [the relevant treasury, the State Attorney, the accounting officer of the national or provincial department as well as the executive authority of the department]. The relevant treasury shall within 14 days of service of the order, ensure the judgment debt is settled, or will itself settle the judgment debt or make acceptable arrangements with the judgment

creditor for the settlement of the judgment debt. If the debt remains unpaid after those 14 days have expired, the judgment creditor may apply to court to execute against movable property owned by the State and used by the relevant department, empowering the sheriff to attach the property. Once the property has been attached, parties with a direct and material interest may apply to court for a stay of execution on grounds that it is in the interests of justice for the execution to be stayed. If no application to that effect is made, the sheriff may remove and sell the property in execution of the judgment debt, 30 days after the attachment. The aggregate time period from the date of final judgment until the date of execution would thus be approximately 75 days.

The LSSA – which represents the attorneys’ profession – intervened as a party in this matter earlier this year on the grounds that attorneys represent the vast majority of persons who litigate against the State. The LSSA pointed out to the Constitutional Court the practical difficulties that judgment creditors face when seeking to execute judgment debts against State property. In most instances, persons who obtain judgment orders against the national or provincial governments are indigent or may not have the resources to act in their own names against the State when State departments fail to settle judgment debts. Justice Yvonne Mokgoro said in her judgment that ‘[t]he Law Society clearly has a material interest in this matter. Its members represent the majority of people who normally litigate against the state. The rights of its members’ clients are profoundly affected by the absence of effective enforcement of judgment debts and the state’s delay in providing remedial legislation.’

The LSSA has and will continue to monitor and comment on draft legislation, such as the State Liability Bill, to ensure that the best interest of the members of the public – which are the clients of attorneys – are protected in any new legislation.

- [Link to Constitutional Court judgment.](#)
- [Link to LSSA media release of 22 July 2009 opposing request for extension by Minister of Justice and Constitutional Development](#)

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

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**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 18 800 attorneys and 4 900 candidate attorneys.

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