

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 53/09

In the matter between:

MINISTER FOR JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT

Applicant

and

DINGAAN HENDRIK NYATHI

Respondent

and

LAW SOCIETY OF SOUTH AFRICA

Applicant for Leave to Intervene

LEGAL RESOURCES CENTRE

First Amicus Curiae

FREEDOM UNDER LAW

Second Amicus Curiae

AIDS LAW PROJECT

Third Amicus Curiae

In re:

Case CCT 90/07

DINGAAN HENDRIK NYATHI

Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL  
FOR HEALTH, GAUTENG

First Respondent

MINISTER FOR JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT

Second Respondent

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**ORDER HANDED DOWN ON 31 AUGUST 2009**

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THE COURT:

[1] Having heard argument in this matter on 12 August 2009, this Court makes the following order:

1. The period of suspension of invalidity in paragraph 2 of the order granted in *Nyathi v MEC for Department of Health, Gauteng and Another* 2008 (5) SA 94 (CC), as extended by an order of this Court granted on 1 June 2009, is further extended until 31 August 2011.
2. The parties to this case, as well as the Minister for Finance, are requested to lodge written argument on or before 15 September 2009 on the question of whether an order in the following terms should be made an order of Court to be operative during the period of suspension made in paragraph 1 of this order:

“During the extended period of suspension granted by this Court on 31 August 2009, or until legislation regulating the matter is brought into effect, the following process for the enforcement of court orders against the state sounding in money shall apply:

(a) If a final court order against the state for the payment of money is not satisfied within 30 days of the date of judgment, the judgment creditor may serve notice on the State Attorney and the relevant Accounting Officer in the National or Provincial Department or the local government of the intention to attach movable property owned by the state and used by the department which is, in effect, the judgment creditor for the purposes of a sale in execution to satisfy the judgment debt.

(b) If, within 14 days after the notice in paragraph (a) of this order has been served, the judgment debt remains unpaid, the judgment creditor may apply for a writ of execution against movable property in terms of Rule 45 of the Uniform Rules of Court or in terms of Rule 36 of the Magistrates' Courts Rules of Court, whichever is applicable.

(c) The Sheriff of the relevant court shall, pursuant to the writ of execution, attach movable property owned by the state and used by the relevant department.

(d) 30 days after the date of the attachment, and in the absence of any application as contemplated in paragraph (e) of this order, the Sheriff of the relevant court may sell the attached movable property in execution of the judgment debt.

(e) Any affected party may, during the periods referred to in paragraphs (b) and (d) of this order, apply to the court which granted the judgment in question for an order staying the execution contemplated in paragraph (d) on the ground that it is not in the interests of justice and good governance to attach and sell in execution the movable property of the state which has been attached.

(f) The duty to establish that it would not be in the interests of justice and good governance for the property of the state which has been attached to be sold in execution rests upon the party seeking the relief sought in paragraph (e) of this order.”

3. The parties to this case, as well as the Minister for Finance, may also submit written argument on or before 15 September 2009 proposing an alternative order for the timeous and effective enforcement of judgment debts.

4. The Registrar of this Court is instructed to arrange for service of a copy of this order, as well as a copy of this Court's judgment in *Nyathi v MEC for Department of Health, Gauteng and Another* 2008 (5) SA 94 (CC) on the Minister for Finance.
  
5. Costs are reserved.

[2] Written reasons for the order will follow in due course.

CORAM: Langa CJ, Moseneke DCJ, Cameron J, Mokgoro J, Ngcobo J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J and Van der Westhuizen J.