

REPORT ON THE STATE LIABILITY AMENDMENT BILL

OFFICE	
MAFIKENG	<p data-bbox="491 513 1033 541"><u>EXECUTIONS AGAINST PROPERTY OF THE STATE</u></p> <ol style="list-style-type: none"> <li data-bbox="517 571 1419 634">1. <u>S S Mothupi / D P Pule & North West Department of Public Works, Roads and Transport</u> <ul style="list-style-type: none"> <li data-bbox="539 669 1000 697">• Lehurutse Court, case number 259/07 <li data-bbox="539 732 1081 759">• State Attorney reference number: 938/07/P3 <li data-bbox="539 794 961 822">• Date of judgment: 1 October 2009 <li data-bbox="539 857 924 885">• Judgment amount: R19 934-67 <li data-bbox="539 920 1142 948">• PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS <li data-bbox="539 983 1431 1141">• A warrant for execution was issued on 6 July 2010. No property was, however, attached. Arrangements were made with the attorneys of the creditor to hold the matter in abeyance and the Department was requested to effect payment. Payment was effected on 11 October 2010. The matter has been finalized and our file has been closed. <li data-bbox="517 1238 1146 1266">2. <u>T & T Roofing / MEC for the Department of Education</u> <ul style="list-style-type: none"> <li data-bbox="539 1301 1060 1329">• Mafikeng High Court, case number 2434/09 <li data-bbox="539 1364 1093 1392">• State Attorney reference number: 1295/09/P8 <li data-bbox="539 1426 782 1454">• Date of judgment: <li data-bbox="539 1489 934 1517">• Judgment amount: R179 838-42 <li data-bbox="539 1552 1137 1580">• PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS <li data-bbox="539 1615 1431 1838">• This matter pertains to a dispute regarding payment for services rendered. T & T Roofing obtained an order against the client for the payment of the amount of R179 838-42. Payment was not made and a writ for execution was issued and faxed but not served on the client. No property was attached. The State Attorney did not represent the client during the initial proceedings and only received instructions once the writ was faxed to the client. <p data-bbox="573 1873 1431 1966">We issued and served an application to Court to have the writ set aside as it was obtained irregularly and not in accordance with the Nyathi judgment. At the same time client attempted to settle the matter. Settlement</p>

negotiations were suspended because another contractor, Naledi Construction, who had a right of retention over the same project, obtained an order for payment of the sum of R179 838-42.

In light of the intervention by Naledi Construction, the application to have the writ set aside will have to proceed. It was, however, postponed to 26 May 2011 in order to afford T & T Roofing the opportunity to file opposing papers.

3. West Transvaal Security Services / Minister of Home Affairs

- Itsoseng Court, case number 17/2011
- State Attorney reference number: 290/11/P13
- Date of judgment: 7 March 2011
- Judgment amount: R3 124-56
- PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS
- Client sent the summons to us after judgment had already been granted. The judgment creditor issued a warrant for execution before expiry of the 30 day period and has also not complied with the other requirements as stipulated in the Nyathi judgment. No movable property has been removed and no sale in execution has taken place as yet. We have recommended to client that we bring an application for the setting aside of the warrant due to non-compliance with the Nyathi judgment and are awaiting instructions in this regard as well as regarding a possible application for rescission of judgment.

4. Candro Trading (Pty) Ltd t/a Surrey Hotel and Off Sales / North West Provincial Legislature

- Molopo Court, case number 2693/09
- State Attorney reference number: 278/11/P9
- Date of judgment: 28 July 2010
- Judgment amount: R6 691-95
- PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS
- The Chief Whip of the ANC in the Province ordered liquor for a party function and failed to pay. The plaintiff erroneously issued summons against the Provincial Legislature in stead of the ANC. The NWPL instructed the State Attorney to act in the matter. After numerous attempts to obtain instructions and after the Office of the Speaker refused to accept urgent

	<p>correspondence from the State Attorney, our office withdrew as attorneys of record due to lack of instructions and closed our file.</p> <p>Thereafter the plaintiff obtained judgment by default and issued a warrant for execution on 8 September 2010. On 1 March 2011 the NWPL instructed our office to act on their behalf to resolve the matter. On 3 March 2011 a meeting was held with officials from client and the office of the ANC Chief Whip. The ANC Chief Whip has informed the Plaintiff's Attorneys that the debt would be paid during the first week of April 2011. Plaintiff's attorneys have confirmed that no further action would be taken against the NWPL.</p> <p>5. <u>Buitenhof Boerdery / MEC for Transport</u></p> <ul style="list-style-type: none"> • Lichtenburg Court, case number 1735/03 • State Attorney reference number: 1014/03/P7 • Date of judgment: 27 May 2010 • Judgment amount: R5 899-51 • PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS • The merits of the matter were settled. The clerk of the court failed to forward the notice of set down on the quantum to our office and default judgment was taken. The attorney first became aware of the judgment on 22 March 2011 when the notice of judgment and certificate in terms of the Nyathi judgment was served on our office. The attorney immediately notified the client and the client indicated that it would process payment of the judgment amount. No warrant of execution has been issued. The attorney will monitor and ensure that payment is made.
BLOEMFONTEIN	<ol style="list-style-type: none"> 1. Dr a c van der watt / MI Seate and Department of Local Government & Housing - ref no. 584/201000525/p17s (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) 2. Dr a c van der watt / LK Ralikonyana and Department of the Premier - ref no. 683/201000513/p17r (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) 3. Dr a c van der watt / a a l fillies and Department of Health - ref no. 596/201000524/p17f (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) 4. Dr a c van der watt / LE Monokoane and department of agriculture - ref no. 701/201000512/p17m (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS)

	<p style="text-align: center;">SUMMARY OF THE FACTS)</p> <p>5. Dr a c van der watt / MM Mjikelo and Department of Agriculture - ref no. 701/201000662/p17m (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS)</p> <p>There are other matters where they have made applications for the authorizing of the issue of warrant of execution to be heard on 14 April 2011. We have not received instructions from client department as to whether they have implemented the emolument attachment order and whether we should oppose the applications despite us hand delivering our letter on 23 March 2011.</p> <ol style="list-style-type: none"> 1. Prof PJ le Roux / DR Mankayi and Department of Education - ref no. 682/201100036/p17m(PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) 2. Prof PI le Roux /MA Mofokeng and Department of Education- ref no. 682/201100039/p17m(PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) 3. Prof PI le Roux / MA Litheko and Department of Education- ref no. 682/201001488/p17l (PLEASE INCLUDE A BRIEF SUMMARY OF THE FACTS) <p>WHAT IS THE CURRENT STATUS OF THESE MATTERS?</p>
<p>PORT ELIZABETH</p>	<ol style="list-style-type: none"> 1. J Tyro v Minister of Safety and Security: Reference: 1625/2009/NX <p>This was a claim against the SAPS for damages arising out of a motor vehicle accident.</p> <p>Details: In this case judgement was granted against the SAPS in case no 7993/2009 delay by the client department in the payment of the judgment of R37,619,55. There was a attorney gave notification of his intention to follow the execution procedures laid down in the Nyathi Judgment and the matter was then reported to me. I reported the matter to the head of SAPS Legal Services on the 1 June 2010. He gave instructions for payment to made as soon as possible. The capital was duly paid on the 29 June 2010 and the interest thereon on the 27 August 2010. Costs have not yet been paid as the Plaintiff has not submitted a bill of costs. In this matter although the procedures in terms of the Nyathi judgment commenced no writ of execution was issued and no attachment took place.</p> <ol style="list-style-type: none"> 2. P W Owunezi v Home Affairs : reference 963/2010/B <p style="text-align: center;">Department of Home Affairs for damages in the</p>

Details: In this matter judgment was granted in the Port Elizabeth High Court on 9 March 2010 for R 90 000, 00. As the judgment was taken by default steps were being taken to rescind the judgment. In the meanwhile however the Plaintiff implemented the Nyathi procedure and issued a writ on 13 April 2010 and on 15 April 2010 attached property belonging to the Department of Home Affairs. It is not clear whether the Plaintiff gave the relevant notices to us or the Department. The Department also failed to inform us of the attachment. On 1 June 2010 the Sheriff returned to the premises of the Home Affairs with instructions to remove the attached computers. All attempts to persuade the instructing attorney to relent and withdraw the attachment and give us time to proceed with the rescission application fell on deaf ears.

An urgent application was accordingly brought on the 1 June 2010 to suspend the operation of the court order pending the finalization of the rescission application. The application was granted and the rescission application was also subsequently granted and the matter is now proceeding.

3. I D BOSCH vs. Minister of Safety and Security: Reference 1503/2007/LS

This was a claim for damages against the SAPS arising out of a motor vehicle accident.

Details: In this matter judgment was granted in the Magistrates Court Graaff Reinet for the sum of R2500, 00 plus costs. There has been a delay in the payment of the sum although the costs have been paid. The attorney has now given notice of his intention to invoke the procedures of the Nyathi judgment. We have requested more time and at the same time called on the client department to urgently pay the outstanding capital.

4. A G AUSTIN V Minister of Safety and Security: Reference: 0999.2010/LS

This was a claim for damages against the SAPS arising out of a motor vehicle accident.

Details: Here there is a judgment of the Magistrates Court Somerset East for R 2088.33 plus costs. The costs have been paid but there has been a delay in the payment of the capital amount by the client department. The attorney has given notice of his intention to follow the procedures laid down in the Nyathi judgment. We have called upon the client department to urgently attend to payment and have at the same time asked the attorney to give us more time.

5. S VAN LOGGERENBERG V Minister of Safety and Security: reference: 0150/2010/C

This was a claim for damages against the SAPS arising out of a motor vehicle accident.

In this matter judgment was granted on 16 November 2010 for the sum of R 35 730,

96 plus costs in the Magistrates Court, Jansenville. There has been a delay in the payment of the capital amount by the client department. The attorney has given notice of his intention to invoke the procedures contained in the Nyathi judgment and has in fact had a writ issued but is holding it back. In the meanwhile we have requested the client department to confirm that the capital and interest have been paid. The costs have not yet been paid as there is a dispute over the correct amount.

As can be seen from the above the procedures are in general working very effectively in ensuring that judgments get paid. A problem is that the attorneys do not always spell out when they serve a copy of the judgment and the certificate of the Registrar or Clerk of the Court that they are invoking the procedures of the Nyathi judgment and that a writ will be issued within 14 days if no payment is received. Similarly the Sheriffs and some attorneys do not seem to be aware that there is a procedure that must be complied with before a writ can be issued and that the Sheriff cannot attach and remove goods on his first visit.

6. PHELOSHE TRADING V MEC Education EC: Reference : 1993/2010/T

This was a claim against the Department of Education for services rendered.

Details: In this matter judgment was entered on 1 October 2010 for R7875, 00 out of the PE Magistrates Court. Judgment was taken by default before the matter was referred to this office. As it was for services rendered the Department delayed payment whilst it decided whether to pay the judgment or apply for rescission. In the meanwhile the Attorney obtained a writ of execution without following any of the Nyathi procedures and on the 6 December 2010 attached and removed goods. We contacted that attorney and pointed out that the attachment was illegal as the procedures had not been followed. The attorney then withdrew the writ. Payment is now being attended to by the client department as matter of urgency but the attorney has been advised that it can only take place during April due to budget constraints.

This case demonstrates what I said previously that some attorneys and sheriffs are not aware that there is a procedure that must be followed before a writ can be issued.

CAPE TOWN

EXECUTIONS AGAINST PROPERTY OF THE STATE

1. Salt Sales Agencies / SAPS

- Cape Town Magistrate's Court, case number 25526/09
- State Attorney reference number: 3183/09/P11
- Date of judgment: 11 August 2010
- Judgment amount: R26 186,52
- Plaintiff issued summons in an amount of R24 512,15 arising from a motor collision. The matter was defended and a Notice of Bar was served on State Attorney. A plea was served timeously but the filing at court only effected after the expiry of the requisite period. In the meanwhile the Plaintiff took judgment by default and issued a writ.
- Judgment by default taken without knowledge of attorney. Warrant applied for and issued by Clerk of Court contrary to the Mokgoro order. Application for rescission of judgment and setting aside of warrant brought. Matter settled.

2. Breede Valley Municipality / SAPS

- Worcester Magistrate's Court, case number 8332/07
- State Attorney reference number: 4077/07/P16
- Date of judgment: No judgment taken
- Judgment amount: R n/a
- Plaintiff issued summons against SAPS for payment of damages in an amount of R75 000,00 arising from a motor collision. The matter was settled, with a capital amount and Plaintiff's costs to be paid by SAPS.
- Warrant applied for and issued by Clerk of Court contrary to Mokgoro order, where debt had already been paid and where judgment had apparently not been entered. Warrant not proceeded with.

3. Small / MEC Department of Health

- Labour Court, case number C245/2007

	<ul style="list-style-type: none">• State Attorney reference number: 2436/07/P17• Date of judgment: Not known (see below).• Judgment amount: R36 256,12 (taxed costs)• The Applicant applied for a post of Assistant Director at PAWC. A requirement for the post was a valid driver's licence, which he did not have. He was accordingly not short listed for the post. He was unable to obtain such a licence as he suffered from a visual impairment. He then sought an order in the Labour Court <i>inter alia</i> to the effect that he was unfairly discriminated against. The matter was settled and Province agreed to pay his taxed costs. The costs were duly paid.• Writ applied for and issued by Registrar of Labour Court. Registrar issued a certificate in terms of 3(b) of the Mokgoro order. Matter had been settled, no indication on our file that settlement had been made an order of court. Writ issued three months after the debt had been paid. Attachment made, writ thereafter withdrawn.
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