594

IN THE HIGH COURT OF SOUTH AFRICA
KWA ZULU NATAL DIVISION, PIETERMARITZBURG

Case No: 4686/21P

In the matter between:

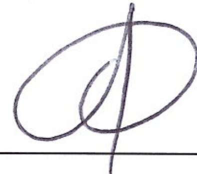
JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
THE MINISTER OF POLICE	1st Respondent
NATIONAL COMMISSIONER FOR THE SOUTH AFRICAN POLICE SERVICE	2nd Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	3rd Respondent
THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO STATE CAPTURE, FRAUD AND CORRUPTION IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	4th Respondent
RAYMOND MNYAMEZELI ZONDO *NO*	5th Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	6th Respondent
THE HELEN SUZMAN FOUNDATION	7th Respondent

FILING SHEET

Filing of Applicants' Replying Affidavit.

595

DATED AT JOHANNESBURG ON THIS THE 5TH DAY OF JULY 2021.



NTANGA NKUHLU INCORPORATED
Applicant's Attorneys
Unit 24 Wild Fig Business Park
1492 Cranberry Street
Honeydew
Tel: 010-595-1055
Fax: 086 538 8718
P.O Box 1838
Northriding
2162
Email: mongezi@ntanga.co.za
Mobile: 0721377104
C/O **ANAND PIILAY INC.**
37 Henrieta Street
Pietermarizburg
Tel: 033 345 1452/3
Fax: 033 345 2813

TO: **THE REGISTRAR OF THE CONSTITUTIONAL COURT**
PIETERMARIZBURG

AND TO: **STATE ATTORNEY, DURBAN**
Respondents' Attorneys
6th Floor, Metlife Building
391 Anton Lembede Street
Durban
Tel:
Fax:
Email: NPeete@justice.gov.co.za
Ref:
c/o THE STATE ATTORNEY, JOHANNESBURG
10th Floor, North State Building
95 Albertina Sisulu Corner Kruis Street
Private Bag X9, Docex 688
Johannesburg 2000

Per: Mr Johan van Schalkwyk
Cell: 071 401 6235
Ref: J Van Schalkwyk
Email: JohVanSchalkwyk@justice.gov.za

AND TO: WEBBER WENTZEL INCORPORATED

Attorneys for the Amicus Curiae
90 Rivonia Road
Sandton
JOHANNESBURG
Tel: 011 530 5867
Email: vlad.movshovich@webberwentzel.com / Pooja.dela@webberwentzel.com / Dylan.cron@webberwentzel.com / Daniel.rafferty@webberwentzel.com / dee-dee.golohel@webberwentzel.com

IN THE HIGH COURT OF SOUTH AFRICA
KWA ZULU NATAL DIVISION, PIETERMARITZBURG

Case No:

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
THE MINISTER OF POLICE	1st Respondent
NATIONAL COMMISSIONER FOR THE SOUTH AFRICAN POLICE SERVICE	2nd Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	3rd Respondent
THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO STATE CAPTURE, FRAUD AND CORRUPTION IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	4th Respondent
RAYMOND MNYAMEZELI ZONDO *NO*	5th Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	6th Respondent
THE HELEN SUZMAN FOUNDATION	7th Respondent

REPLYING AFFIDAVIT

I, the undersigned,

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say the following:

1. I am an adult male and the former president of the Republic of South Africa residing at Kwa Nxamalala in Nkandla.

2. The facts set out below are, to the best of my knowledge, both true and correct, save where the contrary is expressed or appears from the context.

3. Where I make the submissions of a legal nature, I do so on the advice of my legal representatives, which advice I accept.

4. I have read the answering affidavits filed by **Itumeleng Mosala**, who is the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and that of **Hubrecht Antonie van Dalsen** of the **Helen Suzman Foundation** ("**HSF**"). Due to the urgent nature of these proceedings and the commonality of the issues raised and for the convenience of the court, I depose to this composite replying affidavit dealing with both answering affidavits.

5. I do not propose to deal detail with the individual allegations made by the opposing respondents but will mainly present my over-arching responses to the main defences raised in both affidavits. Insofar as I do not deal with any allegations they must be taken as having been denied to the extent that they are in conflict with my version as set out in this and the founding affidavit.

6. Before dealing with the defences raised by the respondents, I raise three preliminary issues. These are:

   6.1. the *locus standi* of the respondents in the present circumstances;

   6.2. *lis pendens* and/ or *stare decisis*; and

6.3. failure to deal with Part B of the application.

Locus standi

7. This Honourable Court will be aware that the main and pertinent respondents in the particular interim relief sought in this matter, namely the Minister of Police and the National Commissioner of the South African Police Service have filed a Notice to Abide. So has the President. Quite significantly and for reasons that will become clear later hereunder, the Minister of Justice and Correctional Services has elected not to oppose the application. In this regard I refer to Annexure "R1".

8. In these circumstances, it is rather bizarre that the only two parties without any direct interest in the relief sought, namely the State Capture Commission or the so-called "Zondo Commission", and the erstwhile amicus curiae, the Helen Suzman Foundation.

9. There must be very good reasons to do with security issues and the public interest why the Ministers, the Commissioner and the President have taken a sensible approach to oppose the relief sought in this matter. As a former president and Head of State, I can authoritatively inform this Court that such a decision would have been taken after considerations made in the Presidency, the necessary intelligence assessments done by specialists within the Justice and Security Cluster of the State.

10. This Honourable Court can take judicial notice of the fact that since the time of the launching of the present applications, the situation in and around Nkandla has escalated to unacceptable levels. The sensible approach of the

relevant state institutions is therefore commendable, especially when contrasted with the self-serving and naïve approach adopted by the opposing parties, which can only be described as vindictive busybodies. The volatility of the situation has been quelled by the sensible approach referred to above. Nobody, with the exceptions of inward-looking parties, would reasonably want to risk another Marikana Massacre situation. This Honourable Court is enjoined to join the sides of the reasonable players in this difficult time.

11. It is therefore improper for a non-governmental organisation and a judicial commission of inquiry to take it upon themselves to insist on my premature and ill-advised arrest even before the main are heard by this Honourable Court and the Constitutional Court which is the highest court in the land.

12. I am therefore advised that it will be argued at the hearing that in the particular circumstances of this matter, the opposing respondents do not have the requisite locus standi to raise the opposition made in their answering affidavits.

Lis pendens* and/or *stare decisis

13. It is common cause that the Constitutional Court has issued directions to the effect that the rescission application is to be heard on 12 July 2021.

14. It would therefore be improper for this Honourable Court to proceed without giving any legal effect to such directions. It would be even more improper for this Honourable Court to pre-empt and decide, directly or indirectly, the very questions pending for determination before the Constitutional Court, including:

    14.1. whether the rescission judgment will succeed or fail;

14.2. whether the requirements in Rule 42 and/or the common law have been met; and/or

14.3. whether my immediate, direct and non-optional imprisonment for 15 months or any period should persist.

15. I am advised that it will be further argued that to do so would be a breach of both the principles of *lis pendens* and *stare decisis* (and possibly even *res judicata*).

16. In either event and in line with the established protocols of our courts and not in the interests of justice.

Failure, inability and incompetence to deal with Part B

17. The two opposing parties have either failed, at all or adequately, to deal with the relief sought in Part B of the notice of motion and/to its legal impact on the current proceedings.

18. In the case of the Commission, it has simply elected to dodge and avoid the obvious effect of Part B, which falls within the exclusive jurisdiction of this Honourable Court and which is fatal to the jurisdictional challenge even in the unlikely event that it was indeed true that this Honourable Court was somehow precluded from granting interim relief pending proceedings which fall exclusively within the jurisdiction of the High Court, which proposition is incorrect and disputed.

19. In the case of the HSF, an ill-fated attempt is at least made to engage with the insurmountable obstacle of Part B by simply arguing that the constitutional

challenge therein is either meritless or it will take a long time. Both of these reasons are unsustainable in law and in the present circumstances.

20. It is trite that the relevant respondent to whom such a constitutional challenge is directed is the Minister of Justice and Correctional Services, the third respondent, who has elected not to oppose the relief sought in Part A. He may or may not oppose the Part B relief but that is neither here nor there.

21. What can certainly not happen is for an NGO, which is not a direct party to those proceedings, to prevail on whether or not the constitutional challenge is good or bad and to resist the related merits of the suspension or interim interdict order sought in circumstances such as the present.

22. On any one or more or all of the aforegoing bases, the opposition purportedly mounted by the opposing respondents ought properly to be rejected and the application granted as effectively unopposed. However, and in the event that this Honourable Court may elect to entertain the said opposition, then I now proceed to deal with the issues raised by the two opposing respondents under the following headings:

22.1. Jurisdiction (point *in limine*);

22.2. Rescission is unsustainable; and

22.3. Voluntary non-participation in the contempt applications.

Jurisdiction

23. There is no authority for the proposition contrived by both respondents that this Honourable Court, whether under the common law and/or section 173 of

the Constitution, lacks the jurisdiction to grant an interim suspension, stay or interim interdict order in respect of "*the order of a higher court*".

24. It is trite that:

24.1. the High Court enjoys the jurisdiction to grant an interim interdict pending proceedings which fall within the exclusive jurisdiction of the Constitutional Court. *A fortiori*, an order such as the one sought in the present proceedings falls within the inherent powers of this Honourable Court. To exercise that power is not to "undermine" the exclusive terrain of the Constitutional Cut to assert this court's own jurisdiction.

25. The contrived interpretation of the words "*their own*" in section 173 is clearly wrong and not worth wasting a lot of time over. By granting the relief sought, this Honourable Court will indeed be regulating its own processes and not the processes of the Constitutional Court. In hearing the rescission application, the Constitutional Court will also be regulating its own process.

26. The constitutional foundation of relief sought can be traced to section 34 of the Constitution and akin to the provisions of section 18 of the Superior Courts Act, namely to preserve the *status quo* and to protect the litigation rights of a party while it seeks to set aside an earlier decision, so that any subsequent victory is not rendered hollow or pyrrhic.

27. In the case of appeals, this situation is now regulated by statute. In the case of rescission, it is not governed by statute but by the provisions of sections 172 and 173 of the Constitution, the applicable Rules and /or the common law.

28. Just as section 18 applies with equal force to appeals which are serving before the Constitutional Court, so too does the present application apply to a rescission application pending before the apex court. I am advised that further argument in this regard will be advanced at the hearing.

29. The jurisdictional challenge must accordingly fail.

No case made for rescission

30. The Commission's view that I have not made out a case for a rescission application in the Constitutional Court is unsurprising in its motive but wrong for three reasons. First, the issue of whether or not I have made out a case for a rescission of the contempt of court and incarceration orders will be decided by the Constitutional Court itself – which has granted leave to have the matter heard by it on 12 July 2021. Secondly, based on the facts which the Commission appears to have deliberately omitted to mention to the Constitutional Court, a case for rescission has been made on the basis of incomplete facts. Thirdly, the application to the Constitutional Court was in itself an abuse of court intended to subvert the binding procedures of the Commissions Act and the Chairperson's rulings on my non-appearance.

31. The following facts were not presented to the Court. They should have been presented by the Commission which was seeking to avoid relying on the provisions of the Commissions Act to seek direct access to the Constitutional Court to enforce summons granted in terms of the Commissions Act. The following facts which were not presented in the Constitutional Court make out prima facie case for the rescission of the order of the Constitutional Court.

32. The genesis of our dispute which the Commission decided to have resolved by the Constitutional Court is the Chairperson's ruling of 14 January 2020. The Chairperson said the following;

> **CHAIRPERSON:** The commission's legal team will deliver a replying affidavit on or before close of business on Friday the 24 January. **That is one. With regard to what is going to happen in regard to this application and the further appearance before the commission of the former President what has been agreed in the discussion involving myself and counsel on both sides is that this application is to be adjourned to a date to be arranged and I hasten to say arranged does not mean agreed.** That is one.
>
> **2. I have accepted with some reluctance but I have accepted the offer made by the former President that the leader of his medical team should see me and in confidence convey to me information that may assist in understanding the medical reasons relating to his failure to appear at some stage in the past before the commission as well as information relating to the future concerning up to when he might not for medical reasons be able to appear before the commission to give evidence and when there would be no medical reasons for him not to appear. It has been accepted that with regard to this 27 to the 20 – to the 31 January the former President need not appear before the commission because of the medical reasons that he has given. The consultation or meeting that the leader of his medical team will have with me will – it is hoped assist in looking at dates when his medical condition would not prevent him from appearing before the commission. So this application will then stand adjourned to a date that will be arranged at the right time. Now before we finalise I just want to check with Mr Pretorius and Mr Masuku whether I have covered everything that needs to be said publicly that we discussed. Mr Pretorius.**

33. The Chairperson was unequivocal that my appearances at the Commission would be subject to his ruling above which made it clear that such scheduling would consider and be informed by my medical team's medical report. It was only when and partly because the Chairperson sought my attendance by way of summons outside the conditions that he had made in his ruling that I began to fear that he was biased against me. Had he informed the Constitutional

Court about this ruling, it may well have accepted that the Chairperson had a duty to comply with his own orders before he can take coercive steps against me. He failed to do so as he does in his answering affidavit in this application. The fact of the matter is that nothing demonstrates incurable prejudice and bias against than a presiding officer who rules one thing and does another, whether with good or bad motives.

34. The Chairperson of the Commission failed to inform the Constitutional Court about my medical situation. This is because he inexplicably failed to comply with his own ruling and undertaking to meet the leader of my medical team who would disclose to him my medical situation – which was clearly relevant to my ability to appear and participate in the Commission on its preferred terms. This failure to comply with his own ruling to meet my medical team and to disclose such failure to the Constitutional Court, resulted in the Constitutional Court making a decision that was clearly unconstitutional and wrong at worst or premised on a mistaken premise at best. The latter constitutes a rescindable error.

35. In this application I am seeking an order to stay my incarceration partly because I believe it is unlawful to commit me to prison without a trial and that my medical condition should have been taken into account when the direct imprisonment route was adopted. The Chairperson did not present those facts to the Constitutional Court. In this application it is clear that he wishes, despite my medical conditions, to have me incarcerated. There can no better evidence of his bias than this blatantly insensitive handling of a delicate matter

involving my right to life. The Commission also did not present to the Constitutional Court the following facts;

35.1. I have a right to appear before a Commission of Inquiry that is not biased. The Commission Chairperson has no right to insist that I appear before him when he is clearly biased and openly hostile and prejudiced against me or so perceived by me. As now the Acting Chief Justice and a judge of many years, and having taken an oath of office to be fair and independent, he knows or should know the standards for a fair hearing and the rules of natural justice. He failed to uphold that standard and hence my recusal application and subsequent review application.

35.2. The Constitutional Court was not told why the Commission of Inquiry has ignored my review application and decided to approach the Court in violation of my right to have the dispute on recusal resolved before I could be forced to appear before the Commission.

35.3. To date, the Chairperson has not filed any record or affidavits in response to my application to review his recusal decision.

35.4. Having refused or failed to respond to my review application, he instead embarked on highly prejudicial procedural violations that should rightly be regarded as an abuse of power and the courts. They are the following:

35.4.1. First, he publicly announced that he would invoke his powers under the Commissions Act to report my alleged

conduct as a criminal offense to the SAPS. This proposed procedure was indeed consistent with the law and has from the inception of the Commissions Act been how Commissions deal with persons who fail to appear before it when asked to do so. A prominent case is that of *PW Botha*, which is referred to in both the minority and majority judgments.

35.4.2. Second, instead of complying with his rulings in relation to my non-appearance at the Commission (in terms of the Commissions Act), he received legal advice to summarily and unilaterally abandon it in favour of an application to the Constitutional Court on a procedure that is unprecedented and unusual, without going back to the parties who labored under the previously articulated position.

35.4.3. Third, his decision to abandon his ruling to deal with my non-appearance at the Commission in accordance with the procedure of the Commissions Act was in itself unlawful, irrational and violates the subsidiarity principle. Having informed me and the public that he was invoking the Commissions Act to address my non-appearance at the Commission, he was simply not entitled, without more, to approach the Constitutional Court as a court of first and last instance on the grounds that he advanced therein.

35.4.4. The abuse of Court is that he abandoned a statutorily prescribed process in the Commissions Act (which he was aware of and which he had made a specific Commission ruling on) to approach the Constitutional Court. The ground he relied on to abandon his own ruling in favour of approaching the Constitutional Court were themselves false and contrived. This misrepresentation, of whatever nature, was instrumental in informing the crucial decisions on urgency and/or direct access.

35.4.5. In addition, the Chairperson of the Commission did not tell the Constitutional Court that he was not going to respond to my review application to resolve the question of his suitability to preside over a hearing involving my evidence and simply ignore it. Had he informed the Constitutional Court of this issue, it may well have refused to hear his application, either at all or certainly not on an urgent and/or direct access basis.

36. Once it became clear that the Commission was essentially asking for a 'default judgment' based on unopposed application against me, the Chairperson of the Commission was obliged to make a full disclosure of all the material facts and circumstances, including those that could hurt his case against me. This was not done, making this a classic case for rescission and/or reconsideration of the order. There were indeed other undisclosed or not fully disclosed materials facts.

37. Firstly, it is incorrect that I did not participate in the Commission. The dispute with the Chairperson plainly arose from that participation and not non-participation.

38. Secondly, it now turns out that he has had two extensions and should he have a good reason, he could have readily obtained further extensions from the courts that appear keen to grant them. The lifespan of the Commission was clearly a key factor in the urgency and/or direct access orders of the court.

39. *Prima facie*, based on these and many other pleaded factors, I have met the requirements of a rescission which is in any event a matter to be decided by the Constitutional Court and not this Court. The prospects of success are no less than overwhelming.

No good reasons given for this application

40. The Commission is wrong that I have not given good reasons for this application. The first good reason is that I am facing imprisonment in circumstances where I was not afforded a fair trial. The Commission's approach to the Constitutional Court deprived me of my constitutional rights to a trial which I would be entitled to in terms of the Commissions Act. In other words, had the Commission complied with its ruling to refer my none appearance at the Commission in breach of its summons to be dealt with in terms of the Commissions Act, I would have had the full benefit of my constitutional rights to a fair trial for the crime of contempt of the Commission.

41. The Commission rather sought to enforce its ruling via the orders of the Constitutional Court and not the Commissions Act. This was clearly in breach

of the subsidiarity principle which the Chairperson of the Commission is fully aware of.

42. I am entitled to resist unlawful imprisonment which this is because it was not reached after a full trial of my alleged transgressions were given.

43. The rights to a fair trial and personal liberty are fundamental rights.

Voluntary non-participation in the previous contempt applications

44. The repeated accusation and refrain that I squandered opportunities to address the Constitutional Court is not correct. It appears in more than 20 places in the opposing papers. However, its repetition does not give it credence. It is false each time it is articulated.

45. In any event and even though I did not participate in the hearings at the Constitutional Court, I was still entitled to a fair and impartial hearing in terms of section 34 of the Constitution. I was entitled to be treated with dignity and not to be convicted of a crime and sentenced to imprisonment without a trial or any other cruel and degrading punishment. A trial was deliberately excluded by the Commission when it chose to approach the Constitutional Court on a direct access and urgent basis and not via the normal route of the Commissions. Even if the Commission took the view that resolving my issues were urgent, there is no basis on which the Commissions Act was ill- equipped or inappropriate to address that issue.

My refusal to appear in January 2021

46. I had good reasons for not appearing in the Commission and had the Commission given me a criminal trial as it was obliged to under the Commissions Act, that would have provided me with the opportunity every person in my position has been provided with – a platform to give my full version of facts.

The first Constitutional Court judgment

47. I elected not to contest the application of the Commission to avoid costs against me. I was also advised that the procedure adopted by the Commission was inconsistent with then Commissions Act, and the ruling of the Chairperson to invoke the Commissions Act, was wholly unmeritorious in its justification on the issue of adopted procedures of urgency and direct access. I still hold that view but I respect and accept the contrary decision of the court.

48. I do not believe that it was constitutional for the Constitutional Court to take away my constitutional rights to have my dispute over the impartiality of the Commission resolved before appearing before the Commission. I also believed that the order taking my constitutional rights away to remain silent at the Commission if I appeared was also unconstitutional. Many persons had been afforded that right and it appears that a different set of laws were being applied to me to force me to appear before a biased Commission. Again and with hindsight, I accept that the Constitutional Court made a contrary finding.

The contempt of court application

49. The gist of my rescission application is that had the above factual and legal errors and/or omissions not taken lace, the outcome of the current 15-month non-optional imprisonment may well not have materialised.

50. If that is indeed found to be so, based on all the pleaded grounds, then the rescission order will almost certainly be granted.

The letter to the chief justice

51. The letter has not been referred to in any detail by the Constitutional Court. The Chairperson nonetheless seeks to introduce it as evidence in circumstances where the Constitutional Court specifically disregarded it as hearsay evidence and not evidence under oath.

52. I simply cannot be sent to imprisonment without a trial for holding views, opinions and beliefs that may well be protected under our Constitution in s 16 and 16 thereof. I cannot be jailed under our constitutional order for being a conscientious objector – this position was criminalized during the apartheid legal system and specifically protected under our Constitution.

53. I am entitled to hold and express my belief under our Constitution and I should not be convicted, sentenced and sent to prison for doing so – especially without a trial being conducted under the Commissions Act and the Criminal Procedure Act.

54. Whether or not the views expressed in the letter crossed the line towards contempt of courts is exactly the reason why the matter ought to have been referred to a trial or, as the minority judgment proposed, to the NPA.

AD PARAGRAPH 68-69

55. For reasons stated above, which will be fully addressed in Court, the legal objection of the Commission based on jurisdiction is without merit.

AD PARAGRAPH 71

56. The urgency of this matter is self-evident that I will be imprisoned in circumstances where the very order on which I am imprisoned is a subject of a rescission application before the Constitutional Court. That application will be heard next week but it is unknown when it will be decided. The previous urgent application was decided after three months. I cannot really be expected to live in such uncertainly for such a long period.

57. Secondly, the resolution of Part B of the Notice of Motion is urgent to resolve – for the proper administration of justice and the protection of constitutional rights of persons in my position. If I am right that it is unconstitutional to convict, sentence and imprison a person accused of civil contempt, then my imprisonment will *ipso facto* be unlawful.

PARAGRAPH 72 to 75

58. I have set out the missing information which the Commission failed to present to the Constitutional Court – the basis on which the Constitutional Court would not have imposed the orders.

615

59. The Commission cannot claim to have fully and candidly set out the facts in the absence of the facts that I set out in my affidavit or to have discharged the duty to disclose them.

60. It is mischievous for the Commission to suggest that I am blaming my lawyers for these problems. I do not. I state as a fact that I received legal advice which the Court said was inaccurate but that is far from blaming my lawyers. I believe that the advice was sound and correct and to date believe so. Hindsight logic always looks and sounds better than the actual and concrete situation, which was being examined at the time. Many other lawyers were genuinely surprised that the court entertained such a matter urgently, directly and without referring it to trial or the NPA. It would of course be difficult to find them now.

AD PARAGRAPH 76 to 77

61. I stand by my allegations that I was sentenced to prison without a trial. At least the Constitutional Court does not pretend to have conducted one and the minority judgment is more direct and thankfully more blunt about that factual question. The difference of divergence is whether I should have been tried criminally.

AD PARAGRAPH 78 to 79

62. I stand by my allegations that I was not given a fair opportunity consistent with the Constitution to deal with my issues with the Commission.

AD PARAGRAPH 80 to 88

63. The allegations in these paragraphs are denied. It is clear that I have a right to be before this court to seek orders that suspend the execution of the orders of the Constitutional Court pending two events – the hearing of the Constitutional Court on my rescission application and the resolution of Part B of my Notice of Motion.

64. Since the Commission is not opposing Part B of the Notice of Motion and will most certainly be opposing the Constitutional Court application, I am advised that its opposition to this relief demonstrate two incontrovertible points:

64.1. That the only basis on which the Commission seeks the immediate enforcement of the commital orders is to gloat and brag, as it did last week immediately after the passing of the sentence but before my rescission application over the prospects of seeing me suffer as a prisoner deprived of freedom and the very life of dignity that I sacrificed my life for. They essentially wish to be grave on which I am buried physically as I testified before them in my first appearance. But more seriously, the Commission is biased and prejudiced in a manner that cannot be cured by any legal principle. For the Commission to repeat clearly inapplicable platitudes, such as that my detention without trial will show that "*nobody is above the law*", cannot pass legal scrutiny. I, on the contrary, have been singled out and declared not to be above but beneath such commonly enjoyed rights as the right to a fair trial.

64.2. The Commission's stance is a political statement rather than an exercise and application of the law.

64.3. The Commission intends to force me into a situation of bankruptcy so they can see my children and my grandchildren suffer from my exercise of constitutional rights.

AD HUBRECHT ANTONIE VAN DALSEN

65. I now address the unnecessarily long affidavit of this amicus curiae. I will not address allegations of law already dealt with in my responses to the Commission's answering affidavit.

AD PARAGRAPH 1 to 4

66. The allegations in the paragraphs are uncontentious. They are nonetheless noted.

PARAGRAPH 5 to 18

67. Our Constitution does not make a distinction – for purposes of the law – between citizens – certainly not based on political considerations or constitutional status. All are equal before the law and have equal protection and benefit of the law. I should not be treated differently before the law because I was a former President. No system of law should convict, sentence and imprison anyone without a trial. In fact, the minority judgment of the Constitutional Court recognised that my fundamental rights are adversely implicated in the summary and unlawful procedure adopted to convict and

sentence me. For that reason alone, it was an egregious error not to apply a section 36 justification inquiry.

68. I deny that the historical issues outside whether I should be convicted, sentenced and imprisoned without a trial are relevant. Whatever the HSF believes about me is solely premised on its understandable political hatred of me based on the nobility of their legal contention. No person, loved or hated, should be subjected to imprisonment without trial. I urge the HSF to look at the minority judgment which although condemning me for my views, opinion and beliefs creates a constitutional safeguard to ensure that I am not sentenced to prison for a without a trial. For the record, I also disagree with the minority judgment insofar as it finds, despite the aforegoing factors that the matter deserved the urgent and direct attention of the Constitutional Court, that I am guilty of contempt. However, these findings are clearly dwarfed into insignificance by the correct injunction that the matter ought properly to be referred to the NPA for a proper prosecution in which I will enjoy the rights to a fair trial like all other human beings who are facing non-optional imprisonment.

AD PARAGRAPH 19 to 29

69. The legal arguments on jurisdiction will be dealt with at the hearing of this matter. They are denied.

AD PARAGRAPH 30 to 40

70. The Constitutional Court which handed down the incarceration order without a trial, did not order that I first comply with its previous order on which it found

I had been contemptuous. That is because it speculated that such an order would not be obeyed by me. How then can HSF expect a sensible debate on whether I should only be able to approach the court when I have purged the contempt and how the contempt might be purged.

71. The constitutional arguments about whether I have disentitled from approaching the Court to vindicate my constitutional rights that have been violated by the court order itself is a scary submission reminiscent of apartheid laws. I urge the HSF to not hunker for a system of law in which rights can simply be removed from a citizen without a lawful process being followed. It is a law I fought against and its one I will fight against. Our law does not permit a system in which citizens' rights can simply be taken away without any lawful process being followed.

72. What is puzzling is the about-face of the HSF, which previously argued in favour of a coercive order. Now it supports imprisonment without trial or the opportunity to obey the underlying court order.

RESCISSION IS UNSUSTAINABLE

AD PARAGRAPH 41

73. The Constitutional Court has allowed me to present my case for rescission. There are no conditions that have been added to it for which the HSF should seek to frustrate the hearing of my application.

74. I stand by my grounds for rescission which are set out in that application and in this one, as set out in the responses to the Commission.

AD PARAGRAPH 42

75. The argument based on a waiver of constitutional rights is unsustainable and should be rejected out of hand. I never forfeited my right to approach the Constitutional Court. I urged for a lawful procedure for approaching the Constitutional Court based on the application of the Commissions Act.

76. In any event, my letter expresses no waiver but is an objection of an unlawful procedure in terms of which I was asked a theoretical question to speculate about my imprisonment. Under a normal system of law I would have been invited to make submissions on sanction after a finding of guilty and not before. That is because my submissions on the sanction is based on the gravity of the crime for which I am convicted. It is not consistent with fair procedure to require from me to speculate about my rights.

77. In any event, as a conscientious objector, I am entitled to the protection of the Courts. The Court failed to do so and interpreted my views, opinions and beliefs as an affront on its authority. I reiterate that no one – not even those who summarily sentenced me to prison without a trial are above the Constitution. They are not above our views, opinions and beliefs. To punish me with almost assured death because I have views, beliefs and opinions about the Court is simply wrong and inconsistent with the Constitution of this Republic.

NO PROSPECTS OF SUCCESSS

AD PARAGRAPH 47 to 59

78. I deny that there are no prospects of success for reasons set out in my affidavits. Nor is it appropriate to raise this issue in the present circumstances.

PART B OF THE NOTICE OF MOTION

79. I have set out my reasons for Part B of the Notice of Motion. The merits are resounding. There is no basis on which Part B of my application should be unsuccessful. I have set out my reasons in the founding affidavit which I stand by.

80. The current law on contempt discriminates in a manner that is not consistent with the Constitution and more particularly - the equal protection and benefit of the law provision of the Constitution.

THE PUBLIC INTEREST AND EFFECTS ON THE ADMINISTRATION OF JUSTICE

81. There is no basis that a matter involving a conviction and sentence without a trial is not in the public interest and the good administration of the law.

82. Further legal submissions will be made at the hearing of this application save to says that this is one matter that cries out, in the public interest and the good administration of justice. No one should be imprisoned without a trial being conducted. That is foundation to a civilized system.

THE LATEST CONSTITUTIONAL COURT DEVELOPMENTS

83. The speculative arguments of the HSF should be disregarded as fictitious and unsustainable.

84. I deny that my statement means that I am above the law. I will not be bullied out of my constitutional rights. I stand by my remarks. They are protected under the Constitution. If they are not, this must be determined in a fair trial.

COSTS

85. This long diatribe on costs coming from a friend of the Court is simply wrong. Costs are a discretionary matter of the Court and amicus curiae should never litigate on the pockets of those they oppose. It is leaching and inconsistent with the position of amicus.

WHEREFORE I pray that it may please this Honourable Court to grant the relief sought in the notice of motion to which this affidavit is attached.

____

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at ________________ on this the ________ day of JULY 2021, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

____

COMMISSIONER OF OATHS

"R1" 624

Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

316 Salu Building
Francis Baard Street
Entrance Thabo Sehume Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1562
(Secretary): (012) 309 1530/23

Fax (General) (012) 309 1469/50
(Direct) (086) 507 3326

05 JULY 2021

Enquires: K I CHOWE
Email:ichowe@justice.gov.za

My ref: 0554/2021/Z75
Your ref: CCT 52/21

EMAIL: mathiba@concourt.org.za

THE ACTING CHIEF JUSTICE
C/O THE ACTING REGISTRAR
THE CONSTITUTIONAL COURT
CONSTITUTION HILL
BRAAMFONTEIN

Dear Acting Chief Justice R Zondo

RE: APPLICTION IN TERMS OF RULE 29 OF THE CONSTITUTIONAL COURT RULES: J G ZUMA vs. THE COMMISSION OF INQUIRY INTO THE STATE CAPTURE, FRAUD AND CORRUPTION IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE AND OTHERS: CASE NUMBER: CCT52/21

1. We refer to the above matter and act herein on behalf of the Minister of Police and the National Commissioner of the South African Police.
2. We have been instructed by our clients to write to the Honourable Acting Chief Justice in view of the recent developments in the matter in which the Honourable Court has found Mr J G Zuma (Mr Zuma) guilty of a crime of

contempt of court and accordingly sentenced, upon which a warrant of committal was issued.

3. In the Court Order handed down by the Honourable Court, the Minister of Police and the National Commissioner of the South African Police have been ordered to take all reasonable steps that are necessary and permissible in law to ensure that Mr Zuma is delivered to the correctional centre in order to commence serving the sentence imposed on him.
4. As indicated in paragraph 2 above, Mr Zuma has launched an urgent application in the Pietermaritzburg High Court in which he among others seek the stay of his committal pending the outcome of an application for reconsideration and rescission of orders and judgement finding him guilty of contempt of court and sentence.
5. A further application has been launched with the Constitutional Court in which Mr Zuma seeks the rescission of judgement and orders against him. Our clients will be filing a notice to abide by the court's decision in this matter.
6. The litigation steps taken by Mr Zuma are being processed and will adjudicated upon by both the High Court and the Constitutional Court within and beyond the time limits our clients are expected to take action to deliver Mr Zuma to a correctional centre to commence serving his sentence.
7. It is our clients' view that the pending litigation has a direct impact on the action which they should take in terms of the Court Order on the basis that the very Court Order has become the subject of litigation in both Courts. Our clients are fully aware that the litigation steps taken by Mr Zuma cannot be categorised as appeal processes which in usual cases would have an effect of suspending the operation of a court order.
8. In view of the unique situation presented by the developments and the legal matrix involved, our clients will, out of respect of the unfolding litigation the processes, hold further actions they are expected to take in terms of the Honourable Court's orders in abeyance pending the finalisation of the litigation alternatively, pending any directions the Honourable Acting Chief Justice may possibly issue regarding the conduct of the litigation and any other related matter relevant to the litigation.

9. We trust you find the above in order and our clients will be bound by any direction which the Honourable Court may issue pursuant to our clients' intention to hold any steps in abeyance as indicated herein.

Yours faithfully

K TSHOWE
FOR: STATE ATTORNEY (PRETORIA)

Cc: State Attorney, Johannesburg
Mr. J van Schalkwyk
johvanschalkwyk@justice.gov.za

Cc: Webber Wentzel Incorporated
Mr. V Movshovich
Vlad.movshovich@webberwentzel.com

And

Cc: Ntanga Nkuhlu Incorporated
Mongezi@ntanga.co.za