IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 52/21

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE	First respondent
RAYMOND MNYAMEZELI ZONDO N.O.	Second Respondent
MINISTER OF POLICE	Third Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Fourth Respondent
THE HELEN SUZMAN FOUNDATION	Fifth Respondent

FILING NOTICE

TAKE NOTICE THAT the fifth respondent ("**the HSF**") presents the following for service and filing:

1. The HSF's answering affidavit in the applicant's rescission application, dated 2 July 2021.

DATED AT JOHANNESBURG ON THIS 6th DAY OF JULY 2021

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

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THE HELEN SUZMAN FOUNDATION	Fifth Respondent

FIFTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

HUBRECHT ANTONIE VAN DALSEN

do hereby make oath and state that:

1. I am an adult male legal counsellor of the fifth respondent, the Helen Suzman Foundation ("**HSF**"), situated at 6 Sherborne Road, Parktown, Johannesburg, a non-governmental organisation whose objectives are to defend the values

that underpin our liberal constitutional democracy and to promote respect for human rights. The HSF is cited as the fifth respondent in the notice of application under this case number dated 2 July 2021 and delivers this affidavit pursuant to the directions of this Honourable Court dated 3 July 2021.

2. I am duly authorised to depose to this affidavit on behalf of the HSF.

3. The facts contained in this affidavit are to the best of my knowledge both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge. Where I make legal submissions, I do this on the strength of the advice of the HSF's legal representatives.

THE APPLICANT'S CASE AND JURISDICTION

4. The applicant, the Former President of the Republic of South Africa, Mr Jacob Gedleyihlekisa Zuma ("**Mr Zuma**" or "**the applicant**"), as is evident from the notice of motion, has purported to bring this application in terms of section 167(3)(b) and/or section 167(6)(a) of the Constitution. The relief sought relates specifically to: the recission of paragraph 3 of the order of the Constitutional Court, dated 29 June 2021 ("**the Order**") in terms of Rule 42 of the Uniform Rules of Court ("**Rule 42**") read with Rule 29 of the Rules of the Constitutional Court; the rescission of paragraph 4 of the Order; and/or the setting aside of paragraphs 3, 4, 5 and 6 of the Order.

5. There is no provision in the Constitutional Court Rules, or in any other enactment, that permits any appeal or a reconsideration of a final judgment of the Constitutional Court. This matter is thus to be determined within the confines of the applicable law relating to rescission of judgments. To the extent that Mr Zuma has attempted to re-argue the merits of the contempt application that lead to the Order and the judgment of 29 June 2021 ("**the Judgment**")

this is impermissible and falls to be disregarded. Only submissions that relate to the requirements for rescission of orders are relevant to the determination of this matter.

6. Mr Zuma does not meet any of the jurisdictional prerequisites required to trigger a rescission application: instead, he largely reargues the merits. Perhaps recognising this, Mr Zuma proposes a novel legal test for rescission, which is not recognised in our law, and which is completely unsustainable.

7. It is, moreover, extraordinary for Mr Zuma to complain that he was not afforded an opportunity to be heard or make submissions, and was improperly judged as a result, when he was afforded multiple opportunities to make submissions, both in the ordinary course and, thereafter, by way of an express directive issued by this Court. His deliberate decision not to participate cannot now be used as a basis to impugn this Court's order.

8. Further, Mr Zuma's conduct in light of this Court's 29 June 2021 judgment does him no honour – he has doubled-down on his contempt and further scandalised the judiciary, and he continues to remain in contempt of two separate orders of this Court.

9. Mr Zuma has become, due to his own conduct, a notorious and serial constitutional delinquent who has brought upon himself two unprecedented Constitutional Court judgments. In the face of these judgments by the highest court in the land he remains obstinate and refuses to accept any outcome that is not in his favour, citing purported breaches of his constitutional rights and alleged public interest which he deploys squarely to his own benefit. He has had his opportunity to raise all relevant issues and is not permitted to have

another chance to resurrect a case on the merits. The guillotine has now fallen on the legal process.

INTRODUCTION

10. As the Constitutional Court has held, the President is "*a constitutional being by design, a national pathfinder, the quintessential commander-in-chief of State affairs and the personification of this nation's constitutional project*".[1]

11. The head of the Republic must thus be beyond reproach; must personify our constitutional democracy and its values and must, above all, always act in the best interests of the Republic. He is required to be a nation-builder, promoting unity within the Republic, advancing the rights of her citizens and guarding her from harm. Of all our nation's citizens, it is he who bears the greatest responsibilities, and it is he who is the most accountable to the law.

12. These observations apply equally to those who have held the high office of President but no longer do, such as the subject of this case, ex-President Mr Jacob Zuma. This is particularly so where the matters concern his time in office as President.

13. Instead of upholding his oath and responsibilities, Mr Zuma defied and vilified the law and the judicial branch, which is tasked with interpreting and giving life to law. Despite this, Mr Zuma is desperately seeking to avoid any accountability and is intent on plunging the Republic into a constitutional crisis, petitioning this Court to rescind its own order on frivolous grounds.

14. The substance of his challenge has no prospects of success because the

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[1] *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (3) SA 580 (CC) para [20].

majority of the Constitutional Court in its judgment of 29 June 2021 already rejected each of the key propositions which he advances, and insofar as he raises any new matter, this matter was available to him in February and April 2021 when he was called upon to state his case, but elected not to do so. He must live with that election.

15. In bringing this application, Mr Zuma attempts to make a mockery of legal process and the judiciary, the Constitution of the Republic and everything our democracy holds dear.

16. As is now notorious, Mr Zuma was afforded every opportunity to participate before the Constitutional Court in relation to the proceedings which resulted in the Judgment and Order.

17. Mr Zuma was even afforded the extraordinary opportunity to make submissions to the Constitutional Court after the hearing of the contempt case, which opportunity he elected to decline. He cannot now complain about a lack of opportunity to participate in the proceedings. Mr Zuma not only elected not to participate in those proceedings, but proceeded publicly to scandalise the Court and impugn the judiciary, repeatedly.

18. In a detailed judgment which considered all aspects of the case, including the very legal issues Mr Zuma now belatedly raises, the Constitutional Court found Mr Zuma guilty of contempt of court and sentenced him to 15 months' imprisonment.

19. Mr Zuma now – optimistically – contends that because his views differ with those of the majority of judges in the Constitutional Court, the CC Order is the product of a patent error and can be rescinded.

20. The Republic of South Africa is a constitutional democracy. Mr Zuma's case strikes at the heart of that constitutional democracy, seeking to subvert an order of the highest court in the land in the context of a profoundly important project, namely the uncovering of corruption and state capture at the State Capture Commission.

21. Quite simply, Mr Zuma seeks to be a law unto himself: a law higher than the Constitution and an authority higher than the Constitutional Court. His case is self-serving and legally unsustainable, both technically and substantively, for the reasons which follow.

22. In addressing the issues below, I note that the majority of the issues raised by Mr Zuma constitute argument, and will, as such, be addressed in legal argument.

23. In the time available I answer Mr Zuma's affidavit thematically below. Any paragraph of Mr Zuma's founding affidavit contrary to the contents hereof, or contrary to the CC (majority) judgment, is denied as if specifically traversed.

MR ZUMA HAS NOT TAKEN STEPS TO PURGE HIS CONTEMPT

24. Our Courts have repeatedly held that a litigant challenging a contempt order is not permitted even to approach a court to challenge that order until it has obeyed the order (and purged its contempt). This is so even if the order may be wrong or if the litigant believes it to be wrong.

25. The judicial authority vested in all courts obliges courts to ensure that there is compliance with court orders to safeguard and enhance their integrity, efficiency, and effective functioning.

26. In this instance, Mr Zuma continues to defy the Constitutional Court order of 28 January 2021 ("**the January CC Order**"), directing him to attend and testify at the Commission.

27. In relevant part, the January CC Order directs as follows:

> "*4. Mr Jacob Gedleyihlekisa Zuma is ordered to obey all summonses and directives lawfully issued by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Commission).*
>
> *5. Mr Jacob Gedleyihlekisa Zuma is directed to appear and give evidence before the Commission on dates determined by it.*
>
> *6. It is declared that Mr Jacob Gedleyihlekisa Zuma does not have a right to remain silent in proceedings before the Commission.*
>
> *7. It is declared that Mr Jacob Gedleyihlekisa Zuma is entitled to all privileges under section 3(4) of the Commissions Act, including the privilege against self-incrimination.*"

28. He has also not complied with the Order (which requires him to report to the South African Police Service within 5 calendar days from 29 June 2021, being by 4 July 2021). He has indicated publicly that he has no intention to comply. He is thus in flagrant defiance of two orders of the Constitutional Court. He has made it clear that he does not have any intention of purging his contempt.

29. In fact, his position – publicly stated and confirmed on affidavit – is that there should be no investigation into corruption at all. In this regard, we refer to *The Citizen* newspaper on 4 July 2021 (attached marked "**AA1**") and highlight the following remarks reportedly made during an address outside his Nkandla home the day before (which remarks Mr Zuma has confirmed he made in the

papers filed in the urgent interdict application before the Pietermaritzburg High Court, and defended his right to make):[2]

29.1 "*It will be difficult for me to hand myself over for imprisonment when I have done nothing wrong*";

29.2 "*This to me is a clear indication that that lawmakers, and even maybe those that are in power do not have an idea of what it means to be in power and to be in charge of taking care of the laws*"

29.3 "*I would like to remind you that even during the times when this commission was formed, I made remarks that one day there will be consequences because they were asking me to do something never before done*";

29.4 in the context, allegedly, of a statement that South Africa was the only country in the world to ever request its officials to investigate their own government and matters of governance: "*Not even a single one, and if you do that – it means you have no idea of the meaning of ruling because each and every country has its own secrets that are never spoken publicly*"; and

29.5 "*your support has been immensely important and hopefully, it will make those that are in power to realise that they are ruling over human beings and they cannot just take decisions lightly*"[3]

30. The above clearly demonstrates that, to this day, Mr Zuma believes himself to be above the law (even if Mr Zuma baldly denied this in the interdict proceedings)[4] and the Constitution, and continues wilfully to defy orders of the highest court and will do so whilst deliberately desecrating the Constitution and the judicial system in its entirely.

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[2] PMB High Court Zuma Replying Affidavit para 84, read with HSF PMB AA para 83. To avoid prolixity, these papers are not included but will be provided if requested.

[3] Quoting from https://citizen.co.za/news/south-africa/politics/2553213/zuma-takes-a-jab-at-judiciary-says-he-will-not-hand-himself-over-to-police/.

[4] PMB High Court RA para 84.

31. His ongoing contempt for the Constitutional Court's orders is not only on legal display through the case he has launched in this Court, but is aligned with public statements made by his foundation, the Jacob Zuma Foundation (from which Mr Zuma has not distanced himself), after the Constitutional Court issued its order on 29 June 2021. A copy of the statement, dated 30 June 2021, is attached as "**AA2**". In it, the Jacob Zuma Foundation "*denounces Judge Kampempe (sic) judgment as judicially emotional & angry and not consistent with our Constitution*". This is itself contemptuous and scandalous of the Court.

32. Before any Court will entertain any process from him, he would first have to comply with the 28 January 2021 Order and the Order.

33. Mr Zuma is thus not entitled to resort to self-help by choosing to ignore the Constitutional Court's order while attempting to bring this case before this Court. The rule of law does not permit it.

34. His continuous flouting of the Constitutional Court's authority, and continuing contempt of its orders, impedes the cause of justice and imperils the rule of law.

35. Mr Zuma has disentitled himself, through his conduct, from an audience before this Court, until he fulfils his court-ordered obligations. He does not approach the Court with clean hands and is not entitled to be before it. At the very least, his conduct ought to disincline the Court, in the interests of justice, of finding any basis to grant his recission application.

LACK OF STANDING AND NON-COMPLIANCE WITH THE REQUIREMENTS FOR RESCISSION

36. This rescission application is, moreover, fatally defective. It is procedurally unsound and unsustainable on the merits. It bears no prospects of success.

37. Mr Zuma's rescission application does not trigger any of the jurisdictional prerequisites which warrant rescission and has no prospects of success.

38. As per Uniform Rule 42(1):

> "*The court may, in addition to any other powers it may have mero motu or upon the application of any party affected, rescind or vary—*
>
> > *(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*
> >
> > *(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;*
> >
> > *(c) an order or judgment granted as the result of a mistake common to the parties.*"

39. It is a general and well-established rule that once a Court has made a final judgment or order, it does not itself have authority to alter, correct or set aside that judgment or order. One reason for this is that the Court becomes *functus officio*, with its jurisdiction over the matter thus ceasing. This also conforms to the principle of the finality of litigation which dictates that the power of the Court should necessarily come to an end once it has pronounced itself finally on an issue. This is an important incident of the rule of law. In relation to this, it should be noted that the inherent jurisdiction of the Court does not include the right to interfere with such principle of the finality of judgments, except in very

limited circumstances as provided for in the Uniform Rules of Court or the common law.

40. For the purposes of this matter, the only relevant exceptions are provided for in Rule 42. The purpose of this rule is to correct an obviously wrong judgment or order. It does not permit the affected person to re-argue his case on the merits in circumstances where he believes the court has erred in granting the order.

41. Rule 42 provides for three distinct bases for rescission or variation:

41.1 the order or judgment was erroneously sought or erroneously granted in the absence of any party affected thereby;

41.2 there is an ambiguity, or a patent error or omission, in the order or judgment but only to the extent of such ambiguity, error or omission;

41.3 the order or judgment was granted as the result of a mistake common to the parties.

42. Mr Zuma has failed to make out a case for any of these grounds for rescission and, indeed, none of these grounds can exist in the circumstances.

Mr Zuma has perempted his right to seek rescission and the Order was, in any event, not sought or granted in the absence of Mr Zuma

43. The High Court sub-rule relating to a judgment erroneously made applies typically to *ex parte* application or other cases where an affected party is absent, to bring true facts to the court's attention. It does not apply to the instance where a party is wilfully absent, and even upon further invitation to partake in the proceedings, defiantly refuses to do so. It is settled law that a

failure by a party to seek relief to which it is entitled is not covered by this High Court sub-rule.

44. The State Capture Commission did not erroneously seek the order that was ultimately granted by the Constitutional Court. Mr Zuma received proper notice of all proceedings in this Court.

45. Moreover, it was not legally incompetent for this Court to grant the order that it did. Mr Zuma has still not disclosed any facts, which if they were known to this Court, would have precluded it from making the order that it did.

46. Mr Zuma was given every opportunity to defend his position in the proceedings before the Constitutional Court leading to the January and June 2021 judgments and orders. Mr Zuma has unequivocally indicated that he refused to recognise the Constitutional Court's authority and would not participate before it. The final salvo in this regard was the 21-page letter Mr Zuma addressed to the Constitutional Court in response to the 9 April 2021 directive inviting him to make submissions regarding sanction for contempt and, if committal was deemed appropriate, "*the nature and the magnitude of the sentence that should be imposed, supported by reasons.*" A copy of this directive is annexed marked "**AA3**".

47. Mr Zuma elected not to file the requested affidavit, and instead filed a 21-page letter (annexed marked "**AA4**"). This letter was widely circulated throughout the country. In this letter, Mr Zuma indicated that his position was that the Constitutional Court proceedings lacked legitimacy; the directions were a sham; the Constitutional Court was embarking upon "*political gimmicks*" and engaging in "*political or public management*" of a decision already made; that

the proceedings constituted "*an extraordinary abuse of judicial authority to advance politically charged narratives*" etc.

48. Importantly, Mr Zuma recorded, unequivocally, the following:

> "[10] *It is a matter of record that I filed no notice to oppose. Nor did I file an answering affidavit or written submissions. I also did not request or brief counsel to appear on my behalf to address the Court on the issues raised by Chairperson Zondo on matters arising from the Commission of Inquiry. I was content to leave the determination of the issues in the mighty hands of the Court. If the Court is of the view, as it does, that it can impose a sanction of incarceration without hearing the "accused" I still leave the matter squarely in its capable hands.*"
>
> ...
>
> "[62] *The Constitutional Court must know that it will imprison me for exercising my constitutional rights and for that I leave it to you and your court. Clearly, the Constitutional Court deems it appropriate and lawful to impose a criminal sanction of incarceration of a person without hearing oral evidence from such an accused person. Contrary to popular sentiment, peddled by sponsored legal analysts and editors, I do not seek to undermine our Constitution or to create any constitutional crises. I have accepted that my stance has consequences…*"

49. Two important consequences arise:

49.1 First: Mr Zuma has indicated, unequivocally, that he leaves it to the Constitutional Court to decide the issue, without his representations. Having made and communicated that election, he cannot back-track, criticise the Court for not affording him an opportunity to make submissions and now – belatedly – attempt to make the very submissions asked of him on 9 April 2021. Quite simply, he – publicly and with great fanfare – washed his hands of the matter and stated that he left the matter for the Constitutional Court to deal with. He also accepted that this stance may have consequences.

49.2 This was a public election by Mr Zuma that the Constitutional Court would indeed deal with the matter, and would do so in the face of his objections and without his further submissions. It is thus not open to him to re-open the matter. He has thus waived his rights and / or is perempted from now seeking to re-open the matter, through rescission, and to make submissions. His refusal to participate, coupled with his acceptance of the consequences of his stance, means that he lacks standing to bring the rescission application.

49.3 Second: Mr Zuma repeatedly complains that he was not afforded an opportunity to make submissions and he has been convicted without a trial. The Constitutional Court in its judgment has made it plain that he was afforded the very opportunity he complains he was denied – namely a right to make representations pertaining to sanction (and the merits). He was afforded this opportunity twice: once in the ordinary course and then again through the directive. But he elected not to participate. Having refused to appear or participate, he cannot now raise his own non-participation as a ground of rescission for the order of contempt made against him.

50. As such, Mr Zuma lacks standing to bring the rescission application, as his previous position, publicly communicated, amounts to a peremption of any ability to challenge the Order, and any "absence" was by his own choosing.

51. Mr Zuma was admittedly, contemptuously and by his own election absent from the proceedings – this was not due to a service or citation failure, but due to Mr Zuma's deliberate decision not to participate. A decision not to participate does not suffice to qualify as "absent" as envisaged in Rule 42(1)(a) above.

52. Mr Zuma has also not been treated differently in the sense in which he contends – he was afforded full rights of *audi*, including in relation to sanction. He abjured those opportunities on every occasion.

There is no patent error or omission in the Order, it was not erroneously granted and no new test(s) falls to be developed

53. For a judgment to be rescinded on the "patent error or omission" ground the error or omission must be attributable to the court and the judgment must not reflect its intention and that fact must be patent.

54. In his founding affidavit Mr Zuma has made no allegations that bring his case within this sub-rule of Rule 42.

55. The Order was not erroneously granted and does not suffer from any patent error or omission. The Constitutional Court was, through Mr Zuma's letter, aware of his contentions as to the procedural hurdles which prevented him from being committed absent a trial. Plainly, the Court was aware of and grappled with these issues, but determined, as our highest Court, that its order was procedurally sound and constitutionally compliant.

56. The Constitutional Court expressly dealt with the procedural issues Mr Zuma now raises, and the absence of a trial. It is not for Mr Zuma now to try re-open those findings through a rescission application. The Constitutional Court has already determined the very procedural challenge he prefaces in making the Order.

57. There is no ambiguity in the Order, and no patent error or omission. A patent error or omission does not mean that a subject of the order believes that the Court erred on the merits and should have reached a different substantive decision. Instead, in the context of rescissions, patent error refers to an error

by the Court whereby the judgment obviously does not reflect its intention. There is no case to this end nor one that is pleaded. The Constitutional Court said precisely what it meant, in the clearest terms.

58. Order 3 is a declaration that Mr Zuma is guilty of the crime of contempt of court for failing to comply with the January CC Order. The issue of contempt was indeed the central issue facing the Court. The judgment assesses this question from paragraph 37 of the judgment, under the heading "*Is Mr Zuma in contempt of court?*". The Court goes about assessing the requirements for contempt and hold that "*[o]n the evidence placed before this Court, there can be no doubt that Mr Zuma is in contempt of Court*". There can thus be no doubt that the Court intended to make order 3 on its terms. There is no error or omission.

59. Order 4 is an order that Mr Zuma is sentenced to undergo 15 months' imprisonment. This order is the sanction that was ordered by the Court pursuant to the finding of contempt. The Court dealt in detail with the issue of the appropriate sanction in the circumstances of the case. The Court dealt in particular with whether a coercive order or punitive order was appropriate in the circumstances. The Court specifically found that a coercive order was inappropriate in the circumstances. On consideration of relevant issues, such as the importance of ensuring court orders are obeyed, Mr Zuma's constitutional rights in respect of sanction and his unique position, including as a former President of South Africa, the Court determined that a punitive sanction of imprisonment was the appropriate sanction. The Court found that "*[t]he cumulative effect of these factors is that Mr Zuma has left this Court with no real choice. The only appropriate sanction is a direct, unsuspended order of imprisonment. The alternative is to effectively sentence the legitimacy of*

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the Judiciary to inevitable decay". There can be no doubt, on a consideration of the judgment, that the Court intended to order a punitive sanction of imprisonment. There is thus no error or omission in order 4.

60. Orders 5 and 6 are measures to ensure that the sanction in order 4 is enforced and that Mr Zuma does indeed carry out the punitive sanction. In the context of order 4, it is clear that there is no error or omission in the granting of orders 5 and 6.

61. There is thus no error or omission in the Order, the orders reflect the intention of the Court and are in line with its reasoning in the judgment. The Order was made on the basis of the reasoning in the judgment. There can be no doubt the orders 3 to 6 were the orders that the Court intended to make.

62. Mr Zuma contends that the Constitutional Court may have erred as it failed to consider certain factors, such as his age, health, the effect of Covid-19 or what imprisonment could mean for an ex-President and the effects on his constitutional rights. The suggestion does not get out of the starting blocks. Motion proceedings are decided on the basis of affidavits, which constitute the pleadings and evidence in the matter. The Court decided the matter on the evidence placed before it. Mr Zuma was given every opportunity to place whatever evidence he deemed necessary, but failed to do so. The Court thus determined the matter on the evidence it did have. Just because there may have been a myriad of evidence which *could* have been raised does not in any way render the judgment erroneous. Mr Zuma has only himself to blame for his defiance of the Court, which has led to any omission. None of the "evidence" put up by Mr Zuma is new or came into being after the date of the hearing or judgment.

63. The above in itself is dispositive of any reliance on a patent error.

64. Further, an applicant for rescission on the grounds that an order was erroneously granted is required to show, *inter alia*, that but for the error he relies on, the Court could not have granted the impugned order. In other words, the error must be something that the Court was not aware of at the time the order was made and which would have precluded the granting of the order. This is clearly not the case in this instance. The factors raised by Mr Zuma did not and do not preclude the granting of the Order.

65. The Court requires three elements to be established:

65.1 an error,

65.2 the error must be something the Court was not aware of at the time of the order, and importantly;

65.3 the error would have "precluded" the granting of the order (and not merely been a factor taken into account).

66. As discussed above, there was no error or omission in the Order. In any event, and for the sake of completeness, even if there was an error it is not based on anything that would have precluded the granting of any of the orders. Mr Zuma has failed to make out a case for rescission under these requirements.

67. Mr Zuma refers to his personal circumstances and the effect of Covid-19 and purported infringements of constitutional rights. He states that given his allegedly vulnerable state of health and that incarceration threatens his physical life, he is entitled to request the Court to examine whether the judgment represents the law on contempt in a constitutional democracy based on the values of human dignity, equality, ubuntu and the advancement of

human rights. He states that it is his right to life itself that is at stake. His request is that the Court re-evaluate whether the Order violates his constitutional rights.

68. These are not grounds for rescission and there is further no basis for this Court to infer or conclude that the Order could not have been granted with the knowledge of these allegations. In addition, if Mr Zuma felt strongly about these factors, he should have made representations when he was given that opportunity. He must live with his failure not to participate in the contempt proceedings. Moreover, it is, by now, public knowledge that Mr Zuma does not appear as concerned with Covid-19 as he alleges – as seen during his address to the media on 4 July 2021, he did not adhere to social distancing protocols (at all); was frequently seen in close proximity to others (including members of the public) without a mask and his supporters / confidantes exhibited similar behaviour. The invocation of Covid-19 thus appears to be yet another attempt to contort the facts to suit his current purpose. But even if any of these factors were to be of relevance, they are to be advanced by Mr Zuma to the relevant authorities in charge of his incarceration.

69. To the extent that Mr Zuma takes issue with the process used by the Constitutional Court and argues that he could not be committed without a trial, that is not a new argument in favour of rescission which can serve before the Constitutional Court. The majority judgment dealt with this very point, in great detail, and after close consideration of the minority' views. The Constitutional Court has held against Mr Zuma in this regard. The Constitutional Court thus considered and ruled upon this issue.

70. The Court dealt with the constitutionality of the sanction and the procedure leading to the sanction in detail. Its findings and deliberations appear in the

judgment, with only one conclusion: that the process it has used is constitutionally compliant, and that, in all the circumstances and in light of the legal matrix, Mr Zuma falls to be committed to imprisonment. Mr Zuma cannot now argue that this very analysis was either not performed or was performed erroneously. Plainly, this exercise was undertaken by the Court in great detail, and, even if it got it wrong (which is denied), that does not create a basis for rescission.

71. It is an exercise in circularity for a litigant to suggest that (1) the Constitutional Court considered a process or piece of legislation but (2) the Constitutional Court erred in this regard and, as such, acted in a manner inconsistent with the Constitution and (3) because of this, the aggrieved party may approach the Constitutional Court again to point this out and have a reconsideration of the very same debate. Where and when would this cycle end? One merely needs to consider it to appreciate the fatal defect in Mr Zuma's approach.

72. The precedents Mr Zuma seeks to establish in this regard are ones which would paralyse the judiciary:

72.1 first, a party could elect not to participate in litigation (despite being cited and served with papers), but then – should he / she lose the matter – demand an opportunity to make submissions thereafter;

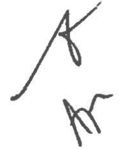
72.2 second, any party whose matter is heard directly by the Constitutional Court – when it affords a party the extraordinary right of direct access – would be entitled to bring a rescission application because (1) no appeal exists and (2) the litigant believes that the Constitutional Court erred or acted in an unconstitutional manner; and

72.3 third, the meaning of "patent error" under Rule 42 would be transformed to mean substantive error, such that it would essentially encompass appeal grounds being brought to the same court.

73. The above are – with good reason – not the tests for rescission, and are expressly why the tests for rescission exist in the form that they do. Mr Zuma's application and relief is an invitation for chaos. Mr Zuma's "test" would simply allow for a never-ending stream of disguised appeals, as well as the Constitutional Court – and every other court - repeatedly having to decide matters twice or thrice or any other number of times until litigants are exhausted of funds. This is anathema to the rule of law and principle of the finality of judgments, which flows therefrom.

74. And the spectre of such future applications is not far-fetched. Already, media reports indicate that the Public Protector is considering seeking a rescission of this Court's order and judgment made against her on a similar basis to that now advanced by Mr Zuma. To this end, I annex media reports, marked "**AA5**".

75. Mr Zuma now also states that he felt that he would not get a fair hearing from the Honourable Pillay AJ (and maybe others). He, however, failed to seek recusal of any of these judges and now, ironically, has contented himself to apply to this Court with the very same composition of judges, including the Honourable Pillay AJ. The fact that Pillay AJ – or indeed any judge – has ruled against Mr Zuma in previous proceedings is not indicative of bias, however. This is particularly so where Mr Zuma is a serial litigant, and serially unsuccessful.



76. Mr Zuma seeks to make an argument for the appropriateness of a coercive sanction by stating that the tenure of the Commission has been extended. This is irrelevant in the circumstances. The Court has considered the appropriateness of a coercive sanction and found that it would be inappropriate even if the Commission had life. It is clear from the reasoning that the tenure of the Commission was not a determining factor in deciding on the sanction. This aspect would thus not have changed the outcome. This argument is also surprising, as he has taken, and continues to take, the position that he will not appear before the Commission.

77. The factors cited by Mr Zuma, even if not considered but now weighed, would not have changed the outcome of the Court's reasoning. To the extent that Mr Zuma believes that the orders should not have been made on the proper application of the law, that is not an error as contemplated in Rule 42. As discussed above, the Court dealt in detail with the constitutionality of the sanction and found that it was appropriate in the circumstances taking into account the case that was before the Court.

78. Mr Zuma, however, while accepting that the Court's findings are final, openly contends that the Court should re-hear his case on the merits by way of a rescission application. In his papers before the High Court of South Africa, Pietermaritzburg, he stated as follows:

> *"[37] I am unable to appeal to any Court because the Constitutional Court is the final court for which there is no appeal for a convicted person in my position. That is why I seek to approach that same court to rescind the order and also hopefully to reconsider whether it is lawful to treat me differently to any criminal accused."*

> *"[60.2] I have nowhere to appeal, hence my application to have the same Constitutional Court that convicted and sentence without a civil or criminal trial*

reconsider, vary or rescind its orders. Yet the Constitutional Court erroneously declared that "the right of appeal does not arise" in my case."

79. In his papers before this Court, Mr Zuma continues this theme, stating:

79.1 "[49] *In my view, the Constitutional Court must reconsider its order that completely strip me of [alleged rights]... I am entitled to hold and express the view that Courts are wrong... and should revisit this grave injustice and unconstitutional conduct."*

79.2 "*[85] The violation of my right of appeal ought properly to have been examined*".

80. The rescission application is thus nothing less than a disguised appeal and is impermissible. What Mr Zuma is doing is to request the Court to reassess the merits of the matter. He states as follows in this founding affidavit:

> "*[14] I am advised that ... it will not be futile to make one last attempt to invite the Constitutional Court to relook its decision and to merely reassess whether it has acted within the Constitution or, erroneously, beyond the powers vested in the court by the Constitution.*"

81. Ultimately, Mr Zuma fails to trigger any of the jurisdictional prerequisites for rescission. He lost before the Constitutional Court and, like every losing party, wishes for a second bite at the cherry. This is not permitted, however.

82. Mr Zuma is essentially advising the Constitutional Court that it is wrong in both its judgments and that it must rather accept – or at least consider – his reasoning. This Court is not able to reconsider the matters as framed, however, as no case for rescission has been made out, and no appeal or review lies to this Court.

83. The Order is the logical consequence of Mr Zuma's ongoing, long-held and publicly stated defiance of his constitutional obligations. Having seemingly hoped that his absence from proceedings would present an insurmountable hurdle, Mr Zuma now attempts to backtrack on that failed strategy, so as to

argue the case which, from inception, he was repeatedly invited to do. Having refused to do so, that opportunity is gone: he cannot ask this Court to treat its order and proceedings as a dress rehearsal and now start again.

84. If the rescission application was to succeed on Mr Zuma's unsuitable grounds, this would cause untold damage to proper process and finality of orders in the High Courts. A litigant could choose not to participate, defy a court order, and when an adverse order is granted, simply come to court on the basis of seeking rescission and have another opportunity to run a further case on the merits. This would be contrary to the principles of the finality of judgments, *res judicata* and *functus officio.* Certainty requires that such finality is respected irrespective of their correctness. To create precedent that is an affront to this principle would cause chaos in the legal system and would not be in the interests of justice.

There is no mistake common to the parties

85. Finally, there is no mistake common to the parties. None has in any event been pleaded. For the sake of completeness, the Court was faced with specific prayers from the Commission for a purely punitive sanction. Mr Zuma was well aware that the case against him involved a possible punitive sanction of incarceration. The HSF also submitted that a punitive sanction was appropriate but argued that there should also be an additional coercive element. The Court considered the merits and appropriateness of both the punitive and coercive sanctions and found that the appropriate sanction in the circumstances was a punitive sanction. There is no mistake between the parties and no error by the Court in handing down the Order on its precise terms.

MISCELLANEOUS

86. Mr Zuma spends some time explaining why he contends that the State Capture Commission (among other entities) is biased and that he has launched review proceedings after Deputy Chief Justice Zondo did not recuse himself as chair thereof.

87. This is irrelevant, however. First, these facts were well-known to the Constitutional Court. Repeating them is thus not a ground for rescission. Second, it is trite law that a review application has no suspensive effect. The review application thus never afforded Mr Zuma any power to refuse to attend at the Commission, and certainly no power deliberately and openly to defy orders of this Court.

88. In any event, the 28 January 2021 order stands and Mr Zuma has taken no steps to impugn it. In the face of that order, Mr Zuma's review application (which antedates that order) has no relevance at all.

89. In addition, Mr Zuma complains that he thought the State Capture Commission would address his behaviour through the Commissions Act. This argument is difficult to understand or credit. In the papers filed before this Court and provided to Mr Zuma, it was made clear, in unequivocal terms, that the State Capture Commission was proceeding, before this Court, for an order of committal given Mr Zuma's non-compliance, as detailed in the papers. Mr Zuma was thus, at all relevant times, fully apprised of the case he had to meet, and what sanctions were being sought from whom. His late-blooming complaint is thus spurious.

90. Finally, Mr Zuma – even in his rescission application – still defiantly contends that "*[t]o issue an order that I should appear before a biased Commission of*

Inquiry and to obey its instructions was fundamentally flawed". This is consistent with his attitude throughout – namely that he would not attend at the Commission and would not be giving effect to this Court's order to the contrary. As such, in that light, how is judicial authority to be enforced and upheld? The administration of justice would be entirely subverted were litigants permitted to ignore court orders without repercussion. And, where coercion or performance is not possible, then punitive measures must be considered so as to protect the functioning of our judiciary.

91. Mr Zuma, like all of us, is subject to the law. This includes laws that he may not like, but he is, nonetheless, obliged to obey. In this respect, far from being singled out as an ex-President, he is treated the same as every other citizen of the Republic. The reason why we are here is that Mr Zuma considers himself to be above the law.

CONCLUSIONS

92. Accordingly, the HSF submits that Mr Zuma is not entitled to bring this application – at all - without taking steps to purge his contempt (in this case by handing himself over for incarceration). Mr Zuma also has no standing to pursue this application and has waived any rights he may have had.

93. There is also no basis for rescission or setting aside of any aspect of the Order. The application is a futile and transparent attempt to have the Court reassess the matter on the merits. The Court has made final and binding findings and orders, and intended to make those findings and orders. Mr Zuma, as everyone else, must live with and obey that outcome.

94. Were Mr Zuma permitted to escape with no consequences to his actions, every litigant would treat judicial authority in the same light.

95. The application is incompetent and an abuse of the Court's processes and which has put the respondents and the Court to unnecessary effort and expense to deal with this unmeritorious and vexatious application. Mr Zuma must thus be ordered to pay the costs of the respondents on a punitive scale.

WHEREFORE the HSF seeks an order that the application be dismissed with costs on the scale as between attorney and client, including the costs of two counsel.

DEPONENT

THUS SIGNED AND SWORN to before me at 06 on July 2021, by the deponent, he having acknowledged that he knows and understands the contents of this affidavit, that he has no objections to taking the prescribed oath and considers same to be binding on his conscience.

Commissioner of oaths

Full names: Alfred Molahlega

Business address: Nr 71 Dundalk Ave Parkview

Designation: COS

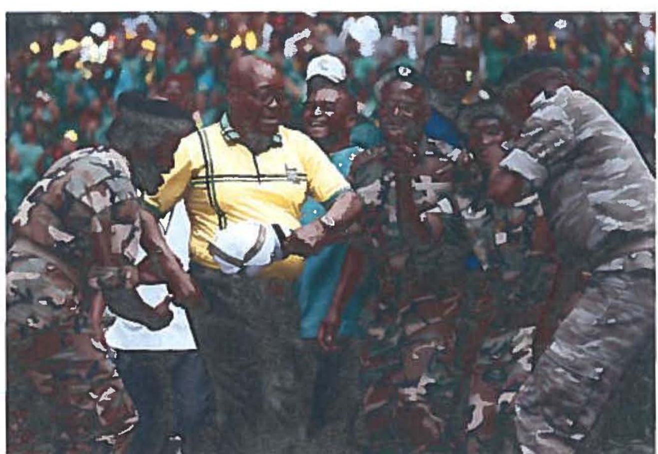
Capacity: COS

NEWS | POLITICS

NEWS

Zuma takes a jab at judiciary, says he will not hand himself over to police

'It will be difficult for me to hand myself over for imprisonment when I have done nothing wrong,' Zuma told cheering crowds.



Former president Jacob Zuma. Picture: Gallo Images/Phill Magakoe

Former President Jacob Zuma has struck a defiant note, saying he will not hand himself over to the police to begin the 15-month sentence handed on Tuesday by the Constitutional Court.

Zuma said this while addressing the Amazulu regiments (*Amabutho*) outside his home in Nkandla on Saturday afternoon, following his first public appearance since the sentence was handed down by Justice Sisi Khampempe.

In his address to the *Amabutho*, he made it clear he had done nothing

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judiciary, warning that those in power will one day live to "regret" their decisions.

ALSO READ: ConCourt agrees to hear Zuma's contempt rescission case

"It will be difficult for me to hand myself over for imprisonment when I have done nothing wrong," Zuma said.

"This to me is a clear indication that that lawmakers, and even maybe those that are in power do not have an idea of what it means to be in power and to be in charge of taking care of the laws."

"When you are given power, you must not dare take that for granted, because the result of doing so could have far-reaching consequences in the country, something that can easily be prevented,' a defiant Zuma said to loud cheers.

By Siyanda Ndlovu
Digital Journalist

3 minute read

4 Jul 2021

10:22 am

"I would like to remind you that even during the times when this commission was formed, I made remarks that one day there will be consequences because they were asking me to do something never before done."

Zuma said that the whole idea of the Commission of Inquiry into allegations of State Capture was wrong.

He said South Africa was the only country in the world to ever request its officials to investigate their own government and matters of governance.

"Not even a single one, and if you do that – it means you have no idea of the meaning of ruling because each and every country has its own secrets that are never spoken publicly."

ALSO READ: Zuma and cronies stoop to new low

Scores of people and organisations have since descended to Nkandla in the north of KwaZulu Natal to stand in solidarity with Zuma, who was until yesterday expected to hand himself over to the nearest police station in Nkandla or in Johannesburg to begin his sentence.

However, the Constitutional Court on Saturday agreed to hear his contempt of court rescission application on Monday, 12 July 2021.

Zuma said crowds flocking to his defence was a sign that people were not happy with the ConCourt's decision.

"You can not... make decisions that upset the people and do things that they are opposing, just because you have the powers.

"I think your support has been immensely important and hopefully, it will make those that are in power to realise that they are ruling over human beings and they cannot just take decisions lightly," said Zuma.

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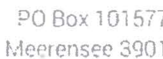
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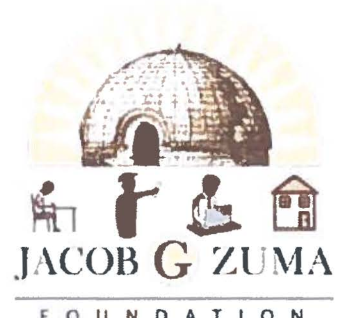

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30 June 2021

JGZF RESPONSE TO JG ZUMA'S CONCOURT JUDGEMENT

The Jacob Zuma Foundation has taken note of the judgment of the Constitutional Court (both majority and minority). We are busy studying the judgment and discussing with our lawyers to get legal advice on the options available to our Patron, H.E President Zuma. We, however, would like to make the following observations:

Firstly, we are cognizant that the State Capture Commission (Zondo Commission) was established to perform a very important and invaluable task for our country. However, it remains a statutory body clothed only with the powers that the Legislature has given it. Our courts (including the Constitutional Court) are duty-bound to uphold and protect the Constitution and to administer justice to all persons alike without fear, favour, or prejudice, in accordance with the Constitution. Suffice to say that the same Constitution that obliges our Patron to obey the supreme law of the land like every other citizen also affords him the same protections that it affords every other citizen.

Secondly, our Patron has never believed that he is above the law or the Constitution, the supreme law of the land. On the contrary, he has always insisted that he must be treated like every other citizen, and his rights to equal protection of the laws must be respected and protected. Indeed, our Patron has expressed his doubts about the lawfulness of the Zondo Commission, the biased manner in which it is being conducted, and the fact that it has been transformed into a "slaughterhouse" and a forum in which all kinds of unsubstantiated and defamatory allegations have been made against him. He sought the recusal of DCJ Zondo on the basis of bias, followed appropriate legal channels, and lodged a judicial review application in the High Court. Instead of allowing a lawful judicial review process to unfold in the High Court, DCJ Zondo ignored that review court process and lodged an urgent application in the Constitutional Court seeking to hold our Patron in contempt despite exercising his rights of access to courts. In our view, that cannot be consistent with the substantive upholding of the rule of law that some only pay lip service to. Justice must be seen to be done.

Thirdly, it is not a criminal offence to have a dispute with an administrative agency such as the Zondo Commission. Our Patron has a legitimate disagreement with DCJ Zondo and has taken steps to have that dispute ventilated in the High Court.
The refusal of our Patron to comply with an order which he considered unconstitutional cannot be characterised as willful or "mala fide." He was acting in good faith and seeking to uphold the law. In addition, DCJ Zondo, through an affidavit that he deposed, is a complainant in a criminal case he has opened against our Patron.
Surely it cannot be consistent with the rule of law for DCJ Zondo to continue to preside over a matter where our Patron is an implicated party wherein the same DCJ Zondo has to make credibility determinations. The common law maxim that a man may not be a judge in his own case-unequivocally negates the power of DCJ Zondo to hear and decide a case in which he is an interested party.

AM

Finally, the principle of equality before the law was clearly violated, and the Zondo Commission was given an advantage in a case that was adjudicated by DCJ Zondo's colleagues, whom he supervises. In addition, the majority judgment makes a spurious claim that our Patron "attacked" the Constitutional Court, which is utterly false. If true, it is unconstitutional and a serious conflict for the same "vilified" panel of judges, which is supposedly embroiled in a running, bitter controversy with the alleged contemnor to preside as judges in their own case. No one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication. The characterisation of our Patron by the majority panel paints a picture of a very angry panel of judges. We concur with the view of other justices who said the Constitutional Court majority acted contrary to the rule of law.

The primacy of our Constitution was not vindicated in this matter at all. Actual or perceived judicial bias is unacceptable in our constitutional order. Judicial authority is an integral and indispensable cog of our constitutional architecture. Our supreme law vests judicial authority in the courts. (Section 165(1) of the Constitution.) It commands that courts must function without fear, favour or prejudice, and subject only to the Constitution and the law. It follows that, at all times, the judicial function must be exercised in accordance with the Constitution. Judges are not above the law.

At a bare minimum, this means that courts must act independently and without bias, with unremitting fidelity to the law, and must be seen to be doing so. That did not happen in the Constitutional Court, as evidenced by the latest judgment. The dissenting minority judgment confirms that the majority judges breached the Constitution and their oath of office. This is so because courts are final arbiters on the Constitution's meaning and the law – a high duty that must be discharged without real or perceived bias.

In conclusion, the Jacob Zuma Foundation denounces Judge Kampempe judgment as judicially emotional & angry and not consistent with our Constitution.

For Inquiries Contact:
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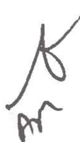

"AA3"

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 52/21

In the matter between:

SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE	Applicant

and

JACOB GEDLEYIHLEKISA ZUMA	First Respondent
MINISTER OF POLICE	Second Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Third Respondent
HELEN SUZMAN FOUNDATION	Amicus Curiae

DIRECTIONS DATED 9 APRIL 2021

The Chief Justice has issued the following directions:

1. The first respondent is directed to file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021 on the following issues:

   a) In the event that the first respondent is found to be guilty of the alleged contempt of court, what constitutes the appropriate sanction; and

b) In the event that this Court deems committal to be appropriate, the nature and magnitude of sentence that should be imposed, supported by reasons.

2. Only in the event that this Court receives an affidavit from the first respondent in terms of paragraph 1 above, the applicant, second and third respondents and the amicus curiae are directed to file affidavits of no longer than 15 pages in response to the affidavit referred to in paragraph 1, if they so wish, on or before Friday, 16 April 2021.

3. Further directions may be issued.

MR DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT

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Ref: V Movshovich / P Dela / D Cron / D Rafferty / D Qolohle

"AA4"

JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

14 April 2021

RE: DIRECTIONS DATED 9 APRIL 2021: CASE NO. CCT 52/21

Dear Chief Justice

1. I received your directions dated 9 April 2021 in which you direct me to "file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021" to address two theoretical questions relating to sanction.

2. The questions are framed on the presumption that the Court that heard the application of the Chairperson of the Commission of Inquiry into State Capture, Fraud and Corruption in Public Entities ("Zondo Commission") has not determined the merits of whether I am guilty of contempt of court.

3. I have thought long and hard about the request in your directives. I have also been advised that addressing a letter of this nature to the court is unprecedented as a response to a directive to file an affidavit. However, given the unprecedented nature of my impending imprisonment by the Constitutional Court, we are indeed in unprecedented terrain.

Am

4. The purpose of this letter is two-fold. First, although I am directed to address in 15 pages and within three court days my submissions on sanction in the event, I am found guilty of contempt of court and *"in the event that this court deems committal to be appropriate, the nature and magnitude of the sentence supported by reasons."*, I wish to advise you that I will not depose to an affidavit as presently directed. Second, I wish to advise that my stance in this regard is not out of any disrespect for you or the Court, but stems from my conscientious objection to the manner in which I have been treated. Accordingly, I set out in this letter my reasons for not participating and deem it prudent, for the record, to appraise you of my objections.

5. At the outset, I must state that I did not participate in the proceedings before the Constitutional Court and view the directives as nothing but a stratagem to clothe its decision with some legitimacy. Further, in directing me to depose to an affidavit, the Chairperson of the Commission, as the applicant, and some politically interested groups styled as *amicus curie* are given the right of rebuttal. That is in my view not a fair procedure in circumstances where my rights under sections 10, 11 and 12 of the Constitution are implicated. I am resigned to being a prisoner of the Constitutional Court because it is clear to me that the Constitutional Court considers the Zondo Commission to be central to our national life and the search for the national truth on the state of governance during my presidency. It has also become clear to me that even though the Constitutional Court has no jurisdiction Deputy Chief Justice Zondo was determined to place the matter before judges who serve as his subordinates in order to obtain the order he wants.

6. This is despite the fact that by doing so, he ignores the review I have launched regarding his refusal to recuse himself.

7. The directions took me by surprise in their breadth and scope. I understand them to be your attempt at giving me a right to hearing only on the question of sanction in the alleged theoretical or hypothetical basis that I am found guilty of contempt of court. That is of significant concern to me firstly because the Court would have known that I had decided not to participate in the proceedings of the Court. I did not ask for this right to hearing and since it is an invention of the Chief Justice I would have expected the Chief Justice to have been concerned about the motive of seeking my participation in mitigating by speculating about a decision concealed from me.

8. As currently framed the directions – to the extent they purport to give me a right to a hearing on the question of sanction – it is a sham and an attempt to sanitise the gravity of the repressive manner in which the Court has dealt with my issues. It is disappointing and fortifies my concerns, when our apex court engages in what clearly is political or public management of a decision they have already taken.

9. In my view, these political gimmicks do not belong in the bench. It is apparent that the Constitutional Court is attempting to correct its rather incorrect decision in hearing a matter relating to a summons or the non-compliance thereto when the Commissions Act contains an internal provision as to how a commission should deal with such an eventuality.

10. It is a matter of record that I filed no notice to oppose. Nor did I file an answering affidavit or written submissions. I also did not request or brief Counsel to appear on my behalf to address the Court on the issues raised by Chairperson Zondo on matters arising from the Commission of Inquiry. I was content to leave the determination of the issues in the mighty hands of the Court. If the Court is of the view, as it does, that it can impose a sanction of incarceration without hearing the "accused" I still leave the matter squarely in its capable hands.

11. My position in respect of the contempt of court proceedings is a conscientious objection to what I consider to be an extraordinary abuse of judicial authority to advance politically charged narratives of a politically but very powerful commercial and political interests through the Zondo Commission. My objection is legitimate, as it is sourced directly from the Constitution itself and what it promises. The Constitution is the pillar of our celebrated constitutional order.

12. South Africa's nascent democratic order is built against the background of a painful past, a blatant disregard for human rights by the apartheid political order. The new South Africa was built on an anti-thesis of an unjust system, a system that had no regard for human rights and justice. Our Constitution cured this apartheid injustice and engraved, as foundational principles, "human dignity, the achievement of equality and the advancement of human rights and freedoms." To ensure the inviolability of these principles, our Constitution made it a mandatory constitutional requirement on every state institution (the courts included) to "respect, protect, promote and fulfil the rights in the Bill of Rights." The Bill of Rights was given the supreme status as the cornerstone of democracy

in South Africa, enshrining the rights of all people in our country and affirming the democratic values of human dignity, equality, and freedom. In s 8 of the Constitution, the Bill of Rights applies to all and binds the legislature, the executive, the judiciary, and all organs of state.

13. This means that both the Zondo Commission (acting as the executive arm of government) and the Constitutional Court are bound by the "democratic values of human dignity, equality and freedom.

14. The Constitutional Court was to be the enduring monument of our constitutional order, representing our victory over the apartheid system. It is the only innovation by the founders of our constitutional order in the structure of our judiciary that was established to champion a judicial system that would be the bulwark against injustice and oppression.

15. It was established to represent an irrevocable covenant between the people and their government of human dignity, the achievement of equality and the advancement of human rights and freedoms.

16. In order to ensure that our new system of constitutional democracy would have an enduring constitutional legacy, we decided that we would only appoint worthy arbitrators, whose historical experience and sense of humanity would connect with the spirit and ethos of our constitutional system. This is because our Constitutional Court would not have to be prompted to perform its central constitutional mission.

17. The Constitutional Court would represent freedom for everyone, and with it, I believed that we would be safe from the unjust and oppressive political narratives that had routinely found credibility in the courts of oppression. It is no secret that dominant narratives come from the dominant and moneyed classes in our society.

18. Ideally, such narratives should not sway our apex court on how to deal with a particular litigant.

19. The men and women who were to serve on it would not conduct the affairs of the Court with arrogance and oppressive tendencies. In the words of our national hero Nelson Mandela on 14 February 1995 at the inauguration of the Constitutional Court, on behalf of the people of South Africa he said to the then Chief Justice Arthur Chaskalson:

> "yours is the most noble task that could fall to any legal person. In the last resort, the guarantee of the fundamental rights and freedoms for which we fought so hard, lies in your hands. We look to you to honor the Constitution and the people it represents. We expect from you, no, we demand of you, the greatest use of your wisdom, honesty, and good sense – no short cuts, no easy solutions. Your work is not only lofty, but also a lonely one."

20. At the signing of the Constitution on 10 December 1996, President Mandela characterized the Constitutional Court as the *"true and fearless custodian of our constitutional agreements."* Why we needed an independent judiciary is to ensure that the courts are transformed into unwavering and uncompromising custodians of our constitutional democracy and the freedoms through an

adjudicative system that is based on the recognition of the inherent dignity of each individual.

21. I was particularly disappointed that our apex court even considered it prudent that it had jurisdiction to consider a custodial sanction as a court of first instance when no trial has been conducted to determine whether or not there has been contempt of court. Although I am not a lawyer, I have read the Constitutional Court ruling and its attempt to fudge the issue of jurisdiction and I was left none the wiser as to its reasoning about jurisdiction.

22. I also watched the proceedings of the Court on 28 December 2020 – in which I was addressed in very unkind words, labelled "accused number 1" at the Commission by the Commission lawyers, a defiant against the authority of the Commission. These unkind comments were not met with judicial disapproval and in fact found validation in the ruling of the Constitutional Court delivered by Justice Jafta on February 2021.

23. I was sad to see the Constitutional Court fail to uphold elementary constitutional standards of human dignity, advancement of rights and freedom. I was particularly shocked to learn that the Constitutional Court found it consistent with its constitutional mission to – in support of the Zondo Commission – to strip me of constitutional rights guaranteed in our Constitution. It was not only the right to be presumed innocent, to remain silent and not to testify during proceedings – guaranteed in section 35(3)(h) of the Constitution. My right to equality before the law and to the equal protection of the law was taken away from me. Many

witnesses at the Zondo Commission, where it was deemed appropriate, could assert their rights in section 35(3)(h) of the Constitution, with approval by the Chairperson, while he sought to limit mine. The Constitutional Court ordered that I should not assert a valid defense based on the right to be presumed innocent, to remain silent and not to testify in proceedings. Why is it consistent with the central constitutional mission of the Court to deprive me of the rights afforded to other witnesses in similar proceedings?

24. I reflected on the condemnatory tone adopted by the Constitutional Court in relation to my non-participation including its decision to impose a punitive cost order and could only conclude that the Court had decided to come to the assistance of the Zondo Commission – not based on constitutionally justifiable grounds but to support the rampant political narrative of the Zondo Commission that if I am forced to testify – it would assist in assessing the state of democratic governance under my Presidency.

25. Finally, without any reflection on its constitutional status as a court of first and final instance in constitutional matters, the Constitutional Court made rulings that deprived me of my right to have my justifiable dispute with Justice Zondo over his suitability to receive and determine evidence given by or against me in the Zondo Commission. I carefully examined the implications of a judgment that was essentially forcing me to appear before a biased and prejudiced presiding officer and realized that the Court had entrenched a growing judicial trend in which my cases are not determined in accordance with the Constitution and the constitutional values of our Constitution. Broadly speaking, I believe, having

examined how the courts have dealt with cases involving my constitutional rights, I came to the conclusion that there is inexplicable judicial antipathy towards me. I can give numerous examples of how courts have joined the political narrative in which I am routinely a subject of political ridicule and commentary.

25.1. The condemnatory political comments by Acting Justice Pillay in her judgment about me are but one example.

26. My decision not to participate in the contempt of court proceedings was based on my belief that my participation would not change the atmosphere of judicial hostility and humiliation reflected in its judgment against me. It is my view or my feeling that the judges of the Constitutional Court do not intend to ensure that they address disputes involving me in a manner that accords with the independence, impartiality, dignity, accessibility, and effectiveness of the Court.

27. One of the astonishing facts is indeed the presence of Acting Justice D Pillay as a member of the panel of the Constitutional Court considering my dispute, a judicial officer whose judicial antipathy towards me is well recorded in a court judgment and an order for my arrest while I was in hospital, sitting comfortably as a panelist pretending to exercise impartial judicial authority in a case that would determine whether I should be arrested and imprisoned for not complying with a court order. I found the participation of Acting Justice Pillay particularly disturbing and a clear indication of her unmitigated lack of discretion and a deeply irresponsible exercise of judicial power. Her gratuitous comments in a judgment against me in a dispute involving my comments on Derek Hanekom and her

subsequent refusal to accept a medical note from a qualified doctor justifying my absence from a court in which my criminal trial was not scheduled to begin are a matter of public record.

28. Your directive, Chief Justice provides that I must answer the questions in a 15-page affidavit within 3 days. Regrettably, if I accede to your request, I purge my conscientious objection for having not participated in the proceedings of the Constitutional Court. So, please accept this letter as the only manner in terms of which I am able to convey my conscientious objection to the manner in which your Constitutional Court Justices have abused their power to take away rights accorded to me by the Constitution. I invite you to share this letter with them as it is relevant to the directions that you have issued. I make this request having been advised that this letter is not a pleading.

29. After agonising over how to respond to your direction, Chief Justice, I came to the conclusion that the directions are an attempt to get me to make submissions that would assist those judging me on the question of sanction.

30. Chief Justice, while giving me a right to a hearing is something I could commend, there are intractable problems with the nature and scope of the right that you have afforded me. The right to hearing in respect of sanction reduced to 15 pages which must be provided to the Court within 3 days does not appear to be made as a good faith attempt to give me a right to hearing but to sanitise the procedural infirmities of the procedures of the Constitutional Court. More importantly, the conditions for my right to a hearing do not appear to fully engage

with my rights to express a view on the merits - given that the issue of sanction would ordinarily also include the question of why I should not be sanctioned for my non-compliance with the Court order. I have therefore decided to address that antecedent question before I address the theoretical question of what the sanction should be given in the event of my conviction.

31. As stated above, my decision not to participate in the hearing of the Constitutional Court was a conscientious objection.

32. Rather than being regarded as acts of defiance, my actions are aimed at bringing to the attention of the Court the injustice of their actions and judgment. I cannot appeal a judgment of the Constitutional Court even where it perpetrates a grave constitutional injustice. I therefore cannot in good conscience enable the Constitutional Court to violate my constitutional rights contrary to its supreme constitutional mandate by filing an affidavit on sanction simply to cure the procedural infirmities adopted by it.

33. When the Constitutional Court accepted the submissions of the Zondo Commission on the question of extreme urgency and direct access, I was convinced that it had done so because of the political nature of the work of the Zondo Commission – which is established to destroy the work that I did when I served my country as President. I am also concerned that in this context, the Constitutional Court as well as the Zondo Commission misapprehended the powers and legal status of the Commission.

34. I have no doubt that the Zondo Commission has become a complex project controlled by my political foes. Even though I established the Commission, I was aware that it had been proposed as part of the campaigns to force me out of government.

35. The Zondo Commission has an insurmountable problem which the Court failed to even reflect on: whether it was competent for the judges of the Constitutional Court to adjudicate a matter involving their own colleague and a Deputy Chief Justice for that matter? The Constitutional Court failed to reflect its reasons for adjudicating a dispute involving their colleague.

36. The contempt proceedings were not brought to vindicate the integrity of the Zondo Commission rulings or directives – for as I listened to the arguments made before the Court by the Commission – it expressly does not seek to enforce my further participation in the Commission. In fact, it was stated vociferously on behalf of the Commission that all it wants is my incarceration and not my appearance before it.

37. What the Zondo Commission did was to avoid utilising the statutorily prescribed procedures for enforcing its directives, it created conditions for holding me in contempt of court rather than in contempt of the Zondo Commission. Had the Zondo Commission utilised the procedure prescribed in the Commissions Act to enforce its rulings, I would have been entitled to raise many defences. Approaching the Constitutional Court as a court of first and final instance violated my constitutional rights.

38. As I understand it, the Zondo Commission publicly declared its decision to file a charge of contempt with the NPA in compliance with the Commissions Act. That statutorily prescribed approach was abandoned for the inexplicable convenience of the Zondo Commission and with no regard to the effects that such a position would have on my constitutional rights. This clearly demonstrated that the Court had abandoned its constitutional mission for the sake of promoting the entrenchment of political narratives of alleged acts of state capture, fraud and corruption by me.

39. I therefore believed that the Constitutional Court would not succumb to the temptation of promoting political narratives. The Court simply ignored that the Chairperson of the Zondo Commission had publicly announced that he would have me prosecuted on a criminal charge of contempt. To date I have not received summons to appear in a criminal court to answer any question in terms of the Commissions Act alleging that I should be found guilty of defying the Zondo Commission.

40. The fact that the Constitutional Court failed to detect the abuse of the procedure adopted by the Zondo Commission demonstrates that they too have adopted the political view that there is something that I did for which it is justified to strip me of my constitutional rights.

41. I was further advised that the Constitutional Court, as the supreme custodian of guaranteed constitutional rights would not countenance a situation in which an executive arm of government would request it to strip me of my constitutional

right to be presumed innocent, to remain silence and not to testify during proceedings guaranteed in section 35(3)(h) of the Constitution. I had seen the Commission Chairperson accepting the right of at least two individuals appearing before him to rely on these rights as a legitimate response to the questions by the Commission. I was treated in a discriminatory manner by the Constitutional Court in violation of my right to s 9 when it agreed that I was not entitled to assert my constitutional right in section 35(3)(h) where other similarly placed witnesses had been allowed to exercise the right.

42. I was convinced that the Constitutional Court, acting as the ultimate custodian of our constitutional rights, would not deprive me of my right to appear before a tribunal or Commission of Inquiry that is fair and impartial This to me was akin to forcing me to appear before someone who had tortured me to give a statement about my alleged criminal conduct involving my political activism. It is for that reason that the Commission has been trying very hard to pretend that my review application does not exist. I have reviewed the decision of Deputy Chief Justice Zondo refusing to recuse himself.

43. In that review I also demonstrate that not only has he told falsehoods on oath, but became a judge in his own matter.

44. I believed that Constitutional Court would respect the authority and obligation of the High Court to determine the merits of my review application and therefore, do nothing that would undermine the fair and impartial adjudication of that matter.

45. The intervention of the Constitutional Court based on political conveniences in the work of the Zondo Commission to me was not only bizarre and premature but demonstrated further that I could not place my trust in the independence, impartiality, dignity, accessibility, and effectiveness of the Court. It was clear to me that the decision to approach the Constitutional Court was an abuse of our judiciary.

46. As a starting point, I do not believe that the Zondo Commission was established in a manner that is consistent with the Constitution. Deputy Justice Zondo's own appointment was unconstitutional as it was done by the Chief Justice – who too was complying with an illegal directive of the Public Protector and an unlawful order of the Gauteng High Court.

47. Chief Justice, you know that you do not have the power, either in terms of the Constitution or by any known convention in political or constitutional governance to participate in the appointment of a Commission of Inquiry established in terms of section 84(2)(f) of the Constitution.

48. You essentially appointed the Deputy Chief Justice Zondo to be Chairperson of the Commission and you did so in the face of a glaring breach of the separation of powers doctrine. The appointment of the Commission failed to uphold the Constitution by accepting the re-allocation of constitutional powers exclusively assigned to the President in terms of the Constitution for the political convenience of the time. In fact, you will recall that you first gave me the name of Justice Desai and thereafter the name of Deputy Chief Justice Zondo. What

is of concern to me other than that you did not have the constitutional power to exercise this function, it is who you consulted with for your change in directing me to appoint Deputy Chief Justice rather than your initial choice of Justice Desai. To date, I do not know what actually changed in this regard.

49. DCJ Zondo is simply disqualified to preside over my evidence by virtue of his prejudice towards me for reasons set out in my review application. Approaching this Court was a clear stratagem to sidestep the review. That the Commission even published that I had to demonstrate my seriousness about the review for it to file the necessary record and answer is simply disingenuous, to say the least.

50. The Zondo Commission, as the Court, knows or should know that there is no case of criminal contempt against me.

51. What the Constitutional Court judgment did was to take away my right to have my review application heard and determined. I could not continue to subject myself to a hearing before the very Commissioner who was biased. This was brought to the attention of the Court in a submission in which my review application was described by the Commission's Counsel as "hopeless".

52. It is not a criminal offence to have a dispute with an administrative agency over its eligibility to adjudicate my dispute. I have a legitimate dispute with the Chairperson, Mr Zondo and I am taking steps to have that ventilated in the courts through a judicial review, which has been ignored by the Commission and the Constitutional Court in its determination of this matter in its previous order.

53. It is clear that DCJ Zondo has created an unconstitutional potential for bias. He serves as both the accuser and the adjudicator in his own case and his own version of facts. He is already a complainant in a criminal case against me. Here the risk of retaliation by Mr Zondo is just too palpable to ignore and to insist that I appear by judicial fiat to a prejudiced presiding officer of a Commission is not only wrong, but it also lacks human dignity and the advancement of freedom and justice.

CONCLUSION

54. My letter to you Chief Justice is long, but it was necessary as I do believe that you need to know why I believe that your decision to afford me a right to be heard falls woefully below that which is expected under the circumstances. I do not accept that I committed contempt of court when I decided not to participate in the Commission proceedings in circumstances where my rights would be violated. It is clear for all to see that nothing can persuade the Constitutional Court not to incarcerate me.

55. I have addressed this letter to you because I deemed it disrespectful to merely ignore directives from our Chief Justice without explaining myself. I have every faith in you as a jurist and a person of absolute integrity. I raise the issues I raise as matters of principle and not as an attack on you. I am fully aware that you were also not part of the panel that complied with DCJ Zondo's strange applications to the Constitutional Court.

56. I also have a duty to protect my constitutional rights even at the risk of being imprisoned. I have just turned 79 years as I write this letter. I have not known the peace and the freedom that I committed the most active years of my life to. However, I watch the Constitutional Court which is charged with ensuring the safety of my constitutional rights, violate them with judicial impunity. What the Zondo Commission has done is inexcusable and I will live to see my vindication when – after squandering billions of much needed public revenue, an independent court reviews and set aside the findings of the Commission on the basis that it was not established in accordance with our Constitution.

57. A lawfully established Commission would be an asset in making recommendations to the executive that could be accepted, considered, and possibly implemented. How an unlawfully established Commission of Inquiry is capable of assisting the executive to govern correctly eludes me.

58. Just so you do not believe that I have avoided answering your direction, here is my answer. There is no precedence for what the Constitutional Court has allowed to take place in its sacred forum. As stated above, I am ready to become a prisoner of the Constitutional Court and since I cannot appeal or review what I see as a gross irregularity, my imprisonment would become the soil on which future struggles for a judiciary that sees itself as a servant of the Constitution and the people rather than an instrument for advancing dominant political narratives. My impending imprisonment by the Constitutional Court will be a constitutional experiment because it does not appear that it was created as a court of first and final instance to hold the powers of imprisonment and incarceration.

59. The Constitutional Court accepted its platform to be used to dehumanise and humiliate me by the Zondo Commission. I listened to the submissions made by Counsel and what stood out for me was his determination to convey to the Courts the unwavering belief that the Zondo Commission – an executive arm – was entitled to an urgent hearing to enforce its rulings by the order of the Constitutional Court. The Constitutional Court endorsed the abusive submissions that I am a risk to the integrity of our democratic system because I assert its laws in the correct forums to vindicate my rights. Chief Justice I have publicly expressed the view that the Courts have become political players in the affairs of our country as opposed to neutral arbiters with supreme constitutional duty to act independently, impartially, with dignity, accessibility, and effectiveness.

60. I am disappointed to witness the degradation of our collective commitment to remain vigilant against any form of dictatorship, including judicial dictatorship. I am however determined to stand on my conscience and beliefs in the sacredness of my constitutional rights. For the cause of constitutional rights, I will walk in jail as the first prisoner of the Constitutional Court.

61. Although this letter is an unprecedented step, I hope that I have answered your questions. However, I cannot assist the Courts to violate my constitutional rights by telling them what kind of punishment they must impose which accords with the foundational principles of human dignity, the achievement of equality and the advancement of human rights and freedom.

62. The Constitutional Court must know that it will imprison me for exercising my

constitutional rights and for that I leave it to you and your court. Clearly, the Constitutional Court deems it appropriate and lawful to impose a criminal sanction of incarceration of a person without hearing oral evidence from such an accused person. Contrary to popular sentiment, peddled by sponsored legal analysts and editors, I do not seek to undermine our Constitution or to create any constitutional crises. In fact, I have accepted that my stance has consequences and I am of the view that the Constitutional Court already knows what ruling it will make.

63. I stress however, that judges of the Constitutional Court must know too that they are constitutional beings and are subject to the Constitution. The power that they have will not always ride on the wave of the political support of ANC political veterans and interests groups whose agenda in our nation is not particularly clear – but appears to mount campaigns to discredit what we and many freedom fighters were determined to achieve even at the cost of life itself. When I am imprisoned, as it is clearly the Court's intention, it is my body that you imprison and my political foes, who are now friends of the Court will flood the streets with celebration – for in my imprisonment – they would have achieved – using the legitimacy of institutions that we fought for.

64. Chief Justice, I would urge you and your colleagues to remain faithful servants and custodians of our Constitution. Be vigilant on what you do with the power vested on you which represents an inviolable national covenant. That my political foes have turned themselves into friends of the Court with such a powerful voice is unfortunate, but is the fate I have resigned myself to. I am ready

for the finding the Constitutional Court is already contemplating, but will not clothe it with the legitimacy of my participation at this late stage and for a purpose that is so obvious.

65. I shall await the decision of your esteemed Court and am preparing myself for its obvious although unjustified severity.

ISSUED BY:

JACOB GEDLEYIHLEKISA ZUMA

SOUTH AFRICA

'ConCourt got it wrong,' says public protector as she considers asking apex court to rescind CR17 judgment

04 July 2021 - 13:39

Aron Hyman
REPORTER

Public protector Busisiwe Mkhwebane is considering appealing to the Constitutional Court over its ruling that she changed wording in the Executive Code of Ethics in her report on President Cyril Ramaphosa's CR17 campaign.
Image: Picture: REUTERS

Public protector Busisiwe Mkhwebane is considering approaching the Constitutional Court to ask it to reconsider its finding that she "changed" wording in the Executive Code of Ethics when it dismissed her appeal on her report on President Cyril Ramaphosa's CR17 ANC election campaign funding.

Mkhwebane approached the Constitutional Court to appeal against a Pretoria high court judgment which set aside her finding that Ramaphosa had misled parliament about the funding for his 2017 bid to be elected ANC president.

TimesLIVE reported this week that the apex court also held that both the constitution and the Public Protector Act do not empower Mkhwebane to investigate the private affairs of political parties.

Public protector spokesperson Oupa Segalwe said Mkhwebane was considering asking the apex court to reconsider its finding that she "changed" wording of the Executive Code of Ethics by removing the adjective "wilfully" and replacing it with "deliberately and inadvertently" in relation to Ramaphosa allegedly misleading parliament.

"She is aggrieved because the suggestion here is that she is so unscrupulous that she would go as far as edit the code so as to have it read in the terms of her preference for purposes of making an adverse finding at all costs," said Segalwe.

He said the truth was that there were two versions of the code.

One, said Segalwe, was published in 2000, which used "wilfully", and the other was published in 2007 as part of the Ministerial Handbook, where the adjectives "deliberately and inadvertently" are used instead.

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"The ConCourt relied on the former while the PP relied on the latter. Accordingly, with the greatest of respect, the court got it wrong when it concluded that the PP 'changed' the code," said Segalwe.

He said the Constitutional Court relied on the 2007 version of the code in its "Nkandla judgment".

"In addition, the PP has previously relied on the same version when she made adverse findings of misleading parliament against the likes of former minister Lynne Brown," he said.

"On the strength of the finding, President Ramaphosa released Ms Brown from office. This much his office confirmed to the PP in writing. In fact the office has always used this version of the code," said Segalwe.

"This dates back to the time of Adv [Thuli] Madonsela, who relied on the same version in her report on the late former minister of local government, Sicelo Shiceka," he said.

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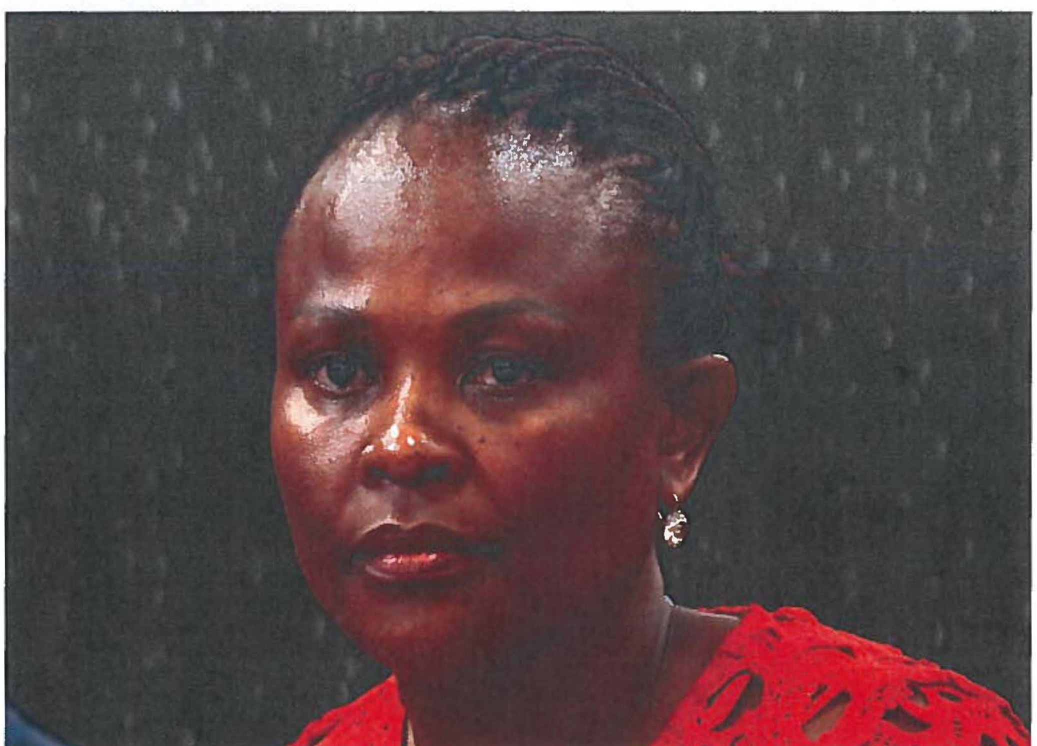
POLITICS

'ConCourt got it wrong,' says public protector as she considers asking apex court to rescind CR17 judgment

Public protector Busisiwe Mkhwebane says the apex court erred when it said she had "changed" the wording of the Executive Code of Ethics in her finding against President Cyril Ramaphosa regarding his CR17 ANC campaign funding

Aron Hyman
Reporter

04 July 2021 - 12:58



Public protector Busisiwe Mkhwebane is considering appealing to the Constitutional Court over its ruling that she changed wording in the Executive Code of Ethics in her report on President Cyril Ramaphosa's CR17 campaign.
Image: *Picture: REUTERS*

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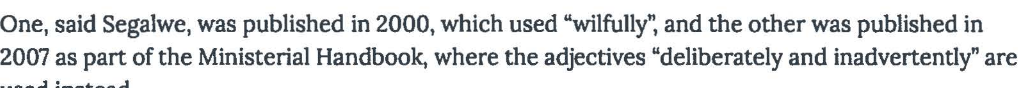

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City Press

Setumo Stone

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Public Protector Busisiwe Mkhwebane at the constitutional court,the highest court in the land has ruled that Mkhwebane put falsehoods, her investigation was flawed in the Bank/korp Absa investigation. Photo: Felix Dlangamandla/Netwerk

NEWS

Public Protector Busisiwe Mkhwebane is set to apply to the Constitutional Court to rescind the findings that she "changed" the Executive Code of Ethics by substituting the word 'wilfully' with 'deliberately and inadvertently' to nail President Cyril Ramaphosa for allegedly misleading Parliament regarding the activities of his #CR17 ANC presidential campaign in 2017.

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preference for purposes of making an adverse finding at all costs," Public Protector spokesperson Oupa Segalwe said.

He added: "The truth is that there are two versions of the code. The one was published in 2000, which used 'wilfully' and the other was published in 2007 as part of the Ministerial Handbook, in which you find adjectives 'deliberately' and 'inadvertently'.

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"The Constitutional Court relied on the former, while the Public Protector relied on the latter. Accordingly, with the greatest of respect, the court got it wrong when it concluded that the Public Protector 'changed' the code."

He said the rules of the court allowed for a ruling to be varied or rescinded.

In the 2016 Nkandla judgment in which the Constitutional Court ordered former president Jacob Zuma to repay the public funds spent on upgrading his homestead in northern KwaZulu-Natal, the judges relied on the 2007 code, he said.

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According to the court records, in the Nkandla ruling, the judges found that Zuma had violated the provisions of the Executive Ethics Code and referred to chapter 1 of the 2007 Ministerial Handbook for authority.

The 2007 handbook read: "Members may not deliberately or inadvertently mislead the president, or the premier or, as the case may be, the legislature."

On Thursday, the apex court found that "what is more concerning with the report is that the Public Protector changed the wording of the code by adding 'deliberately and inadvertently misleading' of the legislature... It is inconceivable that the sole word used in the code 'wilfully' could be read to mean 'inadvertent'.

These words carry meanings that are mutually exclusive... What was done by the Public Protector here exceeded the parameters of interpretation."

Justice Chris Jafta continued, "on the facts placed before her, she accepted that the president did not wilfully mislead Parliament. This meant that he could not have violated the code.

> **It is unacceptable that the Public Protector did what no law had authorised her to do**
>
> **Justice Chris Jafta**

"The Public Protector then changed the wording of the code to include 'deliberate and inadvertently misleading' so as to match with the facts. Having affected the change in the code, the Public Protector proceeded to conclude that the president had violated the code.

"It is unacceptable that the Public Protector did what no law had authorised her to do."

Segalwe said Mkhwebane had previously relied on the same 2007 code when she made adverse findings of misleading Parliament against the likes of former public enterprises minister Lynne Brown. In that report, which was released in 2018, Mkhwebane found that "the allegation that Minister Brown deliberately or inadvertently made a misleading statement to the National Assembly ... is substantiated".

Former Public Protector Thuli Madonsela

City Press saw a copy of the presidency letter, dated March 2018, in which director-general and secretary of the Cabinet Cassius Lubusi informed Mkhwebane that Ramaphosa had removed Brown as minister pursuant to the findings in the Public Protector report that she had violated the ethics code.

Segalwe said the Public Protector's office has always used the 2007 version even during the tenure of Mkhwebane's predecessor, Advocate Thuli Madonsela.

In a 2011 report titled In the Extreme: Report of the Public Protector on an investigation into allegations of a breach of the Executive Ethics Code by the Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka MP, Madonsela referred to the provisions in that code that: "Members may not deliberately or inadvertently mislead Parliament."

Zuma subsequently fired Shiceka.

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