

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: _____

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

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant intends to apply to the above Honourable Court under section 167(6)(a) of the Constitution and rule 18 of the Rules of the Constitutional Court for an order in the following terms:

- 1 In terms of rule 12 of the Rules of this Honourable Court leave is hereby granted that this application be heard as one of urgency, and the rules and forms of service dispensed with in accordance with any directions that the Chief Justice may issue.

- 2 It is declared that Mr Jacob Gedleyihlekisa Zuma is guilty of contempt of court in that, in disobedience of paragraphs 4 and 5 of this Court's order of 28 January 2021 under case number CCT 295/20, he –
 - 2.1 intentionally and unlawfully failed to appear before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (“the Commission”) on 15 to 19 February 2021 in compliance with the summons issued by the Secretary of the Commission on 30 November 2020, which directed him to appear and give evidence before the Commission on the said dates; and
 - 2.2 intentionally and unlawfully failed or refused to furnish the Commission with affidavits in compliance with the directives issued by the Chairperson of the Commission under regulation 10(6) of the Regulations of the Commission on 27 August 2020 and 8 September 2020.
- 3 Mr Jacob Gedleyihlekisa Zuma is sentenced to imprisonment for a term of two (2) years.
- 4 The Second and Third Respondents are ordered to take all such steps as may be required to give effect to the order in paragraph 3.

5 Mr Jacob Gedleyihlekisa Zuma is directed to pay the costs of this application on the attorney and own client scale, including the costs of two counsel.

6 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the Chief Justice is requested to issue directions for the further conduct and disposal of the matter, in accordance with Rule 12 of the Constitutional Court.

TAKE NOTICE FURTHER THAT the Applicant has appointed the State Attorney, Johannesburg, as its attorney of record and his address, as set out below, as the address where it will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT the accompanying affidavit of the Applicant will be used in support of this application.

DATED AT JOHANNESBURG ON THIS DAY OF FEBRUARY 2021.



STATE ATTORNEY, JOHANNESBURG

Attorneys for the Applicant

10th Floor, North State Building
95 Albertina Sisulu Str, Cnr Kruis Str
Private Bag x9, Docex 688
JOHANNESBURG, 2000

Per: Mr Johan van Schalkwyk

Cell: 071 401 6235

Ref: J Van Schalkwyk/1544/18/P45

Email: JohVanSchalkwyk@justice.gov.za

TO: THE REGISTRAR OF THE CONSTITUTIONAL COURT

Private Bag X1
Constitutional Hill
Braamfontein, 2017
Johannesburg

AND TO: MR JACOB GEDLEYIHLEKISA ZUMA

Respondent

Kwadakwadunuse Homestead, KwaNxamalala, Nkandla, King
Cetshwayo District, Kwazulu-Natal

Care of Mabuza Attorneys

1st Floor
83 Central Street
Houghton, 2198
Johannesburg

Ref: Mr E T Mabuza

By hand &

By email: eric@mabuzas.co.za

AND TO: **STATE ATTORNEY**

PRETORIA

Per: Mr I Chowe

IChowe@justice.gov.za

ATTORNEY FOR THE MINISTER OF POLICE AND NATIONAL
COMMISSIONER OF POLICE

C/o General E Groenewald

Email: GroenewaldD@saps.gov.za

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Second Respondent

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE**

Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned

ITUMELENG MOSALA

do hereby make oath and state that:

1. I am an adult male employed as the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**the Commission**"), with its main place of



business situated at Hillside House, 17 Empire Road, Parktown, Johannesburg. My appointment as such was with effect from 1 October 2020. I am duly authorised to institute these proceedings and to depose to this affidavit by the Chairperson of the Commission.

2. All the facts stated herein are, unless the context indicates otherwise, within my own personal knowledge or are contained in records of the Commission under my control, and are to the best of my belief both true and correct.
3. Where I make legal submissions, I do so on the advice of the Legal Team of the Commission and the Commission's legal representatives in these proceedings. I believe such advice to be correct.

THE PARTIES

4. I am the applicant in this matter and institute these proceedings in my capacity as the Secretary of the Commission.
5. The first respondent is Mr Jacob Gedleyihlekisa Zuma ("**Mr Zuma**"), a former President of the Republic of South Africa. Mr Zuma resides at Kwadakwadunuse Homestead, KwaNxamalala, Nkandla, King Cetshwayo District, Kwazulu-Natal.
6. The second respondent is the Minister of Police, cited in his official capacity, care of the State Attorney, Pretoria, at Salu Building, 316 Thabo Sehume Street, Pretoria. The second respondent is cited because in terms of section 207 of the Constitution, the National Commissioner of the police service



exercises control over and manages the police in accordance with the policy and directions of the second respondent.

7. The third respondent is the National Commissioner for the South African Police Service, cited in his official capacity, care of the State Attorney, Pretoria at Salu Building, 316 Thabo Sehume Street, Pretoria. The third respondent is cited because in terms of section 207(2) of the Constitution, he must exercise control over and manage the police service.
8. No costs order is sought against the second and third respondent, save in the event of opposition. They are cited because the services of the South African Police Service are required to implement the order the applicant seeks.

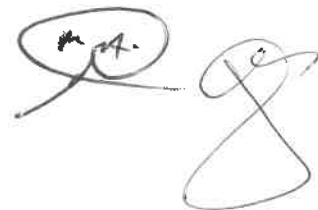
STRUCTURE OF THIS AFFIDAVIT

9. This affidavit is structured as follows:
 - 9.1 First, I shall set out the purpose of the application;
 - 9.2 Secondly, I will deal with the urgency of the application;
 - 9.3 Third, I shall explain why this Court has jurisdiction;
 - 9.4 Fourth, I will deal with the facts of the matter;
 - 9.5 Fifth, I shall deal with the elements of contempt; and
 - 9.6 Finally, I will explain the relief sought including submissions on appropriate sentence.

  3

THE PURPOSE OF THIS APPLICATION

10. The purpose of this application is to secure an order of this Honourable Court declaring Mr Zuma guilty of contempt of court and for his committal to prison, arising from his wilful refusal to comply with this Court's order in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* (CCT 295/20) [2021] ZACC 2, which was handed down on 28 January 2021.
11. This Court's order specifically and unambiguously directed Mr Zuma to comply with the summonses and directives issued by the Commission, and to appear and give evidence before the Commission on the dates determined by the Commission.
12. As I detail below, Mr Zuma has intentionally disobeyed the order. Shortly after the Court gave judgment, on 1 February 2021, Mr Zuma publicly stated his intention to defy the Court's order and to continue to refuse to heed the Commission's summonses and directives. In keeping with his stated intention, Mr Zuma failed to appear and give evidence at the Commission on 15 to 19 February 2021, despite being summoned by the Commission to do so. Mr Zuma also failed to file any affidavits with the Commission, despite being directed to do so.

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URGENCY

13. This application has been brought at the earliest opportunity following the defiance of Mr Zuma of the order of this Court. Mr Zuma was required by this Court to be in attendance at the Commission from 15 to 19 February 2021, in accordance with a summons issued by the Commission. Mr Zuma did not attend at all during the whole week. The application is brought immediately after the last day of the contempt of court, being 19 February 2021.
14. The main application was heard on an urgent basis. The reasons why the main application was urgent remain, as the Commission is yet to finalise its hearings. In addition, the conduct of Mr Zuma, which is dealt with below, requires the urgent attention of this Court.
15. The seriousness of the threat that Mr Zuma's conduct poses to public trust in, and respect for, the authority of the courts and the rule of law requires this Court to intervene and assert its authority without delay.
16. As a former President and leader of the Republic, Mr Zuma is expected to set an example by his words and conduct. He has the position and influence to do so, as others look up to him as a leader. When Mr Zuma undermines the integrity and authority of this Court, and the judicial system as a whole, there is a grave risk that he will inspire others to do so and that the rule of law will be fundamentally weakened.
17. I submit that particularly where someone who has held the highest public office, such as Mr Zuma, has defied an order of court, an application for contempt of



court should be heard urgently. A delay in hearing the application means a delay in the court vindicating its honour and authority, and may result in more acts of defiance of court orders by others, in the belief that court orders may be defied with impunity.

18. In this case, the high position and influence Mr Zuma holds in society, coupled with the public and forceful nature of his defiance of this Court and attack on the judiciary, pose an extraordinary and potentially grave threat to the rule of law. The interests of justice require a swift response.
19. Moreover, Mr Zuma's contempt of this Court's order and his defiance of this Court and its members are ongoing. He has chosen to attack this Court in a series of public statements. While he has labelled his latest statement a "final statement", there is no guarantee that he will not issue further public attacks against this Court and its members.
20. The Commission seeks an order of direct imprisonment. Should this Court be inclined to grant a suspension of the order of imprisonment on condition that Mr Zuma appears and gives evidence before the Commission and submits his affidavits as directed under regulation 10(6), the Commission would need to make appropriate logistical arrangements. For such relief to be possible and effective, a special arrangement would need to be made to hear Mr Zuma's evidence before 31 March 2021.¹

¹ The Commission has applied to the High Court for the extension of its term by a further three months, to the end of June 2021. The intention of the Commission is not to hear evidence during the period of extension, but to use the last three months to write its report. Arrangements could, however, be made to hear Mr Zuma's evidence during the period of the extension if necessary.

21. I submit that, for all these reasons, the Court should hear the application on an urgent basis.

JURISDICTION

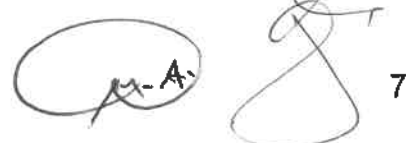
22. I am advised and submit that a court that grants an order retains jurisdiction to ensure that the order is complied with. This Court has heard applications for contempt of court where its own orders have been disobeyed, and has also initiated hearings in respect of contempt of court in relation to its orders at its own instance (*mero motu*).²

23. This contempt application engages the Court's inherent jurisdiction under section 173 of the Constitution, to protect its own process and ensure that its orders are obeyed. This Court's jurisdiction is also engaged because Mr Zuma's contempt undermines the Commission's entitlement, in the previous application before this Court, to effective relief. Further, since Mr Zuma's contempt of this Court is ongoing, the remedy for contempt is concerned with regulating how the matter is to proceed.

24. In all these respects, the assumption of jurisdiction is a manifestation of the continuance of this Court's jurisdiction in the previous matter and it is appropriate for this Court to hear the application.

25. This accords with what this Court stated in *Pheko II*:

² *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (*Pheko II*) para 13.

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“The object of contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.”³

26. It is also in the interests of justice for this Court to hear this application given the very serious affront by Mr Zuma to this Court’s authority and integrity. As is detailed below, Mr Zuma has deliberately disobeyed this Court’s order of 28 January 2021 and issued public statements that specifically attack the integrity of this Court and its members. In light of Mr Zuma’s pointed attack against this Court and its members, it is appropriate that this Court take measures to protect its honour.
27. Mr Zuma has not spared the rest of the judiciary from his attack. He has published scurrilous statements about the courts and certain other members of the judiciary too. As the highest court in the land, with special moral authority in our constitutional democracy, I respectfully submit that it is necessary for this Court to step in to defend the judiciary as a whole against Mr Zuma’s unwarranted attacks.
28. As this Court has previously noted, the authority of courts and obedience to their orders – the very foundation of a constitutional order founded on the rule of law – depends on public trust and respect for the courts. This Court observed in *S v Mamabolo*:

³ Id at para 28.

“Having no constituency, no purse and no sword, the judiciary must rely on moral authority. Without such authority it cannot perform its vital function as the interpreter of the Constitution, the arbiter in disputes between organs of state and, ultimately, as the watchdog over the Constitution and its Bill of Rights — even against the state ...

In the final analysis it is the people who have to believe in the integrity of their judges. Without such trust, the judiciary cannot function properly; and where the judiciary cannot function properly the rule of law must die.”⁴

29. The seriousness of the threat that Mr Zuma's conduct poses for undermining public trust in, and respect for the authority of, the courts calls for this Court's intervention and assertion of its authority.
30. For all these reasons, I submit that it is in the interests of justice for this Court to grant direct access and hear the application.

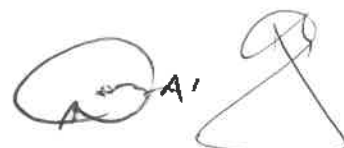
THE RELEVANT FACTS

31. As is detailed in this Court's judgment of 28 January 2021, Mr Zuma failed to remain in attendance and give evidence at the Commission in the week of 16 to 19 November 2020 as he had been summoned by the Commission to do.
32. The Commission proceeded to issue two fresh summonses requiring Mr Zuma to appear and give evidence at the Commission on future dates.

⁴ *S v Mamabolo* [2001] ZACC 17; 2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC) paras 16 and 19.



- 32.1. The first new summons required Mr Zuma to attend at the Commission from 18 to 22 January 2021. It is attached as "IM1".
- 32.2. The second new summons required Mr Zuma to attend at the Commission from 15 to 19 February 2021. It is attached as "IM2".
- 32.3. Both summonses were served on Mr Zuma at his residence in Forest Town in Parktown, Johannesburg and at his residence in Nkandla, KwaZulu-Natal over the period 26 November 2020 to 1 December 2020. The Sheriffs' returns of service are attached as annexure "IM3".
33. The Commission also instituted proceedings in this Court for various orders against Mr Zuma, including an order that he comply with the fresh summonses and the directives of the Commission requiring Mr Zuma to submit affidavits.
34. The application was argued before his Court on 29 December 2020. Mr Zuma did not oppose the Commission's application and indicated by way of a letter from his attorneys that he would not participate in the proceedings "at all".
35. By 11 January 2021, judgment in the Commission's application had not yet been delivered. The Commission accordingly wrote to Mr Zuma, through his attorneys, to advise that Mr Zuma was obliged to heed the summons and appear before the Commission from 18 to 22 January 2021 notwithstanding that this Honourable Court had not yet handed down its judgment. The Commission informed Mr Zuma that the summons remained valid and binding, as it had not been withdrawn, set aside or suspended. This letter is attached as "IM4".

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36. On 15 January 2021, Mr Zuma's attorneys informed the Commission that Mr Zuma would not heed the summons and appear before the Commission on 18 to 22 January 2021. Two reasons were given for Mr Zuma's refusal to heed that summons: first, that "*President Zuma can only be legally obliged to appear after his review application has been determined*"; and second, that "*the Commission must await the decision of the Constitutional Court which has a bearing on President Zuma's appearance*". The letter is attached as "**IM5**".
37. Mr Zuma did not appear at the Commission on any of the days of 18 to 22 January 2021, despite the summons and the Commission's instruction.
38. On 28 January 2021, this Court handed down its judgment. This Court declared that Mr Zuma was obliged to comply with all summonses lawfully issued by the Commission and directed him to do so. I wish to note here that the question of the pending review was fully canvassed in the founding affidavit. This Court, being fully aware of the pending review, granted the order sought by the Commission. Mr Zuma also had a full opportunity to oppose the application, and to make any arguments about the implications of the pending review application, but he chose not to do so.
39. This Court confirmed that, like any other witness summoned to appear and give evidence at the Commission under section 3(2) of the Commissions Act, Mr Zuma was obliged to heed such summonses.
40. This Court also recognised the particular public importance of Mr Zuma's evidence at the Commission, noting that –



“[21] [The Commission’s] terms of reference place the former President at the centre of the investigation. They seek to establish whether he abdicated his constitutional power to appoint Cabinet members to a private family and whether he had acted unlawfully. These are all matters of public concern ... and some of them fall particularly within the personal knowledge of the ex-President.

[22] Sight must not be lost of the fact that it was he who was the subject of the investigation and who drew up the terms of reference that placed him at the heart of the investigation. Some of those matters may not be properly investigated without his participation. Indeed, the terms of reference require all organs of state to cooperate fully with the Commission and extend the application of the Commissions Act to it, including the power to secure and compel witnesses to appear before the Commission for purposes of giving evidence. ...”

And:

“[69] The respondent is firmly placed at the centre of those investigations which include an allegation that he had surrendered constitutional powers to unelected private individuals. If those allegations are true, his conduct would constitute a subversion of this country’s constitutional order.

[70] It must be plainly stated that the allegations investigated by the Commission are extremely serious. If established, they would constitute a huge threat to our nascent and fledgling democracy. It is in the interests of all South Africans, the respondent included, that these allegations are put to rest once and for all. It is only the Commission which may determine if there is any credence in them or to clear the names of those implicated from culpability.”

41. This Court’s order directed Mr Zuma to comply with the summons and directives issued by the Commission, and to appear and give evidence before the

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Commission on the dates determined by the Commission. The pertinent parts of the order read 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.”

42. For ease of reference, I attach a copy of the Court’s judgment and order marked **“IM6”**.

43. Mr Zuma responded publicly to the Court’s judgment and order on 1 February 2021, by issuing a public statement in his own name. The statement, which is entitled ‘Statement on Constitutional Court Decision Compelling Me to Appear before the Commission of Inquiry into Allegations of State Capture’, is attached marked **“IM7”**. Given its relevance, I quote the important passages from the statement below. Mr Zuma informed the public that:

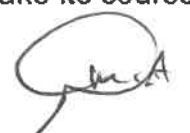

“The Commission Into Allegations of State Capture led by the Deputy Chief Justice, has followed in the steps of the former Public Protector in how it also has continued with creating a special and different approach to specifically deal with Zuma. The chairperson of the commission,

unprovoked, has called special press conferences to make specific announcements about Zuma. This has never happened for any other witness. Recently the commission ran to the Constitutional Court on an urgent basis to get the Constitutional Court to compel me to attend at the commission and to compel me to give answers at the commission, effectively undermining a litany of my constitutional rights including the right to the presumption of innocence. I have never said that I do not want to appear before the commission but have said that I cannot appear before Deputy Chief Justice Zondo because of a well-founded apprehension of bias and a history of personal relationships between the Deputy Chief Justice and myself. I have taken the decision by the Deputy Chief Justice not to recuse himself on review as I believe his presiding over the proceedings does not provide me the certainty of a fair and just hearing.

The recent decision of the Constitutional Court also mimics the posture of the commission in that it has now also created a special and different set of circumstances specifically designed to deal with Zuma by suspending my Constitutional rights rendering me completely defenceless against the commission.... The Commission of Inquiry into Allegations of State Capture should have been rightly named the Commission of Inquiry Into Allegations of State Capture against Jacob Zuma as it has been obviously established to investigate me specifically.

...

It is clear that the laws of this country are politicized even at the highest court in the land. Recently at the State Capture Commission, allegations made against the judiciary have been overlooked and suppressed by the chairperson himself. It is also patently clear to me that I am being singled out for different and special treatment by the judiciary and the legal system as a whole. I therefore state in advance that the Commission Into Allegations of State Capture can expect no further co-operation from me in any of their processes going forward. If this stance is considered to be a violation of their law, then let their law take its course.

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I do not fear being arrested, I do not fear being convicted nor do I fear being incarcerated...

In the circumstances, I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the Constitutional rights that I personally fought for and to serve whatever sentence that this democratically elected government deems appropriate as part of the special and different laws for Zuma agenda.

JG Zuma
1 February 2021⁵

44. This Court's judgment and order was served on Mr Zuma on 5 February 2021, at his residences in Forest Town and Nkandla. The Sheriff's returns of service are attached as annexure "**IM8**" and "**IM9**".
45. There can be no doubt that Mr Zuma was aware of this Court's order and what it required of him.
46. Nevertheless, on 15 February 2021, Mr Zuma failed to attend at the Commission in defiance of the summons and, this time, also in defiance of this Court's order.
47. Instead, Mr Zuma's lawyers addressed a letter to the Commission to inform it "as a matter of courtesy" that Mr Zuma would not be appearing on 15 to 19 February. This letter is attached marked "**IM10**". In summary, Mr Zuma's lawyers gave two reasons for his non-appearance:

⁵ Emphasis added.



47.1. First, they contended that Mr Zuma's application to review the Chairperson's decision not to recuse himself "*was not before the Constitutional Court and, accordingly, was not considered, determined and/or adjudicated by that court*". They stated that appearing before the Commission "*would undermine and invalidate the review application*".

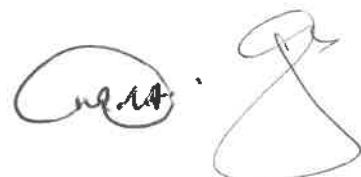
47.2. Second, they contended that the summons issued for Mr Zuma to appear on 15 to 19 February 2021 was "*irregular and not in line with the Fourth order of the Constitutional Court*".

48. Both claims are contrived and stand to be rejected.

49. As regards the first claim, it is incorrect that the implications of Mr Zuma's review application, for his duty to comply with the Commission's summons and directives, was not placed before and considered by this Court.

49.1. While this Court was not called upon to decide the review application, the fact of Mr Zuma's pending review application was pertinently brought to the Court's attention.

49.2. In motivating for the orders I sought, I submitted that Mr Zuma's review was irrelevant to his duty to comply with the summons and give evidence at the Commission. I refer to paragraphs 139 and 140 of the founding affidavit where I stated, under the heading "*Mr Zuma's duty to comply with the summons was not affected by the recusal decision and his pending review*" –

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“139. I am advised and submit that Mr Zuma’s intended application for the review of the Chairperson’s recusal decision did not alter Mr Zuma’s duty to comply with the summons. The summons was lawfully issued and served, and had to be obeyed, notwithstanding the fact that Mr Zuma’s legal representatives indicated an intention to bring review proceedings in respect of the Chairperson’s recusal decision.

140. Likewise, I am advised and submit that Mr Zuma’s intended application for the review of the recusal decision does not alter Mr Zuma’s duty to comply with the fresh summons issued against him by the Commission for his attendance and examination in January and February 2021. Those summonses too have been validly issued and served, and must be obeyed, notwithstanding the fact that Mr Zuma’s legal representatives have indicated an intention to apply for review of the Chairperson’s recusal decision. The recusal decision is not suspended pending Mr Zuma’s application for review, and such review has in any event not yet been instituted.”



50. When the Court granted the order, it was fully aware of the pending review application. In any event as a matter of law, a pending review application does not suspend the duty to comply with the summons.

51. It bears emphasis that Mr Zuma was advised that this issue was raised before this Court. He received the application papers and was given an opportunity to oppose the application and the relief sought, on any grounds he wished to raise. Mr Zuma elected not to oppose the application, and must therefore be taken to have abandoned any grounds to oppose the orders the Commission sought – including on the basis of his pending review application. It is not open to Mr Zuma to raise the review application as a ground to oppose the order granted

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by this Court at this stage or as a ground to justify his blatant defiance of the order of this Court.

52. The second claim by Mr Zuma's lawyers is not explained or substantiated at all – it is no more than a bald claim. Whatever the basis for the claim may be, it cannot alter the legal validity of the summons issued by the Commission and its binding force against Mr Zuma. Absent a court order setting aside the summons (or a decision by the Commission to suspend or withdraw the summons), the summons remained valid and of full legal force and effect. Mr Zuma's lawyers must have been aware of this trite legal principle. Mr Zuma did not institute any court proceedings to have the summonses set aside.
53. The reasons advanced by Mr Zuma's lawyers for his non-appearance at the Commission are evidently not the same as those given by Mr Zuma for his defiance of the summonses and order of this Honourable Court. The reasons Mr Zuma gives appear in the public statement that Mr Zuma issued in his own name on 1 February 2021, which has been quoted above.
54. On 15 February 2021, which was the first of the five days in February 2021 on which Mr Zuma was obliged to appear before the Commission in terms of annexure IM2 and the order of this Honourable Court, Mr PJ Pretorius SC (who was to lead Mr Zuma's evidence and question him) addressed the Chairperson on the spurious grounds given by Mr Zuma's lawyers for his non-appearance, as well as on the import of Mr Zuma's continued failure to give evidence before the Commission.



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55. After hearing these submissions, and engaging with Mr Pretorius on these matters, the Chairperson expressed his concern at the seriousness of Mr Zuma's defiance of this Court's order, and announced that the Commission would institute contempt of court proceedings before this Court for a punitive order for contempt of court. I attach the transcript of the submissions of Mr Pretorius and concluding remarks of the Chairperson on 15 February 2021, marked as "IM11". The Chairperson's concluding remarks summarise what had transpired and the steps the Commission intended to take. They appear at pages 69ff of the transcript.
56. Later on 15 February 2021, Mr Zuma issued another public statement, headed 'Final Statement on Constitutional Court Decision Compelling Me to Appear before the Commission of Inquiry Into State Allegations of State Capture and my Refusal to Appear before the Zondo Commission'. This statement is attached marked "IM12".
57. This statement confirms Mr Zuma's defiant attitude to the order issued by this Court on 28 January 2021. It also goes further to scandalise this Court and other courts that have made orders against him. It is evidently calculated to undermine public confidence in the integrity of this Court and the judiciary more broadly. I address some of the pertinent allegations in the statement further below.
58. As the order of this Court required Mr Zuma to obey both summonses and directives issued by the Commission, Mr Zuma was also obliged to comply with the directives issued by the Commission's Chairperson under regulation 10(6)



of the Commission's Regulations, which directed Mr Zuma to file affidavits in respect of certain matters. I attach a copy of the directives, issued on 27 August 2020 and 8 September 2020, as annexures "IM13" and "IM14".

59. Mr Zuma's failure to file such affidavits is also contemptuous of this Court's order, which specifically directed Mr Zuma to obey both the summonses and directives issued by the Commission (see paragraph 4 of the order).
60. Mr Zuma was aware of the directives he had not complied with. He was also aware of the order of this Court. He defied this Court's order in failing to submit the affidavits required in terms of regulation 10(6). When this Court issued its order, it did not exclude from its order the directives that were extant and pending when the proceedings were instituted and the matter decided. As such, Mr Zuma remained under a duty to furnish the Commission with his affidavits as directed.
61. Mr Zuma's concerns about the alleged partiality of the Chairperson bear no relation whatsoever to his duty to submit affidavits as required by regulation 10(6). Mr Zuma has previously undertaken to submit these affidavits. Despite previous assurances that he would submit the affidavits, and the court order instructing him to comply with the directives issued by the Commission, he has failed to do so.
62. It is clear, therefore, that Mr Zuma's defiance of this Court's order is not limited to his refusal to appear and give evidence before the Commission, but includes his refusal to furnish affidavits as directed. If Mr Zuma had intended to limit his defiance to his appearance only, but to submit the affidavits as required, he

would have stated so in his public statements. In fact, Mr Zuma's public statements say that he will not cooperate with the Commission in any respect.

63. This constitutes an additional ground of contempt of court and an appropriate order is sought.

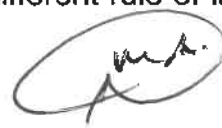
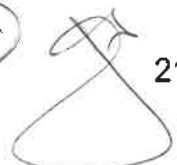
CONTEMPT OF COURT

64. I am advised that the Court's power to impose a punitive sanction for contempt of court is derived from the constitutional imperative to protect judicial authority, the rule of law, the supremacy of the Constitution, and the dignity and effectiveness of the courts.

65. Contempt of court is the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes wilful disobedience and resistance to court orders.

66. The object of contempt proceedings is to secure a finding that a person who has intentionally disobeyed a court order is guilty of the crime of contempt of court and for the court to impose a penalty that will vindicate the court's honour consequent upon the disregard of its previous order or to compel performance in accordance with the previous order, where appropriate.

67. In this case, the Commission seeks a punitive order of committal of Mr Zuma to vindicate the court's authority and the rule of law. Mr Zuma's statement of 1 February 2021 and his 'final statement' of 15 February 2021 indicate that he considers himself above the law, or subject to a different rule of law than that

  21

which applies to everyone else. It would be an extremely serious matter for any person to act under this belief, but it is especially serious and dangerous for a former President to adopt this stance.

68. As I have already noted, given his status as a former President and leader of the Republic, when Mr Zuma undermines the integrity and authority of this Court (and indeed, the judicial system as a whole) there is a grave risk that he will inspire others to do so and that the rule of law will be fundamentally weakened.
69. By displaying wilful disobedience to this Court's order of 28 January 2021, Mr Zuma not only undermined the authority of this Court and the work of the Commission, but also committed a public injury to the administration of justice.
70. It is, therefore, imperative that this Court assert its authority and punish Mr Zuma for his wilful contempt of its order.
71. This Court's closing statement in its judgment of 28 January 2021 bears repeating in light of Mr Zuma's recent conduct:

"[87] The respondent's conduct in defying the process lawfully issued under the authority of the law is antithetical to our constitutional order. We must remember that this is a Republic of laws where the Constitution is supreme. Disobeying its laws amounts to a direct breach of the rule of law, one of the values underlying the Constitution and which forms part of the supreme law. In our system, no one is above the law. Even those who had the privilege of making laws are bound to respect and comply with those laws. For as long as they are in force, laws must be obeyed."

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72. I am advised that an applicant for a punitive sanction for contempt of court must establish that the alleged contemnor (i) had knowledge of the court's order; and (ii) failed to comply with the order. Once these facts are established, wilfulness and mala fides are presumed unless the respondent leads evidence to establish a reasonable doubt. Thus, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.⁶

73. In this instance, there can be no doubt that Mr Zuma had knowledge of this Court's order. Mr Zuma was served with this Court's judgment and order on 5 February 2021. Mr Zuma's knowledge of the Court's order is also plain from the statement Mr Zuma issued on 1 February 2021 and the correspondence the Commission received from his attorneys on 15 February 2021.

74. There can also be no doubt that, despite knowledge of the Court's order, Mr Zuma deliberately refused to obey it. I submit that Mr Zuma had no valid or acceptable reasons for not complying with the order of this Court.

⁶ *Fakie NO v CCI Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) paras 41-42, endorsed by this Court in *Pheko II* at para 36. See also *Matjhabeng Local Municipality v Eskom Holdings Limited and Others*; *Mkhonto and Others v Compensation Solutions (Pty) Limited* [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) at para 67 on the applicable standard of proof.



75. Mr Zuma's wilfulness and mala fides in refusing to comply with the Court's order is evidenced by both of his public statements. These statements demonstrate a clear intention to defy this Court's order, regardless of the consequences.
76. Several statements contained in Mr Zuma's latest public statement are clearly scandalous and malicious against this Court and its members. These include the following:

"I have accepted that Deputy Chief Justice Zondo and due process and the law are estranged" (paragraph 6);

...

"My lawyers, as a courtesy, advised the Constitutional Court that I would not participate in the proceedings. The judges of the Constitutional Court concluded that my election not to waste their time deserves a cost order against me. It has become common place for some of our courts to make these costs orders against me in order to diminish my constitutional right to approach courts" (paragraph 14);

...

"...It is not the authority of the Constitutional Court that I reject, but its abuse by a few judges. It is not our law that I defy, but a few lawless judges who have left their constitutional post for political expediency.... I protest against those in the judiciary that have become an extension of political forces that seek to destroy and control our country." (paragraphs 17 to 18);

...

"None can claim not to see that the recent judgment of the Constitutional Court is a travesty of justice" (paragraph 21);



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And further:

“I protest against our black, red and green robes, dressing up some individuals that have long betrayed the Constitution and their oath of office.... It is a protest against some in the judiciary that have sold their souls and departed from their oath of office” (paragraphs 30 to 31).

77. These statements prove clearly that Mr Zuma’s election not to comply with this Court’s order, and to persist in his refusal to attend the Commission’s proceedings, is intentional. The statements are also calculated to scandalise this Court and its members in the eyes of the public. They are intended to create the impression – falsely – that this Court was not guided by the application of legal principles when it granted its order.
78. In his recent statements of 1 February and 15 February, Mr Zuma seeks to rehash some of the reasons why he claims he should not be required to appear before the Deputy Chief Justice. In this regard he draws a facile distinction between the Commission and its Chairperson. At any rate, Mr Zuma has no valid reasons to refuse to appear before the Chairperson of the Commission. Mr Zuma has had more than enough time to prove his claims, but has thus far failed to do so, instead relying on innuendo and conspiracies. These appear to be part of a deliberate strategy to refuse to account to the nation for the role he is alleged to have played during his tenure in office as President.
79. The letter from Mr Zuma’s attorney which seeks to create different reasons for his non-appearance and defiance can thus be rejected.

APPROPRIATE RELIEF



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80. This case is about the contempt of this Court's order and there is no specified sentence that may be imposed. The Commission has asked for a term of imprisonment of two years. This is informed by the following considerations:

80.1. First, Mr Zuma's contempt of this Court's order has entailed several discrete and compounding acts of contempt. These include:


80.1.1. Mr Zuma's failure to appear at the Commission on any of the five days he was summoned and directed by the Commission to appear in February 2021;

80.1.2. Mr Zuma's failure to file any affidavits at the Commission in defiance of two directives by the Commission and this Court's order specifically directing compliance with the Commission's directives;

80.1.3. Mr Zuma's publicly stated intention to defy this Court's order shortly after the Court gave judgment and his public entrenchment of that stance; and

80.1.4. The scurrilous statements Mr Zuma has made against this Court and its members, and the judiciary as a whole, in purporting publicly to justify his contempt.

80.2. Second, the statutory instruments that impose penalties for non-compliance with a summons or directive of the Commission recognise that periods of imprisonment of up to 6 months (under section 6(1) of

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the Commissions Act, 8 of 1947) or 12 months (under the Commission's Regulations, which were signed by then President Zuma)⁷ is appropriate for just a single failure to comply with a summons or directive from the Commission. The sentence sought in these contempt of court proceedings appropriately reflects the views of the legislature and the executive as to the appropriate sentence for the type of conduct that is at issue here. In this regard, it must be taken into account that on each day – of the five days reserved – that Mr Zuma failed to appear, he was committing a new offence of violating the summons. Had he been tried in a criminal court for breach of the summons, it is submitted that the appropriate sentence would have factored in that each day of non-appearance would be a violation of the summons. The same applies to the failure to submit affidavits as directed under regulation 10(6). Mr Zuma has breached two directives issued under regulation 10(6). In respect of each failure to comply with such directive, Mr Zuma is liable under the Commission's Regulations to imprisonment for a term of 12 months. Thus viewed, Mr Zuma would, in a criminal court, in fact be liable to a combined period of four years and six months if he had been tried and sentenced to the maximum period allowed.

80.3. Third, this is no ordinary case of contempt. The contemptuous conduct of Mr Zuma is especially egregious. He has not only failed to comply

⁷ See regulation 12(2)(c)(ii) of the Commission's Regulations published under Government Gazette No. 41436, on 9 February 2018; and the amendment of regulation 12 in Proclamation 8 of 2020 published under Government Gazette No. 42994, on 4 February 2020.

with the order of this Court, but has also engaged in conduct calculated to undermine the integrity of this Court and the judiciary in general. The language that he has used, the platforms he has selected to announce his intentions, and the challenge to state institutions that he is prepared to be arrested are a grave and serious threat to the rule of law. The sentence must reflect the seriousness of the conduct of Mr Zuma.

80.4. Fourth, it is necessary for the sentence to reflect the expectation of society that a person in a position of leadership and with immense influence, like Mr Zuma, should comply with the law rather than displaying his contempt of the law.

80.5. Fifth, the sentence should also reflect the fact that these contemptuous acts have been committed by a former President, who took an oath to “obey, observe, uphold and maintain the Constitution and all other law of the Republic”, and who was entrusted by the public to do so.

81. Given the history of Mr Zuma’s recalcitrance and the limited time available to the Commission to complete its hearing of evidence (which was fully canvassed in the Commission’s urgent application in this Court), the Commission does not seek a suspended order of committal. However, this Court may yet deem it appropriate to suspend such an order, if the Court is of the view that Mr Zuma should be afforded a final opportunity to comply with its order before he can be imprisoned.

82. The punitive costs order is justified by the fact that Mr Zuma has intentionally and without any valid reasons defied an order of court. Furthermore, Mr Zuma




has again, by his reprehensible conduct, required the Commission to approach this Court. He has also launched scurrilous public attacks on the Constitutional Court, the Commission and its Chairperson, and the institution of the judiciary.

83. In the circumstances, I pray for the relief set out in the Notice of Motion, including the punitive order of costs.


ITUMELENG MOSALA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at BRAAMFONTEIN on this the 22nd day of FEBRUARY 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

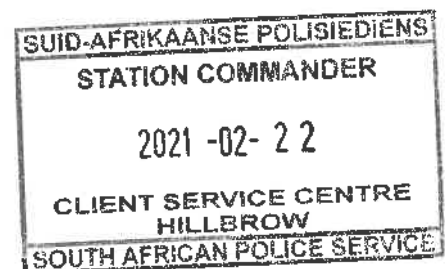

MA SEGAL CAPTAIN

COMMISSIONER OF OATHS

Full names: MOFFAT SEGAL

Address: 1 CLARENDON PLACE HILBROW

Capacity: CAPTAIN



IM1



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

**SUMMONS TO:
APPEAR AS A WITNESS**

In terms of section 3(2) of the Commissions Act of 1947, read with:

- Proclamation 3 published in Government Gazette No. 41403 on 25 January 2018
- Government Notice No. 105 published in Government Gazette No. 41436 on 9 February 2018 (as amended)
- Rules of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State published in Government Gazette No. 41774 on 16 July 2018

Tracking reference:

SPS17(g)/1181/PJP

Handwritten signatures and initials:
M.A.
M.A.

To the sheriff or his/her deputy of Nkandla HL

INFORM:

MR. JACOB GEDLEYIHLEKISA ZUMA

OF

KWADAKWADUNUSE HOMESTEAD,

KWANXAMALALA, NKANDLA,

KING CHETSWAYO DISTRICT,

KWAZULU-NATAL

AND

8 EPPING ROAD, FOREST TOWN,

PARKTOWN,

JOHANNESBURG (ERF 889 PARKTOWN)

that he is hereby summoned to:

appear before the Commission personally at the Civic Centre, 158 Civic Boulevard, Braamfontein, Johannesburg from 18 January 2021 to 22 January 2021 (both dates inclusive) at 10h00am on each such day for the purpose of giving evidence before the Commission and being questioned about any matter being investigated by the Commission, and in particular matters arising from the affidavits or statements listed in Annexure 'A' hereto and any other affidavits or statements that the Commission may serve on him or his attorneys not later than 15 December 2020 and that, should Mr Zuma make appropriate arrangements with the Commission prior to the dates referred to above to give evidence via video link, and he subsequently gives evidence on those days via video link, that will be deemed to be sufficient compliance with this summons.

Your failure to comply with the above without sufficient cause constitutes an offence under section 6(1) of the Commissions Act 8 of 1947.

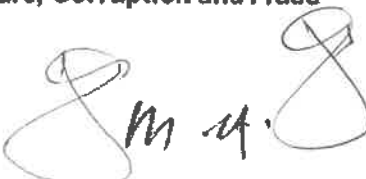
DATED at Parktown on this 26 day of NOVEMBER 2020.



Prof. Itumeleng Mosala


SECRETARY:

**Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud
in the Public Sector including Organs of State**


M. A.

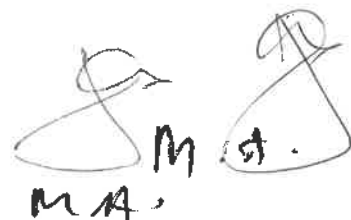
Annexure 'A'

1. Themba Mveli James Maseko : 22 June 2017; 24 August 2017; 04 September 2019
2. Mabel Patronella Mentor : 25 July 2018
3. Nhlanhla Musa Nene : 01 October 2018
4. Pravin Gordhan : 11 October 2018
5. Barbara Hogan : 30 July 2018; 08 October 2018
6. Ngoako Abel Ramatlhodi : 07 November 2018
7. Mahlodi Sam Muofhe : 16 November 2018
8. Fikile Mbalula : 18 March 2019
9. Angelo Agrizzi : 15 January 2019; 26 March 2019
10. Mxolisi Sandile Oliver Nxasana : 11 June 2019
11. Brent Adrian Simons : 09 August 2019
12. Abegnigo Hlungwani : 22 August 2019
13. Meliswe Mildred Oliphant : 07 October 2019
14. Makaringe Richard Baloyi : 11 October 2019
15. Yasmin Duarte : 07 October 2019; 07 October 2019
16. Samson Gwede Mantashe : 07 October 2019; 07 October 2019
17. Zwelini Lawrence Mkhize : 08 October 2019
18. Rajesh Sundaram : 05 April 2019; 29 April 2019
19. Miriam Phumla Williams : 16 August 2018; 22 February 2019
20. Siphwe Nyanda : 02 November 2018; 11 December 2019
21. Trevor Andrew Manuel : 11 October 2018; 14 February 2019
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24. Kobus Demeyer Roelofse : 27 August 2019
25. Lizo Njenje : 01 August 2019; 20 August 2019
26. Rieaz Shaik : 21 November 2019
27. Ronald Shingange : 12 December 2019
28. Mr Y : 28 January 2020
29. Abdurrazack "Zackie" Achmat : 13 February 2020
30. Popo Simon Molefe : 17 February 2020


M-A.
M.A.

The said affidavits or statements have been provided to your present legal representatives on 24 April 2020 and 30 April 2020.

Your former legal representatives were provided with all affidavits or statements until the date on which your present legal representatives confirmed their mandate to represent you on 21 April 2020.



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IM2



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Web: www.sastatecapture.org.za

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

**SUMMONS TO:
APPEAR AS A WITNESS**

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Tracking reference:

SPS17(g)/1285/PJP

M.A.
M.A.

To the sheriff or his/her deputy of Nkandla HL and Johannesburg North HL

INFORM:

MR. JACOB GEDLEYIHLEKISA ZUMA

OF

KWADAKWADUNUSE HOMESTEAD,

KWANXAMALALA, NKANDLA,

KING CHETSWAYO DISTRICT,

KWAZULU-NATAL

AND

8 EPPING ROAD, FOREST TOWN,

PARKTOWN,

JOHANNESBURG (ERF 889 PARKTOWN)

that he is hereby summoned to:

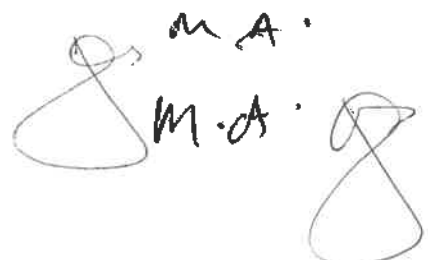
appear before the Commission personally at the Civic Centre, 158 Civic Boulevard, Braamfontein, Johannesburg from **15 February 2021 to 19 February 2021 (both dates inclusive)** at 10h00am on each such day for the purpose of giving evidence before the Commission and being questioned about any matter being investigated by the Commission, and in particular matters arising from the affidavits or statements listed in Annexure 'A' hereto and any other affidavits or statements that the Commission may serve on him or his attorneys not later than 15 December 2020 and that, should Mr Zuma make appropriate arrangements with the Commission prior to the dates referred to above to give evidence via video link, and he subsequently gives evidence on those days via video link, that will be deemed to be sufficient compliance with this summons.

Your failure to comply with the above without sufficient cause constitutes an offence under section 6(1) of the Commissions Act 8 of 1947.

DATED at Parktown on this 30th day of NOVEMBER 2020.



Prof. Itumeleng Mosala





SECRETARY:

**Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud
in the Public Sector including Organs of State**

Annexure 'A'

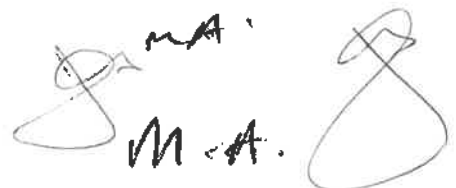
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28. Mr Y : 28 January 2020


M.A.


- 29. Abdurrazack "Zackie" Achmat : 13 February 2020
- 30. Popo Simon Molefe : 17 February 2020

The said affidavits or statements have been provided to your present legal representatives on 24 April 2020 and 30 April 2020.

Your former legal representatives were provided with all affidavits or statements until the date on which your present legal representatives confirmed their mandate to represent you on 21 April 2020.



Handwritten signatures and initials, including "MA" and "M.A.", and two large circular scribbles.

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

In the matter between:
STATE CAPTURE
and:
MR JACOB GEDLEYIHLERISA ZUMA

Case No - Saks No

Applicant

Respondent

Return in accordance with the provisions of Rule 54(6)(b) of the Uniform Rules of Court, as amended

On this 27th day of NOVEMBER 2020 at 13:47 I served the SUMMONS TO: APPEAR AS A WITNESS upon MR JACOB GEDLEYIHLERISA ZUMA at KWADAKWADUNUSE HOMESTEAD, KWANXAMALALA, NKANDLA by handing a copy thereof to Noma Ngcobo, Female, Secretary, a person apparently older than 16 years of age and employed at the respondent given address of employment. I further explained the nature and exigency of the process to the said person. Rule 54(6)(b)

Appearance Date: 18 JANUARY 2021.

Sheriff Fees Baljugetjie	Date Datum	30.11.2020	Invoice Number Belangingsaknr. Nr	I 11382		
			Description	Qty	Vat	Amount
			Return & Copy	1	4.28	28.90
			Registration	1	1.65	11.00
			Service fee	1	10.65	71.00
			Travelling	200	180.00	1200.00
			Send/rec Email	1	2.85	19.00
			Postage	1	3.75	25.00
			Urgency Fee	1	105.00	700.00
			VAT / BTW			308.18
VAT Reg. No. BTW Reg. Nr.	4310289923		You may require this account to be taxed and vouched before payment. U kan vereis dat hierdie rekening getaksaal en gevat word voor betaling		Total Totaal	2362.68
COMMISSION OF ENQUIRY 2ND FLOOR, HILLSIDE HOUSE 17 EMPIRE ROAD, PARKTOWN, JOHANNESBURG 2193			Account No. + Rekening Nr. Your Reference + U Verwysing My Reference + My Verwysing Ref: 1119957POPS/1		1013 VatReg SPS17(9)/1181/PJP	
			Registrar: JOHANNESBURG		Barcode	

S. NGCBO
Deputy Sheriff
S. Chetty
Sheriff - Balju
Melmoth, Eshowe,
Munzini & Nkandla
P O Box 666
Melmoth
3835
Tel: 035 450 0001
Fax: 035 450 0002
sheriffmelmoth@gmail.com
Payments:
Bank: Standard Bank
Name: Sheriff Melmoth
Business Account
BRCode: 57729
Accto: 031013678

Com/Design © Sheriff Chetty System (Pty) Ltd 1998 - 2013

M.A.
M.A.

The Judicial Commission of Inquiry into allegations of State Capture, Corruption and fraud in the Johannesburg

Case No - Saak No NO CASE NO

In the matter between:

THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE CORRUPTION AND FRAUD

Plaintiff

and:

MR JACOB GELDLEYIHLEKISA ZUMA

Defendant

and:

Return in accordance with the provisions of the Supreme Court Act 10 of 2013, as amended

RETURN OF SERVICE - SUMMONS - RETURN IN ACCORDANCE WITH THE PROVISIONS OF RULE 54(6) OF THE UNIFORM RULES OF COURT, AS AMENDED

On this 26th day of November 2020 at 14:50 I served this SUMMONS upon MRS ZNABE MAHLABA, HOUSEKEEPER, ostensibly a responsible person and not less than 16 years of age, of and in control of and at the place of residence of MR JACOB GELDLEYIHLEKISA ZUMA at 8 EPPING RD, FOREST TOWN, PARTOWN, JHB, the last mentioned being temporarily absent and by handing to the first mentioned a copy thereof after exhibiting the original and explaining the nature and exigency of the said process. RULE 54(6)

Note: The original return together with the original abovementioned process is dispatched to the mandator.

Sheriff Fees Baljuggelde	Date Datum	30.11.2020	Tax Invoice Number Belastingfaktuur Nr.	I 57270		
<p style="text-align: center;"><i>Tax Invoice</i> <i>Belastingfaktuur</i></p>			Description	Qty	Vat	Amount
			SERVICE	1	10.58	70.50
			Sheriff Correspondence	1	2.85	19.00
			TRAVELLING	1	33.50	90.00
			Registration	1	1.65	31.00
			RETURN	1	5.63	37.50
			Emergency Fee	1	67.50	450.00
			COLLECTION	1	1.20	8.00
			VAT / BTW 15%			102.90
VAT Reg No. BTW Reg Nr.	4250181902	Excludes errors and omissions. Further costs may be charged. You may require this account to be taxed and touched. Forra en aangings uitgesluit. Verdere kostes mag gelyk word. U kan versoek dat hierdie rekening getakskeer en getast word.			Total Total	788.90
COMMISSION OF INQUIRY COLLECTION			Account No. + Rekening Nr. Your Reference + U Verwysing My Reference + My Verwysing Ret: 158090/Christine/2	4226 NO RBP	Vat Reg NO RBP	
			Registrar: Johannesburg			

M Schoenfeldt
Deputy Sheriff
T A Kruger
Sheriff - Baljo
Johannesburg
North - Noord
Tel 011 334 4397/8/9
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2000
info@sheriff@north.co.za
Payments - Betalings
Bank: Absa Bank
Code: 632005
Name: Sheriff Johannesburg
North
Acct No: 0660 140 867

M.A.
M.A.

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

In the matter between:

STATE CAPTURE

and:

MR JACOB GEDLEYINLEKISA ZUMA

Case No - Sakk No




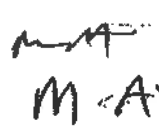

Applicant

Respondent

Return in accordance with the provisions of Rule 54(6)(b) of the Uniform Rules of Court, as amended

On this 01 day of DECEMBER 2020 at 11:40 I served the SUMMONS TO: APPEAR AS A WITNESS upon MR JACOB GEDLEYINLEKISA ZUMA at KWADAKWADUNUSE HOMESTEAD, KWANKANALALA, NKANDLA by handing a copy thereof to SERGEANT NGCOBO, MALE, POLICEMAN, a person apparently older than 16 years of age and EMPLOYED at the RESPONDENT given address OF RESIDENCE. I further explained the nature and exigency of the process to the said person. RULE 54(6)(b).

Appearance Date: 15 FEBRUARY 2021 - 19 FEBRUARY 2021

Sheriff Fees Baljogeldk	Date Datum	Tax Invoice Number Belastingfaktuur Nr.					
	01.12.2020	I 11408	Description	Qty	Vat	Amount	Eduwiso D Mchambu Deputy Sheriff
			Registration	1	1.65	11.00	 S. Chetty Sheriff - Balju Melmoth, Eshowe, Munzini & Nkandla P O Box 666 Melmoth 3835 Tel: 035 450 0001 Fax: 035 450 0002 sherifmelmoth@gmail.com Payments Bank: Standard Bank Name: Sheriff Melmoth Business Account BRCode 67729 AccNo: 031013678
			Return & Copy	1	4.28	28.50	
			Service Fee	1	10.65	71.00	
			Travelling	200	180.00	1200.00	
			Send/rec Email	1	2.85	19.00	
			Postage	1	3.75	25.00	
			Urgency Fee	1	105.00	100.00	
			VAT / BTW			306.18	
VAT Reg No. BTW Reg Nr.	4310289923	You may require this account to be taxed and vouched before payment. U kan vereis dat hierdie rekening getekeneer en getoets word voor betaal		Total Totaal	2362.68		
COMMISSION OF ENQUIRY 2ND FLOOR, HILLSIDE HOUSE 17 EMPIRE ROAD, PARKTOWN, JOHANNESBURG 2193			Account No. ♦ Rekening Nr. Your Reference ♦ U Verwysing My Reference ♦ My Verwysing	1013 vatReg SPS17(g)/1285/RJP			
			Registree: JOHANNESBURG	  			

Shannon S. Van Vuuren

From: johannesburgnorth@sheriffnet.co.za
Sent: Wednesday, 02 December 2020 12:12
To: Shannon S. Van Vuuren; Lerato L. Radebe; lerator@commissioinsc.org.za
Subject: Return: 158370 - NO REF - THE JUDICIAL COMMISSION OF INQUIRY INFO ALLEGAIONS OF STATE CAPTURE CORRUPTION AND FRAUD - MR JACOB GELDLEYIHLEKISA ZUMA

**The Judicial Commission of Inquiry into allegations of State Capture, Corruption and fraud in the public sector including organs of the state
Held at Johannesburg**

In the Matter between:	Case Number	NO CASE NO
THE JUDICIAL COMMISSION OF INQUIRY INFO ALLEGAIONS OF STATE CAPTURE CORRUPTION AND FRAUD	Plaintiff	
and MR JACOB GELDLEYIHLEKI SAZUMA	Defendant	
and		

Return in accordance with the provisions of the Supreme Court Act 10 of 2013, as amended

RETURN OF SERVICE - SUMMONS - RETURN IN ACCORDANCE WITH THE PROVISIONS OF RULE 54(6) OF THE UNIFORM RULES OF COURT, AS AMENDED

On this 30th day of November 2020 at 14:45 I served this SUMMONS upon MRS ZANELE MAHLABA, THE HOUSEKEEPER, ostensibly a responsible person and not less than 16 years of age, of and in control of and at the place of residence of MR JACOB GELDLEYIHLEKISA ZUMA at 8 EPPING RD, FOREST TOWN, PARKTOWN, JHB, the last mentioned being temporarily absent and by handing to the first mentioned a copy thereof after exhibiting the original and explaining the nature and exigency of the said process. RULE 54(6)

Appearance Date: 15 FEBRUARY 2021.

Note: The original return together with the original abovementioned process is dispatched to the mandator.

M Schoenfeldt - Deputy Sheriff

Sheriff Costs - Account: 4226 - COMMISSION OF INQUIRY			
Description	Qty	VAT	Total
Email correspondence	1	2.85	19.00
Service	1	10.58	70.50
Travelling	1	13.50	90.00
Registration	1	1.65	11.00
Return	1	5.63	37.50
Urgency fee	1	67.50	450.00
Collection	1	1.20	8.00
Vat / btw 15%			102.90
Copy Tax Invoice 57558 - Total			788.90
My VAT No: 4250141902			

Sheriff JHB North

T A Kruger

P O Box 9025

Johannesburg 2000

Tel 011 334 4397/8/9

Fax: 011 334 4320

Payments:

Absa Bank Code 632005

AccName: Sheriff JHB North

AccNo: 0660 140 867

kotie@sheriffjhbnorth.co.za

Draft return in electronic format, issued without prejudice of rights and with reservation. The above return is rendered for notification only, not for judicial purposes thus unverified and subject to editing. Errors and omissions excluded. The above information may be legally privileged. If you have received it in error kindly inform sender. Please refrain from any disclosure, copying, distribution or taking any action in reliance thereon.

[Handwritten signatures and initials: M.A., M.A.]



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

11 January 2021

To: Former President Jacob Gedleyihlekisa Zuma
C/O: Mabuza Attorneys

By hand: **KWADAKWADUNUSE HOMESTEAD,
KWANXAMALALA, NKANDLA,
KING CHETSWAYO DISTRICT,
KWAZULU-NATAL**
and
**8 EPPING ROAD, FOREST TOWN,
PARKTOWN,
JOHANNESBURG (ERF 889 PARKTOWN)**

By e-mail: thomas@mabuzas.co.za
eric@mabuzas.co.za
rudolph@mabuzas.co.za

Dear Former President Zuma

**RE: THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE ("THE COMMISSION")**

YOUR APPEARANCE BEFORE THE COMMISSION ON 18 – 22 JANUARY 2021

MA-

1. The Commission wishes to make sure that there is no confusion on your part about your obligation to comply with the summons requiring you to appear before it on 18-22 January 2021.
2. As you know, on 29 December 2020 the Constitutional Court reserved its judgment in the application I brought in that Court for, inter alia, an order that you comply with the summonses requiring you to appear before the Commission on 18-22 January 2021 and on 15-19 February 2021. It is possible that the Constitutional Court might not have handed down its judgment by the 18th January 2021 when, in terms of the summons, you are supposed to appear before the Commission.
3. The Commission wishes to make it clear to you that, even if the Court has not handed down its judgment by 18 January 2021, you are obliged to comply with the summons and appear before it because the summons remains valid and binding on you since it has not been withdrawn, set aside or suspended. Therefore, the Commission wishes to make it clear to you that any failure on your part, without sufficient cause, to appear before it on the 18th to 22nd January 2021 will constitute a criminal offence.

Yours faithfully



PROF. ITUMELENG MOSALA

Secretary

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

me



IM5



Att: Professor Itumeleng Mosala
Secretary of the Judicial Commission of Inquiry
into Allegations of State Capture, Corruption
and Fraud in the Public
Sector including Organs of State
2nd Floor, Hillside House
17 Empire Road
Parktown

1st Floor
83 Central Street
Houghton
2198
PO Box 55045
Northlands 2116
Tel: +27 11 483-2387/483-0476
Fax: +27 11 728 - 0145
Direct e-mail: eric@mabuzas.co.za

Email: BoipeloR@commissionsc.org.za

Your Ref:
Our Ref: Mr ET Mabuza/Mr RN Baloyi/Ms Z Longwe
Date: Friday, January 15, 2021

Dear Professor Mosala,

President JG Zuma's appearance before the Commission on 18 - 22 January 2021

1. We refer to your letter dated 11 January 2021 addressed to President Zuma.
2. We respectfully disagree with the Commission's view that President Zuma is obliged to appear on 18-22 January 2021 on the basis set out in your letter.
3. The Commission is aware that President Zuma has instituted an application to review and set aside the refusal by Deputy Chief Justice Zondo to recuse himself from hearing matters concerning him and his family. The review application is yet to be determined by the court. In our respectful view, President Zuma can only be legally obliged to appear after his review application has been determined.
4. We remind the Commission that it deemed appropriate to approach the Constitutional Court on an extremely urgent basis to compel President Zuma to comply with the very same summons that the Commission now wants to enforce

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and to forego some of his most fundamental rights. The Commission must therefore await the outcome of the decision of the Constitutional Court.


5. We further wish to remind the Commission respectfully that its application to the Constitutional Court did not only deal with the appearance of President Zuma but included amongst others a request for an order that President Zuma should not be allowed to exercise his constitutional right to remain silent.
6. It is therefore obvious that before any suggestion can be made about the appearance of President Zuma, the Commission must await the decision of the Constitutional Court which has a bearing on President Zuma's appearance.
7. In the circumstances, the summons purporting to compel President Zuma to appear before his review is finally determined and even before the Constitutional Court has delivered judgment on the question of his constitutional rights cannot be legally enforced at this stage.
8. We again place on record what we have previously stated regarding how the Commission continues to display conduct that shows clear bias against President Zuma. In this instance, the Commission now seeks to undermine a pending Constitutional Court judgment in pursuance of President Zuma.
9. Please be reminded that President Zuma enjoys no lesser rights than any other citizen of this country and the Commission has no powers whatsoever to act in a way that undermines President Zuma's constitutional rights.
10. It is for all the reasons mentioned above that we respectfully submit that President Zuma will not be appearing before the Commission on 18-22 January 2021. Accordingly, Counsel will not be briefed to appear.
11. The above should never be construed to suggest any disrespect or defiance of a legal process.
12. All our client's rights are reserved.

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Yours faithfully

A handwritten signature in black ink, appearing to be 'S. Mabuza', written in a cursive style. The signature is enclosed within a large, hand-drawn oval scribble.

MABUZA ATTORNEYS

M.A. 

A handwritten signature consisting of the initials 'M.A.' followed by a large, stylized, hand-drawn scribble that resembles a large 'S' or a similar character.



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 295/20

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

Respondent

and

**COUNCIL FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN CONSTITUTION**

First Amicus Curiae

VUYANI NGALWANA SC

Second Amicus Curiae

THE HELEN SUZMAN FOUNDATION

Third Amicus Curiae

Neutral citation: *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma* [2021] ZACC 2

Coram: Jafta J, Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ

Judgments: Jafta J (unanimous)

Heard on: 29 December 2020

MA

Decided on: 28 January 2021

Summary: Section 3 of the Commissions Act 8 of 1947 — the power of a commission to compel a witness to appear before it — urgent application — direct access — privileges of a witness before a commission

ORDER

On application for direct access to the Constitutional Court on an urgent basis:

1. The application for direct access is granted.
2. Advocate Vuyani Ngalwana SC is not admitted as amicus curiae.
3. The Council for the Advancement of the South African Constitution and the Helen Suzman Foundation are admitted as amici curiae.
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.
8. Mr Jacob Gedleyihlekisa Zuma must pay the Commission's costs in this Court, including costs of two counsel.

MA.


JUDGMENT

JAFTA J (Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ concurring):

Introduction

[1] This matter concerns the interpretation and application of the provisions of the Commissions Act¹ and regulations made under that Act.² The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Commission) instituted this application as a matter of urgency. The application was launched in December when this Court was on recess. The Commission sought to approach this Court directly on alternative bases. In the main, it contended that the matter falls within the exclusive jurisdiction of this Court. Alternatively, the Commission sought direct access to this Court for purposes of determining its application.

[2] Commissions of inquiry are investigative tools which the President may invoke for purposes of investigating matters of public concern or for gathering information considered necessary for formulating policy. The power to establish these commissions vests in the President and may be exercised by him or her in his or her capacity as the Head of State. It is a power expressly conferred by the Constitution.³

¹ 8 of 1947.

² Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State published in the Government Gazette number 41436 of 9 February 2018.

³ Section 84 of the Constitution provides:

- (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for—

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[3] In *SARFU III*⁴ this Court construed section 84(2)(f) of the Constitution in terms of which the President is empowered to appoint commissions of inquiry. This Court observed that it was an executive power that was subject only to constraints of legality and those specifically mentioned in the Constitution.⁵

[4] Notably in *SARFU III* it was emphasised that the findings and recommendations made by a commission established in terms of section 84(2)(f) do not bind the President. The President is free to reject them in their entirety or select recommendations he wishes to implement. In this regard the Court said:

“In the case of the appointment of commissions of inquiry, it is well-established that the functions of a commission of inquiry are to determine facts and to advise the President through the making of recommendations. The President is bound neither to accept the commission’s factual findings nor is he or she bound to follow its recommendations.”⁶

-
- (a) assenting to and signing Bills;
 - (b) referring a Bill back to the National Assembly for reconsideration of the Bill’s constitutionality;
 - (c) referring a Bill to the Constitutional Court for a decision on the Bill’s constitutionality;
 - (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
 - (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
 - (f) appointing commissions of inquiry;
 - (g) calling a national referendum in terms of an Act of Parliament;
 - (h) receiving and recognising foreign diplomatic and consular representatives;
 - (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;
 - (j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures; and
 - (k) conferring honours.”

⁴ *President of the Republic of South Africa v South African Rugby Football Union* [1999] ZACC 11; 2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC) (*SARFU III*).

⁵ *Id* at para 148.

⁶ *Id* at para 146.

[5] In addition to the function of advising the President, a commission of inquiry may also serve the purpose of holding a public inquiry in respect of a matter of public concern. The purpose of a public hearing under those circumstances is to restore public confidence in the institution in which the matter that caused concern arose. Here the focus is not what the President decides to do with the findings and recommendations of a particular commission. Instead, the objective is to reveal the truth to the public pertaining to the matter that gave rise to public concern. Affirming this purpose in *Minister of Police*, this Court stated:

“In addition to advising the executive, a commission of inquiry serves a deeper public purpose, particularly at times of widespread disquiet and discontent.”⁷

[6] However, it is not every commission of inquiry that serves “a deeper public purpose”. As mentioned, the President is free to appoint a commission of inquiry, even for purposes of gathering information he or she may use to formulate policy. Ordinarily a commission that was established to gather information does not need coercive powers to force individuals to furnish it with information. But if it is a fact-finding commission, it may be necessary for it to compel witnesses to testify or produce documentary evidence.

[7] Section 84(2)(f) of the Constitution does not, however, authorise the President to confer upon the commission he or she establishes in terms of that section, the power to compel witnesses to appear before the commission. The President derives the power to do so from the Commissions Act.

The Commissions Act

[8] This is a pre-Constitution piece of legislation that came into force in April 1947. It is a short Act comprising seven sections. Section 1 deals with the application of the

⁷ *Minister of Police v Premier, Western Cape* [2013] ZACC 33; 2014 (1) SA 1 (CC); 2013 (12) BCLR 1365 (CC) at para 45.

Act to a commission. It does not automatically apply to a commission upon its establishment by the President. The section requires the President to declare that the Act will apply to the commission subject to conditions he or she may specify.⁸ The declaration must be made in the form of a proclamation in the Gazette.

[9] The section also empowers the President to make regulations that govern the effective operation of the commission in question. These regulations may confer additional powers upon the commission and spell out the procedure to be followed by the commission in conducting an investigation. The regulations may also protect the integrity of the commission and insulate it against external influences. All this may be achieved by criminalising conduct which may prevent a proper investigation.⁹ Section 1(2) prescribes amounts of fines and periods of imprisonment which may be

⁸ Section 1(1) of the Commissions Act provides:

“Whenever the Governor-General has, before or after the commencement of this Act, appointed a commission (hereinafter referred to as a ‘commission’) for the purpose of investigating a matter of public concern, he may by proclamation in the Gazette—

- (a) declare the provisions of this Act or any other law to be applicable with reference to such commission, subject to such modifications and exceptions as he may specify in such proclamation; and
- (b) make regulations with reference to such commission-
 - (i) conferring additional powers on the commission;
 - (ii) providing for the manner of holding or the procedure to be followed at the investigation or for the preservation of secrecy;
 - (iii) which he may deem necessary or expedient to prevent the commission or a member of the commission from being insulted, disparaged or belittled or to prevent the proceedings or findings of the commission from being prejudiced, influenced or anticipated;
 - (iv) providing generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.”

⁹ Section 1(2) of the Commissions Act provides:

“Any regulation made under paragraph (b) of subsection (1) may provide for penalties for any contravention thereof or failure to comply therewith, by way of—

- (a) in the case of a regulation referred to in subparagraph (i), (ii) or (iv) of the said paragraph, a fine not exceeding two hundred rand or imprisonment for a period not exceeding six months;
- (b) in the case of a regulation referred to in subparagraph (iii) of the said paragraph, a fine not exceeding one thousand rand or imprisonment for a period not exceeding one year.”

imposed as penalties for breach of the regulations. The offences created by the regulations may be tried in the magistrate's court.¹⁰

[10] Of importance for present purposes are sections 3 and 6, in addition to section 1. Section 3 provides:

"(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Union have the powers which a Provincial Division of the Supreme Court of South Africa has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(2) A summons for the attendance of a witness or for the production of any book, document or object before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairman of the commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place.

(3) If required to do so by the chairman of a commission a witness shall, before giving evidence, take an oath or make an affirmation which oath or affirmation shall be administered by the chairman of the commission or such official of the commission as the chairman may designate.

(4) Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply."

[11] This provision vests commissions with powers equal to those enjoyed by the High Court with regard to summoning witnesses; taking their evidence under oath or

¹⁰ Section 1(3) reads:

"Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty prescribed by any such regulation."

affirmation and demanding the production of documents and other objects which constitute evidentiary material. Section 3(2) authorises the secretary of a commission to issue a summons which must be in the form prescribed by the commission's Chairperson.

[12] What is apparent from the text of section 3(2) is that if the attendance of a witness is sought, a summons should be issued, directing the witness to appear before the commission on a specified date. Under the section the authority to issue the summons vests in the commission's secretary who should sign the summons presented to him or her if it is in the prescribed form. No substantive application on affidavit is required for that purpose. Nor is the witness to be summoned entitled to a hearing or an opportunity to make representations before the summons is issued.

[13] Once a summons is duly signed by the secretary, it should be served upon the witness in the manner similar to the process followed when summonses are served for the attendance of witnesses at a criminal trial before the High Court. The person on whom the summons is served is obliged to appear at a sitting of the commission on the designated date. Subject to the law relating to privilege applicable to a witness giving evidence in a criminal trial in the High Court, the witness summoned to the commission is obliged to give evidence and answer all questions put to him or her.

[14] Should the witness fail to attend the inquiry on the date and place specified in the summons or to remain in attendance until the conclusion of the inquiry or until he or she is excused by the Chairperson of the commission from further attendance, he or she would be guilty of an offence. Upon conviction he or she would be liable to a fine or a period of imprisonment not exceeding six months or to both such fine and imprisonment.¹¹

¹¹ Section 6 of the Commissions Act provides:

“(1) Any person summoned to attend and give evidence or to produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he is excused by the chairman of the commission from further attendance, or having attended, refuses to be

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[15] It cannot be gainsaid that the Commissions Act authorises serious limitations of fundamental freedoms and rights guaranteed by the Bill of Rights. To mitigate the intrusion upon individual rights, the Act restricts its application to a commission established “for the purpose of investigating a matter of public concern”. In view of this impact of the Act on fundamental rights, the duty imposed by section 39(2) of the Constitution when legislation is interpreted, is activated during the construction of the provisions of the Commissions Act. This duty requires this Court to interpret the Act in a manner that promotes the rights and freedoms safeguarded by the Bill of Rights.¹²

[16] The phrase “a matter of public concern” is subject to an objectively ascertainable standard. It does not mean what the President in his or her mind views as public interest. Instead, it refers to the concern that the general public had in respect of the matter to be investigated by the Commission vested with coercive powers in the Commissions Act.

[17] With regard to the objective test and the proper approach to the interpretation of the phrase, this Court said in *SARFU III*:

“In determining whether the subject-matter of the commission’s investigation is indeed a ‘matter of public concern’, the test to be applied is an objective one. The legally

sworn or to make affirmation as a witness after he has been required by the chairman of the commission to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

- (2) Any person who after having been sworn or having made affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.”

¹² *Chisuse v Director-General, Department of Home Affairs* [2020] ZACC 20; 2020 (6) SA 14 (CC); 2020 (10) BCLR 1173 (CC) at paras 49-50. See also *Van Vuren v Minister of Correctional Services* [2010] ZACC 17; 2012 (1) SACR 103 (CC); 2010 (12) BCLR 1233 (CC) at para 47; *Chagi v Special Investigating Unit* [2008] ZACC 22; 2009 (2) SA 1 (CC); 2009 (3) BCLR 227 (CC) at para 14; *Daniels v Campbell N.O.* [2004] ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) at paras 43-5 of Ngcobo J’s concurring judgment and paras 81-3 of Moseneke J’s dissenting judgment; and *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 72.

relevant question is not whether the President thought that the subject-matter of the inquiry was a matter of public concern, but whether it was objectively so at the time the decision was taken. Whether or not the matter is one of public concern is a question for the courts to determine and not a matter to be decided by the President within his own discretion. In this context, the Constitution requires that the notion of 'public concern' be interpreted so as to promote the spirit, purport and objects of the Bill of Rights and to underscore the democratic values of human dignity, equality and freedom. The purpose of the requirement that a matter be one of public concern is, on the one hand, to protect the interests of individuals by limiting the range of matters in respect of which the President may confer powers of compulsion upon a commission and, on the other, to protect the interests of the public by enabling effective investigation of matters that are of public concern."¹³

[18] In the context of the Commissions Act, a matter is of public concern if it evokes public anxiety or worry and interest. The presence of one or the other of these features does not constitute public concern. With the help of a dictionary meaning, this Court in *SARFU III* stated:

"The Oxford English Dictionary defines the term 'concern' as 'anxiety or worry; or matter of interest or importance to one'. The first meaning given is the meaning of 'worry or anxiety'. The second meaning is a matter of interest or importance. In our view, 'public concern', as it is used in the Commissions Act, should be interpreted in a way which involves both the notion of 'anxiety' and 'interest'. A matter of public concern is, therefore, not a matter in which the public merely has an interest, it is a matter about which the public is also concerned. 'Public concern' in this context is therefore a more restricted notion than that of public interest."¹⁴

[19] In view of the nature of the allegations which are being investigated by the present Commission, there can be no doubt that they constitute matters of public concern envisaged in the relevant Act. As it appears in the Proclamation¹⁵ under which the Commission was appointed, its purpose is "to investigate allegations of state

¹³ *SARFU III* above n 4 at para 171.

¹⁴ *Id* at para 174.

¹⁵ Proc R3 GG 41403 of 25 January 2018.



capture, corruption and fraud in organs of state". In part, the Commission's terms of reference read:

"A Judicial Commission of Inquiry ('the Commission') is hereby appointed in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Commission is appointed to investigate matters of public and national interest concerning allegations of state capture, corruption and fraud."¹⁶

¹⁶ The Terms of Reference read:

"1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, guided by the Public Protector's state of capture report, the Constitution, relevant legislation, policies, and guidelines, as well as the order of the North Gauteng High Court of 14 December 2017 under case number 91139/2016:

- 1.1 whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and /or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOEs. In particular, the commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family;
- 1.2 whether the President had any role in the alleged offers of Cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged;
- 1.3 whether the appointment of any member of the National Executive, functionary and /or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and /or announced, and if so, whether the President or any member of the National Executive is responsible for such conduct;
- 1.4 whether the President or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any state-owned entities (SOEs) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOEs or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state;
- 1.5 the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organizations by public entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended;
- 1.6 whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in the New Age Newspaper and any other governmental services in the business dealings of the Gupta family with government departments and SOEs;
- 1.7 whether any member of the National Executive and including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies;
- 1.8 whether any advisers in the Ministry of Finance were appointed without proper procedures. In particular, and as alleged in the complaint to the Public Protector, whether two senior advisers who were appointed by Minister Des

[20] The terms of reference proceed to explicitly tabulate matters to be investigated. These include allegations that “Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family”. And in particular whether the then President had any role in those offers or in informing that family about appointments to Cabinet, before those appointments were formally made. Another issue for investigation was whether the former President had unlawfully facilitated the awarding of tenders by state-owned entities to the Gupta family or any other person or company.

[21] These terms of reference place the former President at the centre of the investigation. They seek to establish whether he abdicated his constitutional power to appoint Cabinet members to a private family and whether he had acted unlawfully. These are all matters of public concern as defined above and some of them fall particularly within the personal knowledge of the ex-President.

[22] Sight must not be lost of the fact that it was he who was the subject of the investigation and who drew up the terms of reference that placed him at the heart of the investigation. Some of those matters may not be properly investigated without his participation. Indeed, the terms of reference require all organs of state to cooperate fully with the Commission and extend the application of the Commissions Act to it, including the power to secure and compel witnesses to appear before the Commission for purposes of giving evidence. The terms of reference also mention that regulations would be made in terms of the Commissions Act to enable the Commission “to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary”.

Van Rooyen to the National Treasury were so appointed without following proper procedures;

- 1.9 the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organizations by Government Departments, agencies and entities. In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.”

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Regulations

[23] On 9 February 2018, the former President signed the regulations in question. These regulations permit legal representation for any person appearing before the Commission. Regulation 8 obliges witnesses to answer all questions put to them except only those which fall within the scope of section 3(4) of the Commissions Act.¹⁷ It will be recalled that this section affords witnesses before the Commission protections enjoyed by witnesses in a criminal trial. The regulation permits cross-examination of witnesses subject to authorisation by the Chairperson.

[24] In exchange for compelling witnesses to testify before the Commission, regulation 8(2) prohibits the use in any criminal proceedings of evidence adduced at the Commission. This prohibition does not apply to a trial relating to an offence under section 6 of the Commissions Act or regulation 12. The prohibition extends to derivative evidence that may come to light as a result of the witness's testimony before the Commission. That evidence is inadmissible in criminal proceedings.¹⁸

[25] Regulation 10 empowers officials of the Commission to enter any premises and seize evidentiary material relevant to the Commission's investigation.¹⁹ But this entry must be authorised by a search warrant issued by a Judge of the High Court within

¹⁷ Regulation 8(1) provides:

"No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947)."

¹⁸ Regulation 8(2) provides:

"No evidence regarding questions and answers contemplated in sub-regulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or regulation 12."

¹⁹ Regulation 10(1) reads:

"The Chairperson or any officer may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate enter and inspect any premises and demand and seize any document or article which is on such premises."

whose jurisdiction the premises concerned are located.²⁰ But where it is justified, a Judge may issue a warrant for the search of premises situated outside his or her area of jurisdiction.²¹

[26] While section 3 of the Commissions Act empowers the Commission's secretary to issue a summons for attendance at a hearing by witnesses, regulation 10(6) bestows the power upon the Chairperson to secure the same attendance by means of a direction. This regulation provides:

"For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

[27] The regulation enables the Chairperson, acting on his or her own accord, to call any witnesses he considers necessary to give evidence or call upon such witness to submit a sworn statement or produce any document that has a bearing on a matter under investigation by the Commission. It bears emphasis that the process regulated by regulation 10(6) differs from that which is governed by section 3 of the Commissions Act. The regulation 10(6) process does not require a summons to be issued but a direction only. Failure to comply with that direction may, in appropriate circumstances, constitute an offence.²²

²⁰ Regulation 10(3) provides:

"Subject to sub-regulation (4), the premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a judge of the area of jurisdiction within which the premises are situated."

²¹ Regulation 10(4) reads:

"A warrant referred to in sub-regulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified."

²² Regulation 12(2) provides:

"Any person who wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10 is guilty of an offence."

[28] It is against this legislative backdrop that the present claim by the Commission must be adjudicated. This is so because the Proclamation under which the Commission was established explicitly states that the Commission was established in terms of section 84(2)(f) of the Constitution.²³ And in the Government Gazette of 9 February 2018, the provisions of the Commissions Act were extended to apply to the Commission.²⁴

Factual background

[29] It must be mentioned at the outset that the facts placed before this Court were furnished only by the Commission. Former President Jacob Gedleyihlekisa Zuma (respondent) has decided not to participate in these proceedings. This means that the matter will be determined on the basis of the version provided by the Commission, which is the applicant here. The facts as set out in the Commission's papers are not disputed and as a result they will be taken as correct.

[30] Following remedial action issued by the Public Protector to the effect that a commission of inquiry be appointed to investigate certain allegations that were made to her during an investigation, the respondent who was then the sitting President of the Republic, established the Commission. As mentioned, he was exercising the power conferred on him by section 84(2)(f) of the Constitution. On the recommendation of

²³ The Proclamation states:

"In terms of section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, I hereby appoint a Commission of Inquiry to investigate allegations of state capture, corruption and fraud in the Public Sector including organs of state with the terms of reference in the Schedule attached hereto and appoint Honourable Mr Justice Raymond Mnyamezeli Mlungisi Zondo, Deputy Chief Justice of the Republic of South Africa, as its Chairperson."

²⁴ Government Notice No 105 of 9 February 2018 reads:

"Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947) (the Act), I hereby—

- (a) declare that the provisions of the said Act shall be applicable to the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State established in terms of Proclamation No.3 of 2018 published in Gazette No. 41403 dated 25 January 2018; and
- (b) make the regulations in the Schedule with reference to the said Commission."

the Chief Justice, the respondent appointed the Deputy Chief Justice as the Chairperson of the Commission.

[31] Among the allegations which the Public Protector ordered be investigated by a commission were matters which implicated the respondent in his capacity as President of the Republic. These included offers of appointment to Cabinet made to certain individuals by the Gupta family and whether the President and members of his Cabinet were involved in the facilitation of the awarding of tenders unlawfully by state-owned entities. Commendably the respondent, having established the Commission, drew up terms of reference which covered the allegations flagged by the Public Protector, despite the fact that he was implicated as one of the culprits. Effectively the respondent, by so doing, made himself the subject of the Commission's investigation.

[32] It must have come as no surprise to him that the Commission required his attendance in the course of its investigation. At that point the respondent, having resigned from office, was no longer President of the Republic. During September 2018 the respondent was requested to furnish the Commission with an affidavit, responding to the evidence by two witnesses, Ms Mentor and Mr Maseko, which implicated him. The respondent, through his attorneys, informed the Commission that he had sought certain records from the office of the President. The records in question had, it was stated, information relevant to matters the respondent needed to include in the requested affidavit.

[33] However, no affidavit was submitted by the respondent. More than seven months later, the Commission addressed a query to the respondent's attorneys expressing concern that no affidavit had been submitted. The respondent's attorneys responded immediately and took issue with the assertion that he had "failed to deliver an affidavit as requested". They pointed out that the Presidency had furnished them with incomplete information on 24 April 2019. They recorded their rejection of a suggestion that the respondent did not cooperate with the Commission, even though the Commission's letter under reply made no suggestion of that sort. That letter merely

A handwritten signature, possibly 'M. A.', is written in the bottom right corner of the page. The signature is written in dark ink and consists of a large, stylized initial 'M' followed by 'A.'.

recorded the Commission's concern over the delay. The respondent's attorneys proceeded to lump the Commission and the Presidency together and accused them of lack of cooperation with the respondent by their failure to furnish him with information. They concluded by insisting that their client needed the full information in order to submit an affidavit and mentioned that their client's rights on the issue were reserved.

[34] On 30 April 2019, and by means of a letter, the Commission invited the respondent to appear before it from 15 to 19 July 2019. The letter stated that the purpose of the appearance was to afford the respondent an opportunity "to give his side of the story" in relation to evidence of witnesses who implicated him and also to answer questions from the Commission. The letter asked for a written confirmation that the respondent would appear before it.

[35] Following an exchange of correspondence between the Commission and the respondent, the former President appeared before the Commission on 15 July 2019. He testified for two and half days before declining to answer questions and objecting to being questioned in a manner that he said amounted to cross-examination. The respondent took the decision that he would no longer participate in the proceedings of the Commission. He did not complain only about the questioning, but also expressed misgivings about how the Commission had secured his attendance.

[36] The Commission's lawyers refuted the respondent's complaints. They pointed out that the Chairperson had authority to call witnesses to testify before the Commission and that the respondent was "invited" in the exercise of that power. They drew the respondent's attention to the provisions of regulation 8(1) and pointed out that he was obliged to answer questions, except those in respect of which he was exempted from answering by section 3(4) of the Commissions Act. The lawyers for the Commission also refuted that the respondent was subjected to cross-examination. They concluded by asserting that the respondent's procedural objections, complaints and misgivings were not valid.

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[37] This impasse prompted the Chairperson to invite the lawyers on both sides to a discussion in chambers. On 19 July 2019, an agreement was reached on the respondent's continued participation in the Commission's hearings. He withdrew the decision not to participate and promised to cooperate with the Commission.

[38] The agreement included the Commission's lawyers providing the respondent with a list of issues in respect of which he was required to testify, within two weeks from 19 July 2019. Thereafter, the respondent would furnish the Commission with an affidavit, setting out his version on those issues. The parties had contemplated that once these steps had occurred, the respondent would testify before the Commission.

[39] On 30 July 2019, the Commission's lawyers emailed a list of issues to the respondent's attorneys and concluded their message by recording that the Chairperson had directed that the respondent should return to the hearing from 14 to 25 October 2019 and from 11 to 15 November 2019. The respondent's attorneys took umbrage at the directive fixing dates on which the respondent was required to return to the Commission. They requested the Commission's lawyers to inform the Chairperson that they regarded those dates as a proposal which may be changed at the instance of either party. Further correspondence was exchanged between the lawyers of both sides. In one of the letters, the Commission's lawyers pointed out that what informed the decision on the dates in question was the fact that the lifespan of the Commission would terminate at the end of February 2020.

[40] Notably the Commission disputed that it was a term of the agreement of 19 July 2019 that dates on which the respondent would return to the Commission, would be arranged by consensus between the parties. However, the Commission excused the respondent from appearing before it from 14 to 25 October 2019 as those dates clashed with his appearance before a criminal court in Pietermaritzburg. With regard to the dates in November, the respondent's attorneys pointed out that he and his legal team would not be available as they would be attending to another case in which he unsuccessfully sought an order for a permanent stay of prosecution. In a subsequent

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letter, they informed the Commission that the respondent was sick and that he was admitted in hospital. Consequently, he could not come to the Commission in November 2019.

[41] Meanwhile the respondent had also failed to meet the deadline agreed to on 19 July 2019 for submitting an affidavit, and no explanation was furnished to the Commission for his failure. This was a second occasion that he failed to do so. On the first occasion he complained that the Presidency had given him incomplete information. To date not a single affidavit has been presented by him to the Commission.

[42] In December 2019 the Commission's lawyers took a decision that the Commission's powers of compulsion should be invoked in order to force the respondent to attend and testify. Having sketched out in detail in their letter to the respondent's attorneys the chronology of the respondent's failures and their impact on the Commission's investigation, they concluded:

"The above record of events is a matter of material concern for the legal team of the Commission. First, the inability of the Commission to secure the attendance of Mr Zuma to continue evidence before the Commission is hampering the work of the Commission. Second, and in particular, the refusal or failure to submit an affidavit in response to the 'areas of interest' communication of 30 July 2019 is a breach of arrangement agreed and referred to above. Third, the loss of three weeks hearing time is something the Commission can ill afford both in relation to time and the costs involved. Finally it is noted that despite the Chairperson's various directives, you have failed or refused to approach him by way of formal applications to seek rulings excusing non-compliance with his directives."

[43] But for reasons that are not apparent from the record, the Commission's lawyers, rather than following the Commissions Act and seeking that a summons be issued, chose to give notice to the respondent, advising him that they contemplate making an application for authorisation of a summons by the Chairperson. A substantive application on affidavit was filed and served on 19 December 2019. It was to be heard on 14 January 2020. The relief sought was an order authorising and directing the

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Commission's secretary to issue summons against the respondent. The notice of application afforded the respondent up to 6 January 2020 to give notice to oppose and deliver an affidavit setting out the grounds of opposition. On 6 January 2020, the respondent's attorneys filed a notice to oppose and promised to file the opposing affidavit on 10 January 2020.

[44] However, on that date the respondent's attorneys informed the Commission that their client had undergone a surgery on 6 and 9 January 2020 and promised to file the affidavit on or before 14 January 2020. On 13 January 2020, the respondent filed an affidavit of 105 pages, excluding annexures. As the Commission's lawyers sought to file a reply, the application was not heard on 14 January 2020. The matter was postponed indefinitely for a reply.

[45] It was only on 28 August 2020 that the Commission issued a notice setting down the application for 9 September 2020. The respondent's attorneys responded on 30 August 2020 and pointed out that due to prior commitments the respondent's counsel were not available. They asked that the hearing be rescheduled. They also objected to dates which were fixed by the Commission for the appearance of the respondent from 21 to 25 September 2020, before the application for the issuance of summons was heard. These dates were fixed by means of a letter of 10 August 2020. The respondent's attorneys demanded to be consulted before dates were fixed.

[46] On 18 September 2020 the Commission by letter informed the respondent's attorneys that the hearing of the application for summons had been rescheduled for 9 October 2020. The Commission suggested that argument on that application may even be presented "remotely". Alternatively, the application could be determined on written submissions only. In a second letter with no date, the Commission's secretary informed the respondent's attorneys that 16 to 20 November 2020 were the new dates for the respondent's appearance at the Commission. It is not clear whether the Commission excused the respondent from attending from 21 to 25 September 2020 at the behest of his attorneys.

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[47] But what is evident is that the respondent's attorneys took offence at the fixing of the new dates. They responded by informing the Commission that they were instructed to bring an application for the Chairperson's recusal.

[48] Meanwhile the Chairperson had issued two directions in terms of regulation 10(6). The first was issued on 27 August 2020 and required the respondent to respond by way of an affidavit to the evidence of Messrs Tsotsi, Linnell and Matona. The second was issued on 8 September 2020 and directed him to respond to the evidence of Mr Popo Molefe by affidavit. The respondent did not comply with both directions.

[49] On 9 October 2020, the application for the issuance of the summons was heard, in the absence of the respondent. The Commission's secretary was later authorised to issue summons which was issued on 20 October 2020. The summons required the respondent to appear before the Commission from 16 to 20 November 2020. This summons was duly served on the respondent's attorneys.

[50] On 16 November 2020, the respondent appeared before the Commission but his counsel moved the application for the Chairperson's recusal. Full argument was presented by both sides. The Chairperson took time to consider the submissions and made his ruling on 19 November 2020. In a fully reasoned ruling, the recusal application was dismissed. Following the ruling, the respondent's counsel informed the Commission that his client will leave the hearing as he intends taking the ruling on review.

[51] The Commission took a short adjournment and it was during that adjournment that the respondent and his legal team left the hearing. When the hearing resumed, the Chairperson was informed that the respondent had left without being excused from further attendance. Unimpressed by the turn of events, the Chairperson instructed the secretary to lay a criminal charge against the respondent and to launch an urgent application in this Court, hence the current one.

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[52] But litigants do not approach this Court, which is the apex court, as of right. They require the Court's permission to do so, particularly if the relief sought can be obtained in the courts below. The exception to this rule applies where a matter falls within the exclusive jurisdiction of this Court. If a litigant establishes exclusive jurisdiction, it is entitled to approach this Court directly as the matters falling within this Court's exclusive jurisdiction cannot be entertained by other courts. Here, the Commission approached this Court on two grounds. First, it contended that the matter fell within the Court's exclusive jurisdiction. Second, the Commission sought to be granted direct access. Any one of these grounds, if successfully established, would entitle the Commission to a hearing by this Court. However, at the hearing of the matter, counsel for the Commission addressed the Court on direct access only. He submitted that if the Commission succeeds on it, it will not be necessary for the Court to determine whether its exclusive jurisdiction was engaged. Therefore, the point on direct access will be considered first.

Direct access

[53] In order to determine whether direct access should be granted, it is helpful first to identify the standard against which the request for direct access must be assessed. It is by now trite that when this Court grants direct access, it exercises a discretionary power.²⁵ Like all discretions, the power must be exercised judicially. What this means is that the Court must not misdirect itself in relation to the relevant facts and the applicable law. Should an incorrect legal standard be applied, it cannot be said that the discretion was properly exercised.

[54] Section 167(6) of the Constitution empowers litigants to bring cases directly to this Court if it is in the interests of justice to do so and leave is granted.²⁶ Consistent

²⁵ *Tsotetsi v Mutual and Federal Insurance Co Ltd* [1996] ZACC 19; 1997 (1) SA 585 (CC); 1996 (11) BCLR 1439 (CC) at paras 11-2.

²⁶ Section 167(6) of the Constitution provides:

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with this provision, rule 18 of the rules of this Court prescribes the procedure to be followed when cases are brought directly to this Court.²⁷ The rule requires that these cases be brought on notice of motion, supported by an affidavit that sets out fully the facts upon which the applicant relies for relief. The rule obliges the applicant to describe grounds on which the request for direct access is based.

Grounds for direct access

[55] The Commission's mainstay for seeking direct access is urgency. It pointed out that the Commission's lifespan is to come to an end on 31 March 2021. Building on this, the Commission argued that very little time remains for it to complete hearings and compile a report. Had it not lost three months of its time to the Covid-19 lockdown, the Commission could have concluded oral hearings at the end of December 2020. As a result, the Commission now aims at completing hearings at the end of February 2021. The Commission pointed out that it has the period of January to February 2021 to hear evidence from the respondent which is pivotal to its investigation.

[56] It concluded by submitting that in these circumstances, it is urgent that this Court makes a final determination of the issues because if it were to approach the High Court, the appeal process which may ensue would defeat the objective of compelling the

"National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—

- (a) to bring a matter directly to the Constitutional Court; or
- (b) to appeal directly to the Constitutional Court from any other court."

²⁷ Rule 18 provides:

- "(1) An application for direct access as contemplated in section 167(6)(a) of the Constitution shall be brought on notice of motion, which shall be supported by an affidavit, which shall set forth the facts upon which the applicant relies for relief.
- (2) An application in terms of subrule (1) shall be lodged with the Registrar and served on all parties with a direct or substantial interest in the relief claimed and shall set out—
 - (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
 - (b) the nature of the relief sought and the grounds upon which such relief is based;
 - (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot;
 - (d) how such evidence should be adduced and conflicts of fact resolved."

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respondent to testify before the Commission. The Commission argued that the normal procedures are not appropriate in view of the impending termination of its existence. As mentioned, the bedrock of the Commission's argument is that anything other than direct access to this Court would result in its tenure coming to an end without hearing the respondent's testimony.

[57] Of course, this would be a cogent reason if this situation was not caused by the Commission's own conduct.²⁸ We are told that the Commission has sought the respondent's attendance at its hearings since 2018. We are also told that to date the Commission has issued no less than 2526 summonses, but we are not informed why a summons was not issued against the respondent until October 2020.

[58] Despite the constitutional injunction of equal protection and benefit of the law,²⁹ of which the Commission was aware, for reasons that have not been explained the Commission treated the respondent differently and with what I could call a measure of deference. He was only subjected to compulsion by summons when it was too late in the day. On the occasion of the respondent's withdrawal without permission from the Commission in November 2020, the Chairperson stated:

"Given the seriousness of Mr Zuma's conduct and the impact that his conduct may have on the work of the Commission and the need to ensure that we give effect to the Constitutional provisions that everyone is equal before the law, I have decided to request the Secretary of the Commission to lay a criminal complaint with the South African Police against Mr Zuma, so that the police can investigate his conduct and in this regard the Secretary would make available to the police all information relevant as well as make information available to the National Prosecuting Authority."

[59] This is a classic example of the Commission invoking its coercive powers. The question that arises is whether the current situation in which the Commission finds itself

²⁸ *AParty v Minister of Home Affairs; Moloko v Minister of Home Affairs* [2009] ZACC 4; 2009 (3) SA 649 (CC); 2009 (6) BCLR 611 (CC) at paras 57-9.

²⁹ Section 9(1) of the Constitution provides: "[e]veryone is equal before the law and has the right to equal protection and benefit of the law."



would have arisen if it had timeously invoked its powers of compulsion. This requires us to look at steps taken by the Commission over time.

[60] When the respondent appeared before the Commission in July 2019, he refused to answer questions that made him uncomfortable and effectively withdrew his participation, raising complaints which the Commission viewed as lacking merit. This must have signaled to the Commission that the use of its coercive powers may be necessary. However, an agreement between the respondent and the Commission's lawyers was brokered. Although the Commission's lawyers kept their side of the bargain, the respondent did not. He failed to submit an affidavit he had promised to file. He took offence to the Chairperson fixing dates for his future appearance without consulting his lawyers.

[61] But of more importance is the fact that in December 2019, the Commission was convinced that a summons should be issued against the respondent. However, instead of asking that the summons be issued immediately by the Commission's secretary, the Commission's lawyers chose to give the respondent notice, informing him that they planned to make a substantive application to the Chairperson for authorisation of the summons. Shortly thereafter, they launched the application which was served upon the respondent. All of this appears not to be required by any law. And the Commission was aware that it had limited time within which to conduct hearings. As to why it did not follow the law in relation to issuing summons, we are not told.

[62] Having opted for a formal application, the Commission did not pursue and ripen it for hearing diligently. The notice of application required the respondent to file a notice to oppose and his opposing affidavit on or before 6 January 2020. On that day notice was filed without accompanying affidavits. The respondent's attorneys promised to file affidavits on 10 January 2020. The application was set down for hearing on 14 January 2020. On the eve of the hearing, the respondent filed a long affidavit. Since the Commission's lawyers wanted to file a reply the matter was postponed without fixing a date.

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[63] The respondent indicated that he would be going abroad for medical treatment and that he would be back at the end of March 2020. The Chairperson exempted him from attendance during that period. But this did not mean that the application could not be heard in his absence. The Commission failed to set the matter down from 14 January 2020 up to the end of March 2020, when the national lockdown was declared. There is no explanation as to why this did not happen. In fact, that application was only set down for 9 September 2020. Again this long delay is not explained. The Commission merely says that it lost three months of its time due to the Covid-19 lockdown. The lockdown commenced on 26 March 2020. The three months lost by the Commission must be April to June 2020. It is not clear from the Commission's papers why the application was set down for 9 September 2020. The period July to August 2020 is not accounted for by the Commission.

[64] When the respondent pointed out that 9 September 2020 did not suit his legal team, the hearing of the application was rescheduled for 9 October 2020. It was only on that day that a summons against the respondent was authorised and issued. It required the respondent to appear in November 2020. During his appearance then, the respondent moved an application for the Chairperson's recusal. When this failed, he unilaterally withdrew from the hearing and left the Commission's venue.

[65] By then the Commission was left with almost no time to compel the respondent to appear before it by means of laws at its disposal, hence the urgent application it launched in this Court in December 2020. Had the Commission acted diligently and in accordance with the relevant law, the present situation could have been avoided.

[66] It is not true that it was only during the respondent's walk-out in November 2020 that the Commission realised that intervention by a Court was necessary. The red lights started flashing in July 2019 when the respondent unilaterally decided to withdraw from further attendance. Later in September 2020, having berated the Chairperson for not consulting his attorneys, he made it plain that he will not participate in the hearings

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unless the Chairperson recused himself. This was a build up to what happened in November 2020.

[67] However, the Commission's maladroit conduct described above is not decisive of the interests of justice issue. This factor must be weighed against other factors including those that are in favour of granting direct access. These include enabling the Commission to conduct a proper investigation of matters it is tasked to determine; the fact that the matter is not opposed and that it bears reasonable prospects of success.

[68] With regard to reasons for direct access, the Commission averred:

"One of the most compelling reasons for direct access lies in the pressing public importance of the matter and prejudice to the public interest if jurisdiction is not assumed. Given the importance of Mr Zuma's role as former President, I submit that it is in the public interest that urgent steps are taken to secure his appearance before the commission. It is in the public interest to require Mr Zuma to appear before the Commission to give answers to the matters under investigation as part of his duty of accountability. I refer also to what I have stated about importance of the subject of the Commission's investigation."

[69] It is apparent from these reasons that a dismissal of the application for direct access would prejudice the public interest in the Commission's investigations. The respondent is firmly placed at the centre of those investigations which include an allegation that he had surrendered constitutional powers to unelected private individuals. If those allegations are true, his conduct would constitute a subversion of this country's constitutional order.

[70] It must be plainly stated that the allegations investigated by the Commission are extremely serious. If established, they would constitute a huge threat to our nascent and fledgling democracy. It is in the interests of all South Africans, the respondent included, that these allegations are put to rest once and for all. It is only the Commission which

may determine if there is any credence in them or to clear the names of those implicated from culpability.

[71] The public, whose interest would be frustrated if direct access is refused, is not responsible for the blunders of the Commission's lawyers. As a result, the lack of diligence on the lawyers' part cannot be attributed to the public. In all these circumstances I am persuaded that direct access should be granted.

[72] This conclusion renders it unnecessary to determine whether the matter falls within the exclusive jurisdiction of this Court.

Applications for admission as amici

[73] Three parties applied to be admitted as amici curiae (friends of the Court). The first applicant was Advocate Vuyani Ngalwana SC, the second was the Council for the Advancement of the South African Constitution (CASAC) and the third was the Helen Suzman Foundation (Foundation). The Commission opposed the application by Ngalwana SC only and supported that of CASAC. This Court issued directions requiring these applicants to file their written submissions on or before 28 December 2020 which was the eve of the hearing of the main application by the Commission.³⁰

[74] Those directions informed the relevant applicants that rulings on their respective applications would be made at the time of deciding the main application. This was

³⁰ The directions of 23 December 2020 read:

"1. Council for the Advancement of the South African Constitution, Advocate Vuyani Ngalwana SC and the Helen Suzman Foundation are directed to file written submissions not later than 13h00 on Monday, 28 December 2020.

2. The decision on whether these parties should be admitted as amici curiae will be taken and communicated in the Court's judgment.

3. The parties mentioned in paragraph 1 will not present oral argument at the hearing on 29 December 2020.

4. The Commission may file a response to submissions referred to in paragraph 1, if it so wishes, on 30 December 2020."

M.A.

necessitated by the fact that this Court was still to decide whether it would entertain the main application. If direct access were to be refused, the applications for admission as amicus would have fallen away, as there would have been no matter into which the applicants could have been admitted.

[75] It is now settled that the role of an amicus is to help the Court in its adjudication of the proceedings before it. To this end, the applicant for that position must, in its application, concisely set out submissions it wishes to advance if admitted. It must also spell out the relevance of those submissions to the proceedings in question and furnish reasons why the submissions would be helpful to the Court.³¹ For the applicant's argument to be useful, it must not repeat submissions already made by other parties.³²

[76] It is not generally permissible for an amicus to plead new facts which did not form part of the record or adduce fresh evidence on which its argument is to be based. Nor can the amicus expand the relief sought or introduce new relief.³³ This is because an amicus is not a party in the main proceedings and its role is restricted to helping the Court to come to the right decision.

[77] The application by Ngalwana SC does not meet the relevant requirements. He seeks relief that differs materially from that sought by the Commission and which may

³¹ Rule 10(6) of the rules of this Court provides:

"An application to be admitted as an amicus curiae shall—

- (a) briefly describe the interest of the amicus curiae in the proceedings;
- (b) briefly identify the position to be adopted by the amicus curiae in the proceedings; and
- (c) set out the submissions to be advanced by the amicus curiae, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the Court and different from those of the other parties."

³² Rule 10(7) of the rules of this Court provides:

"An amicus curiae shall have the right to lodge written argument, provided that such written argument does not repeat any matter set forth in the argument of the other parties and raises new contentions which may be useful to the Court."

³³ Rule 10(8) of the rules of this Court provides:

"Subject to the provisions of rule 31, an amicus curiae shall be limited to the record on appeal or referral and the facts found proved in other proceedings and shall not add thereto and shall not present oral argument."



not be established by the facts already on record. He claims to be acting in the public interest in terms of section 38(1)(d) of the Constitution. It will be recalled that this provision confers legal standing on a party that seeks to enforce rights in the Bill of Rights by asking for appropriate relief for the breach of those rights.

[78] Accordingly, the application by Ngalwana SC must fail. It cannot be brought under the guise of an amicus application. It is a different substantive application for different relief. It should have been instituted as a separate application, provided it met the requirements of approaching this Court directly.

[79] Although the applications by CASAC and the Foundation raise in part argument that is not relevant to the issues we are called to decide, they do contain submissions which are relevant to some of the issues. And those submissions differ from those advanced by the Commission. At face value the relevant submissions look useful. Consequently, CASAC and the Foundation should be admitted as amici curiae.

Merits

[80] The central issue that arises on the merits is whether the respondent should be compelled to appear before the Commission and testify. The subtext of this issue is whether upon appearing, he is obliged to answer all questions put to him. This requires the determination of rights held by witnesses who testify before a commission like the present one.

[81] In searching for answers to these issues, the right place at which to begin is the Commissions Act. The summonses which the Commission seeks this Court to enforce are issued in terms of the Act. Section 3(2) of the Act empowers the Commission's secretary to sign and issue summons for the attendance of witnesses at hearings by the Commission. Once a summons is issued in terms of the section and served on a prospective witness, that witness is obliged to comply. If it requires him or her to appear before the Commission on a fixed date, the witness must do so, regardless of his or her status or standing in the community.

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[82] Compliance in this regard does not mean that the witness may just show his or her face at the Commission and thereafter leave at the time convenient to him or her. The obligation on the witness is to remain in attendance until the proceedings are concluded or he or she is excused by the Chairperson of the Commission from attendance. A breach of this duty constitutes an offence under section 6 of the Commissions Act.

[83] The undisputed facts here are that the respondent failed to remain in attendance after his application for recusal was dismissed on 19 November 2020. As a result, the Commission was impeded from continuing with the hearing that was scheduled for further dates in November 2020.

[84] In fact, as far back as 28 September 2020, the respondent had shown an intention not to appear before the Commission for purposes of testifying. In a letter addressed by his attorneys to the Chairperson, the respondent berated him for fixing the dates of 16 to 20 November 2020 for the respondent's appearance at the Commission without first discussing those dates with his lawyers. In that letter the respondent continued to question the lawfulness of the Commission which he himself had established in terms of section 84(2)(f) of the Constitution.

[85] He made it quite clear that he would not comply with the process issued by the Commission and dared the Chairperson to take whatever steps he considered appropriate. In paragraph 12 of that letter, the respondent's attorneys stated:

“Until this application for your recusal is finally determined, President Zuma will take no further part in this Commission and the Chairperson is entitled to take any such steps as he deems lawful and appropriate. We reiterate that President Zuma has questioned the lawfulness of the establishment of this Commission. He persists with this issue and reserves all his rights in this regard.”

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[86] The summons was not the only process from the Commission which was ignored by the respondent. In August and September 2020, the Chairperson issued two notices under regulation 10(6) of the Commission's regulations. These notices required the respondent to file affidavits with the Commission within specified periods. To date the respondent has failed to comply with those directions. It is remarkable that the respondent would flout regulations made by him whilst he was still President of the Republic.

[87] The respondent's conduct in defying the process lawfully issued under the authority of the law is antithetical to our constitutional order. We must remember that this is a Republic of laws where the Constitution is supreme. Disobeying its laws amounts to a direct breach of the rule of law, one of the values underlying the Constitution and which forms part of the supreme law. In our system, no one is above the law. Even those who had the privilege of making laws are bound to respect and comply with those laws. For as long as they are in force, laws must be obeyed.

[88] In these circumstances, I am satisfied that the claim for compelling the respondent to obey process from the Commission and testify before it, has been established.

Witnesses' rights

[89] Before leaving the Commission on 19 November 2020, counsel for the respondent cautioned that if his client were compelled to attend he would take the witness stand but would not testify. On this issue counsel said:

"If you blow us, today, you do not agree with us – as I have said, I have a mountain to climb – what happens? Do we get Mr Zuma here as a guarantee? No, no, if we are approached that way, we will just – even if we lose, we will review you, we will go as far as wherever and that is not helpful. If you force me to bring him here without the climate being created for him to believe that he is not being charged. Well, I put him there, Chair, and he will exercise his right to say nothing."

[90] Although clumsily put, it is apparent that the respondent and his legal team believe that he has a right to remain silent during the proceedings before the Commission. However the right to remain silent that I am aware of is the one guaranteed by section 35(1)³⁴ and (3)³⁵ of the Constitution and under the common law.

³⁴ Section 35(1) of the Constitution provides:

“Everyone who is arrested for allegedly committing an offence has the right—

- (a) to remain silent;
- (b) to be informed promptly—
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than—
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.”

³⁵ Section 35(3) of the Constitution provides:

“Every accused person has a right to a fair trial, which includes the right—

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;

But that right is evidently available to arrested and accused persons only. When he appears before the Commission, the respondent's status is that of a witness. He is not an arrested person. Nor is he an accused person. Moreover, a witness in a criminal trial has no right to remain silent.

[91] There are cogent considerations that militate against permitting witnesses to invoke the right to remain silent before the Commission. The first is that such a proposition is contrary to the plain text of the Commissions Act. It is implicit that the Act requires witnesses to answer all questions, barring the issues covered by section 3(4) which I will address in a moment. Section 6 of that Act makes it a criminal offence to refuse to answer lawfully put questions fully and satisfactorily.

[92] The other consideration is that allowing witnesses before a commission to invoke the right to remain silent would seriously undermine commissions and frustrate their purpose to investigate matters. This would include, as here, matters of public concern and interest. In *Magidiwana* this Court observed:

“The power to appoint a commission of inquiry is mandated by the Constitution. It is afforded to the President as part of his executive powers. It is open to the President to search for the truth through a commission. The truth so established could inform corrective measures, if any are recommended, influence future policy, executive action or even the initiation of legislation. A commission's search for truth also serves indispensable accountability and transparency purposes. Not only do the victims of the events investigated and those closely affected need to know the truth: the country at large does, too. So ordinarily, a functionary setting up a commission has to ensure an

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- (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.”

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adequate opportunity to all who should be heard by it. Absent a fair opportunity, the search for truth and the purpose of the Commission may be compromised.”³⁶

[93] I conclude that witnesses who appear and testify before the Commission have no right to remain silent. On the contrary, they are obliged to give evidence and answer all questions lawfully put to them, except only questions that address matters falling within the ambit of section 3(4) of the Commissions Act.

The exception

[94] Section 3(4) affords witnesses before a commission the protections which are enjoyed by witnesses in a criminal trial. This section extends the application of laws relating to privilege, to the hearings of commissions. Therefore, for a witness in a commission hearing to lawfully decline to answer a question, it must be shown that the refusal is based on legal privilege which would have been upheld if the proceedings amounted to a criminal trial.

[95] Witnesses at a criminal trial enjoy a statutory privilege against self-incrimination.³⁷ This is a codification of the common law principle to the effect that no one may be compelled to give evidence that incriminates himself or herself. They cannot be forced to do so before or during the trial.³⁸ This principle was affirmed by this Court in *Ferreira* where it was observed that it forms part of the fair trial rights guaranteed by the predecessor to section 35 of the Constitution.³⁹

³⁶ *Magidiwana v President of the Republic of South Africa (Black Lawyers Association Amicus Curiae)* [2013] ZACC 27; 2013 JDR 1788 (CC); 2013 (11) BCLR 1251 (CC) at para 15.

³⁷ Section 203 of the Criminal Procedure Act 51 of 1977 provides:

“No witness in criminal proceedings shall, except as provided by this Act or any other law, be compelled to answer any question which he would not . . . , have been compelled to answer by reason that the answer may expose him to a criminal charge.”

³⁸ *R v Camane* 1925 AD 570 at 575.

³⁹ *Ferreira v Levin N.O.* [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) at paras 79 and 186.

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[96] In *Ferreira* this Court was concerned with the question whether a person summoned to an inquiry under section 417 of the Companies Act⁴⁰ enjoyed the privilege not to answer questions which would incriminate him or her in the commission of an offence. Ackermann J and Chaskalson P (writing for the majority) had no difficulty in locating such a right in the interim Constitution. In this regard, Ackermann J said:

“I conclude that the right of a person not to be compelled to give evidence which incriminates such person is inherent in the rights mentioned in section 25(2) and (3)(c) and (d). The fact that such rights are, in respect of an accused person, included (implicitly or otherwise) in section 25(3) of the Constitution, does not for that reason preclude the Court from giving residual content to section 11(1) and holding that section 11(1) protects rights similar to those in section 25(3)(c) and (d) in contexts and in respect of persons other than those there mentioned.”⁴¹

[97] It is evident from this statement that Ackermann J held the view that the rights in section 25(3) of the interim Constitution did not apply to persons summoned in terms of section 417 of the Companies Act to an inquiry because those persons are not accused persons. However, he held that their right to freedom guaranteed by section 11(1) of the interim Constitution, included the “right not to be compelled to give evidence against oneself in a section 417 enquiry”.⁴²


[98] On the contrary, Chaskalson P located the right against self-incrimination in section 25 of the interim Constitution. He did not see any difficulty in accepting that persons summoned under section 417 could invoke fair trial rights of accused persons in section 25 of the interim Constitution to challenge the validity of section 417. He observed:

“Ackermann J has demonstrated that the rule against being compelled to answer incriminating questions is inherent in the right to a fair trial guaranteed by s 25(3).

⁴⁰ 61 of 1973.

⁴¹ *Ferreira* above n 39 at para 79.

⁴² *Id* at para 80.

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Because he held that the applicants could not rely on s 25(3) he analysed the issues in the present case in terms of s 11(1). The reasoning that led him to conclude that s 417(2)(b) is inconsistent with s 11(1) would also have led him to conclude that it is inconsistent with s 25(3). It seems to me to be clear that this is so. To some extent his reasons are shaped by the fact that the issue is treated as one implicating freedom and not the right to a fair trial. In substance, however, they can be applied to a s 25(3) analysis and I have nothing to add to them, nor to his reasons for the conclusion that the issue of derivative evidence is one that ought properly to be decided by a trial Court.⁴³

[99] A proper reading of *Ferreira* reveals that the majority accepted that in appropriate cases, the privilege against self-incrimination may be located in section 11(1). In making this concession, Chaskalson P said:

“Against this background I can see no objection to accepting provisionally that s 11(1) is not confined to the protection of physical integrity and that in a proper case it may be relied upon to support a fundamental freedom that is not otherwise protected adequately under chap 3.”⁴⁴

[100] Section 11 of the interim Constitution entrenched the rights in section 12 of the Constitution. Chief among them is the right to freedom and security of the person. It is this right which the minority in *Ferreira* concluded encompasses the privilege against self-incrimination.

[101] Although witnesses before the Commission may not assert the rights in section 35(1) and (3) which are reserved for arrested and accused persons, those witnesses may invoke the rights guaranteed by section 12 of the Constitution. The latter provision protects, among others, the right to freedom and security of the person which, on the authority of *Ferreira*, includes the privilege against self-incrimination.

⁴³ Id at para 186.

⁴⁴ Id at para 185.

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[102] It is evident from this analysis that a statutory provision that compels witnesses to give self-incriminating evidence would be inconsistent with section 12 of the Constitution. As a result, when that statute is interpreted, the obligation imposed on courts by section 39(2) of the Constitution is triggered.⁴⁵ The Commissions Act is such a statute.

[103] Section 39(2) obliges us to interpret section 3(4) of the Commissions Act in a manner that promotes the objects of the Bill of Rights. In *Makate* this Court held:

“The objects of the Bill of Rights are promoted by, where the provision is capable of more than one meaning, adopting a meaning that does not limit a right in the Bill of Rights. If the provision is not only capable of a construction that avoids limiting rights in the Bill of Rights but also bears a meaning that promotes those rights, the court is obliged to prefer the latter meaning.”⁴⁶

[104] Here section 3(4) clearly bears a meaning that promotes the right not to be compelled to give self-incriminating evidence, guaranteed by section 12 of the Constitution.⁴⁷ According to our jurisprudence, we are bound to prefer the meaning of section 3(4) which protects witnesses who testify before a commission, against self-incrimination.

[105] Contrary to all this, CASAC argued that section 3(4) must be construed as excluding the privilege against self-incrimination but retaining all other privileges. This interpretation, CASAC submitted, is consistent with section 3(4) itself and section 35

⁴⁵ *Makate v Vodacom Ltd* [2016] ZACC 13; 2016 (4) SA 121 (CC); 2016 (6) BCLR 709 (CC) at para 88.

⁴⁶ *Id* at para 89.

⁴⁷ Section 12(1) of the Constitution provides:

“Everyone has the right to freedom and security of the person, which includes the right—

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.”

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of the Constitution. The flaw in this argument lies in its foundation. There is nothing in the language of section 3(4) which suggests that the privilege against self-incrimination is excluded whilst the other privileges enjoyed by witnesses in a criminal trial are retained. There is no textual foundation for contending that the interpretation advanced by CASAC is consistent with section 3(4).

[106] In addition, it is wrong to suggest that CASAC's interpretation is consistent with section 35 of the Constitution. As mentioned, section 35 confers rights on arrested and accused persons. It does not safeguard rights of witnesses, even in criminal proceedings. Yet section 3(4) affords protection to witnesses who testify before a commission of inquiry.

[107] Reliance on the regulations to buttress CASAC's interpretation is misplaced for a number of reasons. First, in our law a regulation cannot be used to interpret a provision in the statute, let alone to give a restrictive meaning to the language bearing a wider meaning.⁴⁸ Second, the regulations themselves acknowledge that a witness before a commission may decline to answer a question on the ground of a privilege envisaged in section 3(4) of the Commissions Act. Third, the fact that regulation 8(2) refers also to a self-incriminating answer does not mean that a witness is not entitled to the privilege against self-incrimination. Regulation 8(2) must be read together with regulation 8(1) which permits witnesses to invoke section 3(4) privileges. Read in this way, what regulation 8(2) means is that if the privilege is not claimed and a self-incriminating answer is given, that answer will not be admissible as evidence against that witness in criminal proceedings. Lastly, section 203 of the Criminal Procedure Act protects witnesses not only against the use of their own incriminating evidence at criminal trials but also from answering questions which would expose them to criminal charges. For all these reasons, the interpretation advanced by CASAC cannot be sustained.

⁴⁸ *Road Accident Fund v Masindi* [2018] ZASCA 94; 2018 (6) SA 481 (SCA) at para 9.



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[108] The privilege against self-incrimination is not the only privilege witnesses before a commission are entitled to. There may be others. The test is whether such a privilege would have applied to a witness in a criminal trial, for it to be covered by section 3(4) of the Commissions Act.

[109] However, it lies with a witness before a commission to claim privilege against self-incrimination. In the event of doing so, the witness must raise the question of privilege with the Chairperson of the Commission and must demonstrate how an answer to the question in issue would breach the privilege. If the Chairperson is persuaded, he or she may permit the witness not to answer the question.⁴⁹ Privilege against self-incrimination is not there for the taking by witnesses. There must be sufficient grounds that in answering a question, the witness will incriminate himself or herself in the commission of a specified crime.

Remedy

[110] Section 172(1)(b) of the Constitution vests wide remedial powers on courts when deciding constitutional matters. The flexibility of these powers enables courts to craft orders suitable to the resolution of actual disputes between parties. Sometimes a court is required to forge an order that addresses the underlying dispute between parties.⁵⁰

[111] Here the real dispute is about the respondent's attendance at the Commission's hearing for purposes of testifying and answering questions lawfully put to him. Consequently, it is just and equitable to direct him to obey all summonses and directives lawfully issued by the Commission. For the sake of certainty, declarators defining the parties' rights during the hearing at the Commission must be added to the order to be issued.

⁴⁹ *S v Carneson* 1962 (3) SA 437 (T) at 439H.

⁵⁰ *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* [2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC) at para 97.

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Costs

[112] Although the respondent has not opposed the relief sought, the Commission asked for costs against him. The Commission contended that it was the unlawful conduct on the part of the respondent which forced it to approach and seek relief from this Court. If the respondent had obeyed the process lawfully issued by the Commission, continued the argument, the Commission would not have been compelled to institute and fund litigation whose purpose was to stop the respondent's unlawful conduct.

[113] The rule that a private party that loses in constitutional litigation against organs of state should be spared from liability to pay costs, does not apply here. This rule was designed to protect private parties which raised genuine constitutional issues. This is not such a case. Indeed, *Biowatch* cautioned:

"At the same time, however, the general approach of this Court to costs in litigation between private parties and the state, is not unqualified. If an application is frivolous or vexatious, or in any other way manifestly inappropriate, the applicant should not expect that the worthiness of its cause will immunise it against an adverse costs award."⁵¹

[114] This holds true also in respect of respondents who raise frivolous defences or whose unlawful conduct has forced the state to litigate. Like the applicants described above, they do not enjoy any immunity against adverse costs orders. But here the costs order is justified by the reprehensible conduct of the respondent towards the Commission. By ignoring process from the Commission, he did not only contravene the Commissions Act but he also breached regulations made by him for the effective operation of the Commission. His conduct seriously undermined the Commission's investigation, that included matters on which the respondent may be the only witness with personal knowledge. For example, as the President at the relevant time, the

⁵¹ *Biowatch Trust v Registrar, Genetic Resources* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) at para 24 (*Biowatch*).

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respondent was the only person who could appoint and dismiss Ministers from Cabinet. And the Commission was mandated to investigate issues relating to the appointment and dismissal of Ministers from Cabinet during the respondent's presidency. These facts outweigh the respondent's decision not to oppose the relief sought.

Order

[115] In the result the following order is made:

1. The application for direct access is granted.
2. Advocate Vuyani Ngalwana SC is not admitted as amicus curiae.
3. The Council for the Advancement of the South African Constitution and the Helen Suzman Foundation are admitted as amici curiae.
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.
8. Mr Jacob Gedleyihlekisa Zuma must pay the Commission's costs in this Court, including costs of two counsel.



M.A.

For the Applicant:

T Ngcukaitobi SC and J Bleazard
instructed by State Attorney,
Johannesburg

For the First Amicus Curiae:

MM Le Roux and O Motlhasedi
instructed by Werksmans Attorneys

For the Second Amicus Curiae:

V Ngalwana SC

For the Third Amicus Curiae:

M du Plessis SC, J Thobela-Mkhulisi
and C Kruyer instructed by Webber
Wentzel

MSA

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JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

STATEMENT ON CONSTITUTIONAL COURT DECISION COMPELLING ME TO APPEAR BEFORE THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE

I have received an overwhelming number of messages of support from members of the African National Congress and the public at large following the recent extraordinary and unprecedented decision of the Constitutional Court where it effectively decided that I as an individual citizen, could no longer expect to have my basic constitutional rights protected and upheld by the country's Constitution. With this groundswell of messages, I felt moved to publicly express solidarity with the sentiments and concerns raised with me about a clearly politicized segment of the judiciary that now heralds an imminent constitutional crisis in this country.

When the former Public Protector, Advocate Madonsela, stipulated the terms upon which the President would establish a commission of inquiry to look into allegations of state capture, she had recommended that the chairperson of the inquiry be appointed by the Chief Justice and not the president as is the normal and correct legal procedure. As the President at the time, I legally challenged this approach by the Public Protector stating that she was overstepping the powers of her office by imposing the decision to appoint a commission of inquiry on the president and by imposing how the head of that commission of inquiry should be appointed. The Public Protector stated that she made the recommendation of the appointment of a commission of inquiry because her term of office was ending and she would not have had sufficient time to complete her investigation into the complaints that had been lodged. This in itself was also legally problematic in that, the investigation was carried out by her office and not her as an incumbent in that office. Her successor



would have carried on with the work she had started as the work is that of the office of Public Protector and not the individual serving as the Public Protector at the time. She did not leave that office having completed every single investigation that was before her when her term ended but deemed it necessary that this particular investigation be referred to a commission of inquiry and not the other investigations that she had not completed at the time. It was clear then as is clear now that; given that this matter contained specific allegations against Zuma, it needed a different and special approach that would deviate from the law and the Constitution to ensure that Zuma was dealt with differently.

The High Court in Pretoria decided in favor of the Public Protector in that legal challenge stating, amongst other things, that the commission of inquiry as recommended by the Public Protector would be different in that it would only have such powers as are directly equal to the powers of the office of the Public Protector. What has subsequently transpired with the establishment and functioning of the Commission of Inquiry Into Allegations of State Capture is completely at odds with what the court stated as the envisaged purpose of this commission.

The Commission Into Allegations of State Capture led by the Deputy Chief Justice, has followed in the steps of the former Public Protector in how it also has continued with creating a special and different approach to specifically deal with Zuma. The chairperson of the commission, unprovoked, has called special press conferences to make specific announcements about Zuma. This has never happened for any other witness. Recently the commission ran to the Constitutional Court on an urgent basis to get the Constitutional Court to compel me to attend at the commission and to compel me to give answers at the commission, effectively undermining a litany of my constitutional rights including the right to the presumption of innocence. I have never said that I do not want to appear before the commission but have said that I cannot appear before Deputy Chief Justice Zondo because of a well-founded

A handwritten signature, possibly 'M.A.', is written in the bottom right corner of the page. The signature consists of a stylized, looped initial followed by the letters 'M.A.'.

apprehension of bias and a history of personal relations between the Deputy Chief Justice and myself. I have taken the decision by the Deputy Chief Justice not to recuse himself on review as I believe his presiding over the proceedings does not provide me the certainty of a fair and just hearing.

The recent decision of the Constitutional Court also mimics the posture of the commission in that it has now also created a special and different set of circumstances specifically designed to deal with Zuma by suspending my Constitutional rights rendering me completely defenceless against the commission. This conjures up memories of how the apartheid government passed the General Laws Amendment Act 37 in 1963 which introduced a new clause of indefinite detention specifically intended to be used against then PAC leader, Robert Sobukwe. The parallels are too similar to ignore given that Sobukwe was specifically targeted for his ideological stance on liberation. I on the other hand am the target of propaganda, vilification and falsified claims against me for my stance on the transformation of this country and its economy. The Commission of Inquiry Into Allegations of State Capture should have been rightly named the Commission of Inquiry into Allegations of State Capture against Jacob Zuma as it has been obviously established to investigate me specifically.

With the recent decision of the Constitutional Court one cannot help but wonder why it is that Chief Justice Mogoeng initially informed me that this commission would be chaired by Judge Desai but shortly thereafter changed this decision and informed me that the commission would be chaired by Deputy Chief Justice Zondo instead.

Deputy Chief Justice Zondo in dismissing the application to recuse himself was again frugal and expedient with the truth in how he contextualized and defined the nature of the personal relationship we had. Perhaps by western culture's standard of defining kinship he may be correct if the yardstick is of family events attended or family invitations issued. I had relied on his own

W. A. ' 

personal integrity, which now seems very compromised, to disclose to the public the extent to which I have repeatedly intervened financially in matters pertaining to the maintenance of the child whose details he has already divulged. I had relied upon his own sense of integrity as a person and a judicial officer to remember that he had on several occasions asked people such as Mr. Manzi to speak to me on his behalf regarding his judicial appointments and personal aspirations to be considered by me as president for his elevation to higher courts during my tenure as president. I had relied upon his own sense of integrity as a person and a judicial officer to remember that we had met at my Forest Town residence to discuss the nature of our relationship and the risks that were inherent in the public knowledge of our past association given the offices we both occupied at the time. I had relied upon his own sense of integrity as a judicial officer to be mindful of the fact that he and my estranged wife Thobeka are very close confidants and that I am a point of convergence in key aspects of their lives respectively. I had relied on his own sense of integrity as a judicial officer not to be a witness and judge in an application where he is central to the dispute. He literally created a dispute of fact in an application about him and continued to adjudicate the matter where his version was being contested by me. Again, a special and different set of legal norms were employed because they were targeting Zuma. This violation of sacrosanct legal principles went unnoticed simply because it was being used against Zuma.

It is clear that the laws of this country are politicized even at the highest court in the land. Recently at the State Capture Commission, allegations made against the judiciary have been overlooked and suppressed by the chairperson himself. It is also patently clear to me that I am being singled out for different and special treatment by the judiciary and the legal system as a whole. I therefore state in advance that the Commission Into Allegations of State Capture can expect no further co-operation from me in any of their processes going forward. If this stance is considered to be a violation of their law, then let their law take its course.

A handwritten signature consisting of a stylized, looped shape, followed by the initials 'M.A.' written in a cursive hand.

I do not fear being arrested, I do not fear being convicted nor do I fear being incarcerated. I joined the struggle against the racist apartheid government and the unjust oppression of black people by whites in the country at a very young age. As a result, I was sentenced in December 1963 to serve 10 years on Robben Island at the age of 21. Thereafter, I continued to be at the forefront of the liberation struggle within the ranks of the African National Congress and Umkhonto weSizwe in exile until my return to South Africa in the early 90's. In all the years of struggle, I had never imagined that there would come a time when a democratic government in South Africa built on Constitutional values would behave exactly like the apartheid government in creating legal processes designed to target specific individuals in society. Witnessing this carries a much more amplified pain when realizing that it is now a black liberated government behaving in this way against one of their own. The notion of divide and conquer against the ANC has never been a more apposite truism than in the current politics of South Africa. This brings to mind what the great Pan Africanist philosopher Frantz Fanon wrote of post-colonial nations in his work titled *The Wretched of the Earth* saying:

"If this suppressed fury fails to find an outlet, it turns into a vacuum and devastates the oppressed creatures themselves. In order to free themselves they even massacre each other. The different tribes fight between themselves since they cannot face the real enemy- and you can count on the colonial policy to keep up their rivalries"

The wrath visited upon me as an individual knows no bounds as my children and those known to be close to me have been specifically targeted and harassed to the extent that they all have had their bank accounts closed for no particular reason other than that they are known to be associated to me. The government and the justice system have turned a blind eye to these and many other injustices simply because they target Zuma. Anything bearing the name Zuma can enjoy no legal rights or protection in this country as the grand



M-A.

agenda to have special and different laws that only apply to Zuma continues to manifest.

In the circumstances, I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the Constitutional rights that I personally fought for and to serve whatever sentence that this democratically elected government deems appropriate as part of the special and different laws for Zuma agenda.

JG ZUMA

1 FEBRUARY 2021



M.A.

NO CASE NO

In the matter between:

THE JUDICIAL COMMISSION OF INQUIRY INFO ALLEGAIONS OF STATE CAPTURE CORRUPTION AND FRAUD

CASE NO - SAAK NO

Plaintiff

and:

MR JACOB GELDLEYIHLEKISA ZUMA

Defendant

and:

Return in accordance with the provisions of the Supreme Court Act 10 of 2013, as amended

RETURN OF SERVICE - ORDER OF THE CONSTITUTIONAL COURT AND JUDGEMENT

On this 05 day of February 2021 at 14:33 I served this ORDER OF THE CONSTITUTIONAL COURT AND JUDGEMENT upon MRS Z MAHLABA, HOUSEKEEPER, ostensibly a responsible person and not less than 16 years of age, of and in control of and at the place of residence of MR JACOB GELDLEYIHLEKISA ZUMA at 8 EPPING RD, FOREST TOWN, PARKTOWN, JHB, the lastmentioned being temporarily absent and by handing to the firstmentioned a copy thereof after explaining the nature and exigency of the said process. RULE 4(1)(a)(ii) The original return together with the original abovementioned process is dispatched to the mandator.

Sheriff Fees Baljugekte	Date Datum	09.02.2021	Tax Invoice Number Belastingfaktuur Nr.	I 62477		
			Description	Qty	Vat	Amount
			Email Correspondence	1	2.85	19.00
			SERVICE	1	10.58	70.50
			TRAVELLING	1	13.50	90.00
			Registration	1	1.65	11.00
			RETURN	1	5.63	37.50
			Urgency fee	1	67.50	450.00
			TELEPHONE	1	2.70	18.00
			COLLECTION	1	1.20	8.00
			VAT / BTW 15%			105.60
					Total Totaal	
					809.60	
VAT Reg No. BTW Reg Nr.	4250141902	Excludes errors and omissions. Further costs may be charged. You may require this account to be taxed and vouched. Foute en weglatings uitgesluit. Verdere kostes mag gehel word. U kan vereis dat hierdie rekening getakseer en gestaaf word.				
COMMISSION OF INQUIRY COLLECTION			Account No. ♦ Rekening Nr.	4226	VatReg	
			Your Reference ♦ U Verwysing	NO REF		
			My Reference ♦ My Verwysing			
			Ret: 163174/Christine/2			
			Registrar: Johannesburg			

M Schoenfeldt
Deputy Sheriff
T A Kruger
Sheriff - Balju
Johannesburg
North - Noord
Tel 011 334 4397/8/9
Fax 011 334 4320
Cell 082 442 1952
P O Box 9025
Johannesburg
2001
info@sheriffjhbnorth.co.za
Payments - Belatings
Bank: Absa Bank
Code: 632005
Name: Sheriff Johannesburg
North
AccNo: 0660 140 867

MA

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

Case No – Saak No

CCT295/20

In the matter between:

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

Applicant

and:

JACOB GEDLEYIHLEKISA ZUMA

Respondent


and:

Return in accordance with the provisions of Rule 54 (6)(b) of the Uniform Rules of Court, as amended.

On this 05 day of FEBRUARY 2021 at 13:42 I served the JUDGMENT AND ORDER OF 28 JANUARY 2021 upon JACOB GEDLEYIHLEKISA ZUMA at KWADAKWADUNUSE HOMESTEAD, KWANXAMALALA, NKANDLA by handing a copy thereof to Ntoeng Sekhoto, Personal Assistant, a person apparently older than 16 years of age and employed at the Respondent given address of Residence. I further explained the nature and exigency of the process to the said person. Rule 54(6)(b)

Informed by Ntoeng Sekhoto, Personal Assistant, Mr Zuma is in a meeting. Therefore served documents on the Personal Assistant.

Original
oorspronklik

Sheriff Fees Baljugelede	Date Datum	05.02.2021	Tax Invoice Number Belastingfaktuur Nr.	I 11922	
			Description..... Qty	Vat	Amount
			Registration	1	1.65 11.00
			Return & Copy	1	4.28 28.50
			Service Fee	1	10.65 71.00
			Cost of Copies	50	48.75 325.00
			Travelling	200	180.00 1200.00
			Send/rec Email	1	2.85 19.00
			Postage	1	3.75 25.00
			Urgency Fee	1	105.00 700.00
			VAT / BTW		356.93
VAT Reg No. BTW Reg Nr.	4310289923	You may require this account to be taxed and vouched before payment. U kan verlaas dat hierdie rekening getakseer en gestaaf word voor betaling		Total Totaal	2736.43
COMMISSION OF ENQUIRY 2ND FLOOR, HILLSIDE HOUSE 17 EMPIRE ROAD, PARKTOWN, JOHANNESBURG 2193			Account No. ♦ Rekening Nr. Your Reference ♦ U Verwysing My Reference ♦ My Verwysing Ret: 112606/POPS/2	1013 1544/18/P45	VatReg
			Registrar: JOHANNESBURG	 S. Chetty Sheriff – Balju Melmoth, Eshowe, Mtunzini & Nkandla P O Box 666 Melmoth 3835 Tel: 035 450 0001 Fax: 035 450 0002 sheriffmelmoth@gmail.com Payments. Bank: Standard Bank Name: Sheriff Melmoth Business Account BrCode: 57729 AcNo: 031013678	

Handwritten signature



Att: Professor Itumeleng Mosala
Secretary of the Judicial Commission of Inquiry
into Allegations of State Capture, Corruption
and Fraud in the Public
Sector including Organs of State
2nd Floor, Hillside House
17 Empire Road
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Direct e-mail: eric@mabuzas.co.za

Email: BoipeloR@commissionsc.org.za

Your Ref:
Our Ref: Mr ET Mabuza/Mr RN Baloyi/Ms Z Longwe
Date: Monday, February 15, 2021

Dear Professor Mosala,

President JG Zuma's appearance before the Commission on 15 -19 February 2021

1. We refer to the above matter.
2. We formally inform the Commission, as a matter of courtesy, that our client will not be appearing before the Commission on 15-19 February 2021, for the reasons set out below.
3. The Commission is aware that the review application which President Zuma has instituted to set aside the refusal by Deputy Chief Justice Zondo to recuse himself from hearing matters concerning him and his family is yet to be determined by the court.
4. The Summons issued for our client to appear on 15-19 February 2021 is irregular and not in line with the Fourth Order of the Constitutional Court judgment of 28 January 2021.

A handwritten signature in blue ink, appearing to be 'Eric T Mabuza', is written over a large, light blue circular scribble. To the right of the signature, the initials 'M.A.' are written in black ink.

5. Appearing before DCJ Zondo in the circumstances, would undermine and invalidate the review application over his decision not to recuse himself.
6. We also place on record that the review application was not before the Constitutional Court and, accordingly, was not considered, determined and/or adjudicated by that court.
7. We reiterate that the above should not be construed to suggest any defiance of a legal process.
8. All our client's rights are reserved.

Yours faithfully



MABUZA ATTORNEYS



M.A.

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

15 FEBRUARY 2021

DAY 344



Gauteng Transcribers
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 M.A.

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

15 FEBRUARY 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

 M.A.

PROCEEDINGS RESUME ON 15 FEBRUARY 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: If you will be – she is trying to get me one of the files but I think we – we can start. We can start Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. This morning Mabusa Attorneys representing the former President Mr
10 Zuma addressed a letter to the commission who informed the commission that quote “as a matter of courtesy” unquote our client will not be appearing before the commission on 15 to 19 February 2021 for the reasons set out below.

Two reasons are given. The first is that there is a...

CHAIRPERSON: One sec – one second Mr Pretorius. Yes Mr Pretorius.

ADV PRETORIUS SC: Two reasons are given the first is as follows:

20 “The commission is aware that the Review Application which President Zuma has instituted to set aside the refusal by Deputy Chief Justice Zondo to recuse himself from hearing matters concerning him and his family is yet to be determined by the court”



I just point out briefly at the moment perhaps there will be more to be said about it later Chair by yourself but for the moment that application was put before the Constitutional Court. The Constitutional Court was aware of that application and notwithstanding that granted the order that it did compelling Mr Zuma to appear today.

The second point raised is the following:

10 “The summons issued for our client to appear on 15 to 19 February 2021 is irregular and not in line with the Fourth Order of the Constitutional Court Judgment of 28 January 2021.”

Well Chair that is not for Mr Zuma or his attorneys to decide that is a matter for the Constitutional Court and any contempt application it may emanate from these proceedings but it does seem to ignore the application or potential application of the principle that the issue of summons would be valid until set aside by a proper court and that is a principle applied our court time and time
20 again.

And then in paragraph 5 the letter said:

“Appearing before DCJ Zondo and the circumstances would undermine and invalidate the review application over his decision not to recuse himself.”

Well no doubt the courts in due course will deal with that issue.

CHAIRPERSON: Do they – do they care to explain why if Mr Zuma thought that the fact that he intended to launch a review application against my decision not to recuse myself why they thought he should not put that before the Constitutional Court when the commission applied for an order to compel him to appear.

ADV PRETORIUS SC: Well they say in paragraph 6 that
10 that review application was not before the Constitutional Court. It was not before the Constitutional Court in the sense the Constitutional Court was not asked to decide that application but certainly they are incorrect insofar as they suggest that that application was not properly pleaded and was not put before the Constitutional Court and they were aware of it. So there is no explanation given beyond the bare statement. But that is a matter that the Constitutional Court will no doubt decide on the face of it it has not merit whatsoever but what is not correct in the
20 approach of the former President is that he should come here and express a lawful reason why he should not apply the law or attend in accordance with the summons.

CHAIRPERSON: Well ...

ADV PRETORIUS SC: Or set the summons aside prior to.

CHAIRPERSON: When the commission – when the

commission launched an application – its application to the Constitutional Court Mr Zuma was served with a full set of papers

ADV PRETORIUS SC: Correct.

CHAIRPERSON: And his attorneys were given a courtesy copious as far as I recall from what I was told to say here is a full set of court papers that will be or will – or have been served upon your client.

Now in that application the point is made quite
10 clearly that the commission was aware that Mr Zuma intended to launch a review application in regard to the recusal application and it was contended by the Secretary of the Commission that that would be no grounds for him not to appear before the commission at the meantime.

So he and his lawyers knew that this was one of the points that was being made – that were being made by the commission before the Constitutional Court. And if they contested that it was up to them to file papers in the Constitutional Court and say the commission is wrong. The
20 position is that as far as we are concerned if there is review application we are still intending to file in the High Court the Constitutional Court should not order our client to appear. Mr Zuma chose not to oppose that application notwithstanding the fact that he knew that that was one of the points that the commission was going to make before



the Constitutional Court.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: He – he and his lawyers sent a letter to say he would not participate in those proceedings at all. The question is can he complain about the order made by the Constitutional Court in circumstances where he was given a full opportunity to oppose that application and place before the court his case and elect and he elected not to do so.

- 10 **ADV PRETORIUS SC:** Yes Chair. Chair the – we could use much stronger language but perhaps that would be appropriate – more appropriate in time but the failure to appear today does not appear to be justified by any valid reasons certainly not the reasons given in the letter addressed to the commission as a matter of courtesy this morning.

20 Firstly the review application matter was before the Constitutional Court. It was raised in pleadings before the Constitutional Court and notwithstanding the Constitutional Court's awareness of it and notwithstanding Mr Zuma's failure to address the issues at all the order was given that he must appear.

In relation to the summons not being a valid summons well that Mr Zuma was free to come here and say today but chose not to and as we know such a summons

A handwritten signature consisting of a large, stylized loop with a vertical line through it, followed by the initials 'M.A.' written in a cursive hand.

must as a matter of law be valid until set aside by a proper court. People cannot just form their own views as to what the law might or might not say and decide what to do in the face of a validly issued summons or even a summons which on the face of it is validly issued.

That is valid until set aside. And there is not basis whatsoever for the certainly expressed day for the President not to be here today.

CHAIRPERSON: If Mr Zuma or his lawyers were of the
10 view that the summons was irregular the law obliged him if he wanted not to be obliged to appear to approach a court and ask that it be set aside on the basis that it was irregular.

And I do not know the law to be that he is an adult to just ignore a summons just because he thinks it's irregular.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: And I think that the principle you have articulated is the same principle that the Constitutional
20 Court told him about in the Nkandla matter. That you cannot just ignore a process issued by a lawful body requiring you to take certain action and just because you think it is wrong you just sit back and ignore it.

ADV PRETORIUS SC: Yes. In any event Chair two points only to be made from what is or what appears to be in the



public domain the real reasons for non-appearance are not expressed in that letter and they are matters that are perhaps beyond the realm of this commission.

This commission has a mandated job to do it must do it. The implications and consequences of this commission doing its job is for those who will receive the report ultimately to decide.

The second point is that whatever merits there might be and we do not see any in the reasons not to appear today will no doubt in due course be decided by our courts once again.

CHAIRPERSON: Have you got the media statement that he issued on the 1st of February? Have you got it at hand?

ADV PRETORIUS SC: Yes we can get it.

CHAIRPERSON: You have not got it. You see the letter from his attorneys this morning says in the last paragraph that in effect his non-appearance should not be constituted to suggest any defiance of the legal process. But my recollection of his media statement of the 1st of February is that in his own words he said he was going to defy.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: The summons of the commission and he was going to defy an order of the – the order of the Constitutional Court. Those were his words. The media statement was not issued by his foundation it appears to

M.A -


have been issued by him; himself.

ADV PRETORIUS SC: Yes. Chair in fact the statement it is a long statement but...hair in fact the statement it is a long statement but...

CHAIRPERSON: Yes.

ADV PRETORIUS SC: If we could just place on record certain paragraphs.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Of his statement. He says

10 "I therefore state in advance that the commission into allegations of state capture can expect no further cooperation from me in any of their process going forward. If this stance is considered to be a violation of their law then let their law take its course. I do not fear being arrested; I do not fear being convicted nor do I fear being incarcerated."

And then the last paragraph reads:

20 "In the circumstances I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the constitutional rights that I personally fought for and to serve

M-A


whatever sentence that this democratically elected government deems appropriate as part of the special and different laws for Zuma agenda”

Well certainly...

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That is to put it at its mildness – mildest this statement of defiance.

But once again Chair it does appear that the true
10 reasons for not appearing are beyond these strict Terms of Reference which we must investigate and they are of a political nature.

CHAIRPERSON: Well we – we – the commission is interested in what reasons have been given insofar as they have been given for his non-appearance and that media statement seems to make it clear that he was – he had decided to defy.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: The summons, to defy the order of the
20 Constitutional Court and of course ...

ADV PRETORIUS SC: The law.

CHAIRPERSON: That is – and the law and that seems consistent with his conduct before this commission on the 19th of November when he had been issued with a summons; he came to the proceedings and left at a time

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when it had been made clear to him and his lawyers that to leave the commission without the Chairperson's permission would be a breach of the summons and a breach of the commission.

His foundation it is in the public domain issues a media statement on the same day saying it had been assured by him that he would have a good day than appear before the commission.

So the media statement that he issued on the 1st of
10 February after the Constitutional Court issued – have handed down its judgment and ordered him to appear before the commission and to comply with all summonses and directives issued by the commission.

The statement of – that he gave is consistent with the Jacob Zuma Foundation's media statement of the 19th of November 2020.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: And in the founding affidavit deposed to by the Secretary of the Commission in the application that
20 was made to the Constitutional Court one of the points was not – that was made was that reference was made to the contents of that statement by the Jacob Zuma Foundation of saying he was going to – he was not prepared to appear before the commission and he would rather go to jail.

And he that is Mr Zuma was invited to distance

Handwritten signature and initials. The signature is a stylized, cursive mark that appears to be 'M.A.' with a flourish. To the right of the signature are the initials 'M.A.' written in a simple, blocky font.

himself from that statement by his foundation; he has never distanced himself. Instead in his media statement of the 1st of February he confirmed that he was going to defy not only the summons of the commission but also an order of the highest court in this country.

ADV PRETORIUS SC: Chair in summary the reasons for non-appearance couched in courteous and polite language in this morning's letter from Mabusa Attorneys do not seem to hold any water and are groundless. But those comments
10 there in particular the comment that nothing should be construed goes to suggest any defiance of a legal process must be read in the light of the statements to which we have just referred.

And in part – well particular concern is the reference to their law. In other words not a law by which I will be bound but a law that will bind others and if there is any active defiance it is contained in those two words.

CHAIRPERSON: Yes continue.

ADV PRETORIUS SC: Chair the legal team has prepared
20 an address to deal with the very circumstances that are – have now arisen and if I could take half an hour or so.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: To just inform the Chair and the public of the types of issues that would have been raised.

CHAIRPERSON: Yes.

 M-A

ADV PRETORIUS SC: Had Mr Zuma elected to obey...

CHAIRPERSON: I think that is – that is important because it is important that everybody understands at least the important features of what has happened.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And how we have come to be where we are.

ADV PRETORIUS SC: So what this address will deal with is really the evidence before the commission and what
10 issues would have been placed before Mr Zuma for his response or input in order to assist you to come to findings in accordance with your mandate and your Terms of Reference Chair.

We do not intend to deal with the legalities of the non-appearance and the consequences of Mr Zuma's failure to appear as a matter of law.

In short Chair the commission has not been deprived of its opportunity to question the former President in regard to his knowledge of and his conduct relevant to
20 the commission's Terms of Reference which I will detail in a moment.

But by way of summary where we find ourselves now is that we have Terms Of Reference a mandate to you Chair and to the commission as a whole Mr Zuma has is referred to directly by name in four Terms of Reference and

M.A.


indirectly in two as part of the Executive or at least two.

His evidence is obviously relevant to the commission's work in this regard. There can be no doubt about that.

Mr Zuma has also been implicated to date by the evidence of at least 40 witnesses now. Now whether Mr Zuma believes he has been accused of wrongdoing or not which appears to be the case his responses to those allegations are still directly relevant to the work of this
10 commission.

Numerous statements have been made by or on behalf of Mr Zuma that he has not been implicated in any wrongdoing by any of the witnesses that have thus far come before you Chair.

If that is so – if it is so that Mr Zuma believes he has not been implicated of any wrongdoing or accused of any wrongdoing by any evidence before you Chair then it is difficult to understand why he would need to rely on a right to silence.

20 **CHAIRPERSON:** And also it is difficult to understand why he would be scared of taking the witness stand and subjecting himself to questioning like everybody else.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: By the evidence leaders and the Chairperson.

Handwritten signature and initials, possibly 'MA', in the bottom right corner of the page.

ADV PRETORIUS SC: And still less Chair would Mr Zuma need to rely on any right against self-incrimination if on his version there is no evidence which indeed incriminates. So the alleged interference with his constitutional rights seems on his own version to be entirely groundless.

Be that as it may what happened during the Presidency of Mr Zuma and during the period under review the details of what he did; the details of what he did not do and importantly his knowledge of the relevant events
10 whether direct knowledge or indirect knowledge are important for the work of this commission.

Moreover he was not only during much of the period under review not necessarily all of the period under review President he was Chair of Cabinet. Cabinet made important – Cabinet on the face of it failed to take importance of this issue.

The exercise of his responsibility in these capacities are important to the work of the commission.

Finally Mr Zuma and members of his family are
20 alleged to have received substantial monetary and other benefits from private and state sources. These also require a response and an explanation.

In short Chair Mr Zuma perhaps more than anyone else is able to assist the commission in understanding what happened in the period under review; how it happened and



what recommendations the commission could make in relation to its findings.

But clearly this assistance is not forthcoming. This is not an attack it is a calling to account and a calling for assistance and information to enable you Chair to – to fulfil your mandate.

The Constitutional Court made a finding in December Chair said on January.

10 "It must be plainly stated that the allegations investigated by the commission are extremely serious. If established they would constitute a huge threat to our nascent and fledgling democracy. It is in the interests of all South Africans the respondent included that is Mr Zuma that these allegations are put to rest once and all. It is only the commission which may determine if there is any credence in them or to clear the names of those implicated

20 from culpability."

There are two aspects to a commission of inquiry certainly in these circumstances Chair.

The first is to investigate its Terms of Reference. To hear evidence in relation to its Terms of Reference and to make findings and recommendations in relation to that.

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But it is also there – there as a matter of public concern and this was stressed by the Constitutional Court. The public have a right to know what happened. The public have a right to know what their President did or did not do. The public have a right to know what their President says about this. Not in the streets outside residences in KwaZulu Natal but here in this commission.

So the duty to assist the commission there is not only a legal duty arising from the summons issued by the
10 commission but the narrow legal issue which is before you Chair. It is a cross..

CHAIRPERSON: Well in – in talking about the duty to assist if I recall correctly paragraph 3 of the Terms of Reference of the commission which were signed by him while he was President in paragraph 3 of the Terms of Reference he said all organs of state will be required to cooperate fully with the commission.

ADV PRETORIUS SC: That is correct.

CHAIRPERSON: One would have thought that he would be
20 the first one to cooperate fully with the commission.

ADV PRETORIUS SC: Yes. Well at the time too he made a public statement announcing the establishment of the commission and urging all South Africans to cooperate fully and that clip is in the media.

CHAIRPERSON: Hm.

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ADV PRETORIUS SC: Apart from the duty to obey the summons; apart from the duty to abide by regulations, Terms of Reference and the like there is a constitutional duty there arising from the position that Mr Zuma held as President of the country.

It is also a public duty owed to the citizens of this country. Manifestly this commission's work is a matter of public concern.

So Chair whatever the politicians and commentators
10 might have to say about the commission's work it remains our duty to fulfil the mandate that you have given in accordance with your Terms of Reference and it is these Terms of Reference that guide its work. We simply have to do our duty so whatever the noise out there Chair we – yourself as the sitting Justice and ourselves as evidence leaders and the investigators we have a mandate it is a legal mandate and we must obey that mandate and that is our duty – then we must fulfil it.

The legal consequences of Mr Zuma's failure to
20 appear will no doubt be dealt with separately and perhaps Chair we can – you will deal with those in due course.

But I would appreciate Chair and have been requested by yourself to inform yourself the commission and the public of the issues the legal team intended this week and perhaps an additional time to raise with Mr

Zuma.

Chair there is a need for a caveat however it seems that many do not understand really how the commission goes about this. But here is evidence. It does not tell people what to say of – it may highlight topics that need to be covered but ultimately the witnesses come here to give their evidence.

That evidence can be contested by other witnesses in the fullness of time and when you do your report Chair
10 you will decide who is telling the truth and who is not telling the truth and we can assist you in that regard.

But the allegations that we will outline now in this address Chair are based on evidence presented as well as evidence still to be presented; allegations which have emerged and investigations, statements which have been taken.

The correctness or the veracity of that evidence will only finally get examined after you Chair have considered all the relevant versions received in respect of the
20 evidence including what we thought might be the version of Mr Zuma.

Some of the allegations as I have said that will be referred to have not yet been led in evidence but Mr Zuma has been notified of such allegations in voluminous correspondence and his attorneys. All those allegations



would in the ordinary course be the subject matter of notification to Mr Zuma before being questioned thereon at a later state.

So even if this week we were constrained to deal with certain issues in relation to which Mr Zuma had already been received information and be notified.

In later – at a later time, he would have to answer other questions or be asked to answer other questions in relation to allegations that are the subject matter of the
10 Commission's investigations.

Chair, but the essential thrust of the questioning and discussions with Mr Zuma this week is based on the ultimate question really that the Legal Team would like to assist this Commission to answer.

In August 2018, the Legal Team made an opening presentation to the Commission and in that opening presentation it was emphasised that State Capture is not just about corruption.

The mandate to enquire as to what is State
20 Capture and whether State Capture was a project which was perpetrated by whomever might have been implicated in the evidence. It is a question that is yet to be answered.

The work of this Commission is not even about widespread corruption. Corruption itself may be a part of a



project of State Capture or an alleged project of State Capture but it is - State Capture is more than that.

State Capture, and this was in the opening statement in 2018, at least in theory would concern a network of relationship both inside and outside government whose objective would be to ensure the repurposing of government departments, officials and state-owned entities for private and unlawful...

In other words, when one puts together all the
10 elements, the evidence that you have heard, the question is: What does this mean? Is it just corruption?

Are these just ad-hoc events that seem to collect in a period of time or is there something more to it than that. And that is what would have been explored with Mr Zuma and that is ultimately a finding that you would have to address in your report Chair.

So the submission was made that the work in 2018
Chair by the Legal Team that the Commission was obliged to investigate circumstances where the allocation and the
20 distribution of state resources is firstly determined by a network of persons outside and inside government acting contrary to constitutional and legal norms.

Secondly, directed not in terms of our laws and policies to what should have been the outcome but for the promotion, protection and private financial gain of



beneficiaries of that network of that business inside and outside government.

And facilitated that project, the question arises: Was that project – and this was put as a question, not as an answer – was it facilitated by deliberate effort to exploit or weaken key-state institutions for example law enforcement agencies or even Parliament in its oversight duties?

Finally Chair, what would have been at its borders, 10 the question, not the answer, the question put to Mr Zuma is how does one make sense of it? What really happened? Not the little pieces of the jigsaw but looked at globally in its whole conspectus. What happened?

And secondly, how could that have happened? How could it happen for example that this corruption was not picked up and prevented by law enforcement agencies?

How could it happen that the various constitutional oversight bodies failed, at least initially, to deal with what was going on? Really what happened and how could it 20 have happened?

And only with the full understanding of that with the assistance of Mr Zuma, honestly and openly speaking to the Commission, could one take the next step towards recommendations.

To go into some detail now Chair against that

general background. Mr Zuma would have been asked to respond in detail to allegations regarding his relationship with the Gupta family in South Africa.

And there are many factual issues which arise under this head that would require some discussion and some examination.

So, and obviously, in the short time that we have this morning I am not going to deal with every issue but mainly to highlight certain important issues.

10 There has been evidence led over three years Chair relating to the knowledge and involvement of the Gupta family in actual or contemplated ministerial appointments and dismissals.

We have heard the evidence of Ms Mentor, Mr Jonas, Ms Hogan, Mr Gigaba, Mr Mbalula, Mr Gordhan, Mr Nene and Mr Des van Rooyen to name but a few. All of them ...[intervenes]

CHAIRPERSON: You said Mr Gigaba. Well, I have not heard him yet.

20 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Well, there are allegations ...[intervenes]

CHAIRPERSON: Yes, there is evidence ...[intervenes]

ADV PRETORIUS SC: ...that have been put to him.

 n A.

CHAIRPERSON: ...media allegations.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And ...[intervenes]

ADV PRETORIUS SC: There are allegations that he would answer in this realm.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: As I said in the beginning this includes evidence already led and to be led on the understanding that before been called to answer, he would
10 have been informed of it for a later appearance.

Chair, in relation to the appointments and dismissals of ministers; now this is just one piece of the jigsaw, what flowed from the appointments and dismissals of ministers, I will deal with in due course but that is the starting point in the centre of the jigsaw puzzle Chair.

The evidence has been that the Gupta's had in some cases prior knowledge of executive appointments and dismissals in our Terms of Reference specifically...

The Gupta sought to influence executive
20 appointments on occasion through bribery or attempted bribery. The Gupta sought to gain business advantage from relationship with and access to ministers and I will come to the detail in a moment. That is at a general level.

What is also clear, and that is the next step in the puzzle, the Gupta's and Gupta related entities ultimately

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benefited substantially from manifestly corrupt or irregular procurement deals. That is the evidence. Those are the allegations made before you. You will make a finding on the correctness of those allegations and in due course.

And this followed what may be termed a new level of repurposing, not at executive level but at the level state-owned entities.

And the allegation that would have been put to Mr Zuma is that by reorganising or repurposing state-owned entities, principle who appointments and dismissals in relation to which, at least in some cases, Mr Zuma's involvement was direct.

That as arranged to redirect state resources into hands of select individuals and entities including Gupta entities. And these beneficiaries included members of Mr Zuma's family. So the allegation goes and I stress this, the allegations. Principle Mr Duduzane Zuma.

So Chair there is substantial evidence requiring an answer before you make your final decision and I stress that once again that we are dealing here with allegations that are before this Commission that must be dealt with in the fullness of time.

Mr Zuma involved himself ...[intervenes]

CHAIRPERSON: Well, strictly speaking, where evidence has already been given, it is really more than allegations.



It is evidence.

ADV PRETORIUS SC: Chair but ...[intervenes]

CHAIRPERSON: It is evidence now. It has been given under oath and some of those witnesses have subjected themselves to questioning on their evidence. So it is evidence that has been placed before the Commission. It is no longer just mere allegations that are made in the streets.

ADV PRETORIUS SC: Yes. Well, perhaps it would be fair
10 to say that in the course of evidence under oath before you.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: It has been tested to an extent.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Certain allegations have been made which require an answer.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: At the end of the Commission's work insofar as the leading of evidence is concerned,
20 whether in oral or documentary form, you will then determine the outcome Chair.

So there is substantial evidence. Chair, I will detail that in a moment. That Mr Zuma's involvement directly in the affairs of state-owned entities.

Executive appointments were follows and the

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executive – I am talking of Cabinet appointments – were followed by appointments of amongst others board of and senior executives in state-owned entities and this happened by way of example, Eskom, Transnet, Denel, PRASA, SAA. All that evidence is before you Chair.

The consequence. What happened then in time is that there has been evidence of vast acts of corruption which took massive resources out of those state entities and placed them in the hands of those very entities and persons who influenced this whole process...

The question is: Was this just a coincidence in time? Is it simply a coincidence in time that after the ministerial appointments of ministers and after the replacement of boards and replacement of executive vast corruption is alleged to have taken place.

Is that a coincidence or was it part – was the outcome intended at the time the reorganisation or repurposing took place? That is the key question in relation to whether State Capture took place or not Chair.

So for example. Chair, if we may ...[indistinct] [mechanical interruption in recording 00:12:08 – 00.12.38]

...as the allegation was in who should be appointed, whether Mr Marogo's(?) resignation should be – have been accepted and for what purpose? Why was this done?



M. A.

There has also been evidence Chair, substantial evidence more recently, that during the latter years, much later than the incidents revolving around Mr Marogo's resignation, that the former President involved himself directly in the suspension of senior Eskom executives and their ultimate replacements by others.

That evidence, you have asked Mr Zuma to respond to in 10.6 Directives which are legally binding. Those 10.6 Directives asking him to respond to that
10 evidence have been completely ignored.

Once again, why would a sitting President – this would be put before Mr Zuma – involve himself in meetings with executives and others to determine the content of a board, or senior executives in this case, of a state-owned entity? What was the purpose of that?

We know what happened afterwards, after the repurposing under Mr Zuma's watch as that corruption occurred, redirection of state resources occurred. The question is: Was there a link? Was the outcome intended
20 by the repurposing or through the repurposing and reorganisation?

So evidence has also been led. One will recall at the beginning the influence or alleged influence of the Gupta family in ministerial appointments and dismissals and others too.



M A

We know that ultimately financial benefits in a reorganised state-owned entity flowed to the Gupta's and Gupta related entities. Again, was this just coincidence entirely or was it this a planned series of acts to achieve the outcome that actually happened? And in this, Mr Zuma could have assisted you in answering that question.

We also have evidence Chair of cash during this period under review in giving to and taken away from the Saxonwold residence of the Gupta's by a number of key-
10 personnel in the state-owned entity stable or stables.

Now if one takes these events, the attempts to influence executive appointments, the attempt to – and I mean Cabinet executives at Cabinet level, appointments and dismissals, the consequent effect that those – that reorganisation at the highest level had on the composition of boards and executives in state-owned entities.

The outcome of that, the allegation of the illicit flow of monies out of these state-owned entities to the very influencers that sought in the beginning to set the train of
20 events in motion.

The question is: Are these random and ad-hoc occurrences in a sequence of time? Or are they part of an organised project to redirect state resources into private and individual hands where these are illicit and receipts?

Transnet, Chair is another example. Again,



Mr Zuma appears to have involved himself directly in executive appointments.

Mr Hogan led extensive evidence, some of which had been dealt with but not entirely by Mr Zuma of Mr Zuma's actions in the contemplated appointment of Mr Siyabonga Gama.

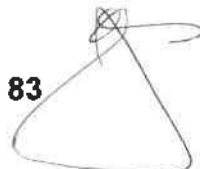
According to the evidence, Mr Zuma went to great lengths to bring this about despite what was happening at the hands of the board within Transnet.

10 The appointment of Mr Brian Molefe as Transnet Group CEO appears to be known beforehand by the New Age Newspaper, a Gupta entity. Now could this happen? What are the implications of this evidence? Was there an organising hand in this whole sequence of events?

Again Chair, there is substantial evidence of a repurposed Transnet being exploited through corrupt procurement deals for personal gains, including that of the Gupta related entities.

20 Denel, by way of example Chair, there is evidence that through appointments and dismissals at board and executive level, Denel was reorganised under the Minister at the time, Minister Lynne Brown.

And that includes the appointment of Mr Dan Mantsha, Mr Zuma's former attorney as chair of the Denel Board. Did Mr Zuma have any hand or know of it? What



was the position there? But again, after the reorganisation, after the change in personnel one has – is it a mere coincidence entirely?

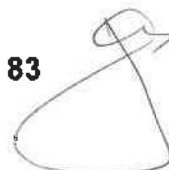
You have the VR Laser matter where at great cost to state-owned entity, Denel, a Gupta related entity, VR Laser Asia is dealt with by Denel. They cost Denel but great benefit to the related entity.

Again, is this merely a coincidence entirely or was it part of an intended plan and then was it an intended
10 consequence? Because now the evidence is building up Chair. You have Transnet, you have Denel.

At PRASA the same pattern occurs. Evidence of appointments of the chair and CEO under whose watch significant acts of corruption have been alleged and reported.

There is also been evidence of attempts to “clean-up PRASA” being hampered by a lack of support from the ANC Top Six that including Mr Zuma. And that is an explanation required, not only from Mr Zuma but from
20 others as well who were part of the Top Six at the time.

It is not enough to say: Well, they had the power to deal with it. They should have dealt with it. I mean, that is the most extraordinary statement that emerged from that evidence by a senior ANC politician who simply said: Yes, we were told of the corruption by Mr Molefe but they



had the power to deal with it. It is really extraordinary.

And then there has been evidence of a company and this company would – is part of the evidence, quite separate from evidence that was sought to be led in relation to benefits that a company is linked to Mr Zuma or a company linked to someone who paid Mr Zuma money, received benefits under the PRASA banner but that is another issues that would have been raised.

10 But again, there is evidence that payments were made to Mr Zuma arising out of the procurement deal in the PRASA stable.

SAA, similar evidence, South African Airways particularly the protection that has alleged to have been afford to Ms Dudu Myeni as chair of SAA who we know had a very close relationship with Mr Zuma. And these allegations would have been put to him and he would have been asked for an explanation in this regard.

20 Now Chair these examples in relation to state-owned entities are by no means exhausted of the evidence led before the Commission but as I have said what requires consideration, ultimately by you Chair after evidence from all concerns is, what is the connection between the attempts to influence appointments and dismissals by Cabinet.

The appointments and dismissals that actually took



place at Cabinet ministerial level. The appointments and dismissals that took place at state-owned entity, board and executive levels and the substantial corrupt dealings, evidence of substantial corrupt dealings which followed.

The question that would have been put to Mr Zuma is: What was your involvement, your knowledge, your action, your lack of action in relation to this?

Was this just, as I have said, a coincidence, a sequence of coincidental actions which began with
10 attempts to influence appointments at the most senior government level through to board executives and – well, board and executives of state-owned entities by corruption to the benefits that came back to those that sought to influence this course of events in the first place?

Was that an organised project? Was the outcome intended when these appointments and dismissals were made? Were the persons who were appointed subject to influence that could have assisted in the redirection of state resources in a manner in which it was done?

20 That is as far as state-owned entities are concerned. As far as government departments are concerned, similar evidence, similar pattern of evidence has been put before you Chair.

There has been substantial evidence of attempts to reorganise or repurpose government departments. Again,

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the evidence appears to state that this was done for the improper business advantage of select individuals and entities.

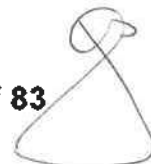
Now that is put at the most general level. Some of the detail in Minerals and Energy you heard evidence Chair from former Minister Ramathodi that he was pressured to meet with and to favour Gupta linked operations. Again improperly within the mining sphere Chair.

The allegations are to the effect that reports were made to Mr Zuma in relation to these offences. Did he approve? Did he act? Did he fail to act? In each case, why? What was the purpose of that approach?

These attempts were resisted by Mr Ramathodi. He was removed as Minister. Mr Zwane was then appointed as Minister. Attempts were made to appoint Mr Jimmy Manje as Director-General. These attempts failed.

But these figures appear in other aspects of the evidence too, particularly in relation to communications and government Communications And Information Service, the New Age Newspaper and the like. I will deal with that in a moment.

So after Mr Zwane's appointment, there is evidence that steps were taken to favour the Gupta's mining interests. Some of those activities the evidence



appears were irregular and unlawful.

There is the remarkable evidence of one of the former members of the SAA to the effect that – to the knowledge of the President.

A meeting was held in the President's private study in his residence in Pretoria where one of the Gupta brothers accosted Ms Susan Shabangu about her failure to meet the desires of the Gupta family and its entities in relation to the mining issue.

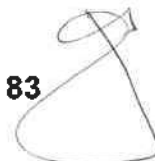
10 That evidence is quite extensive but again shows that to the knowledge of the pressure, the pressure was put for elicited and unlawful favoured treatment within the Minerals and Energy Department.

National Treasury, the matter of great controversy especially beyond the four walls of this venue Chair. But as was made clear by Mr Nene.

20 National Treasury – it is important because its finances deal, procurement deal of a large nature, it does have a supervisory procurement role to play and it is in a sense an oversight body in this regard. It does have regulatory powers over how it governs financial resources.

So Treasury is, and the evidence is that it was, a stumbling block to irregular procurement deals and the irregular expenditure of state resources.

And what is clear is that again the former



President, the evidence goes, sought to influence or exert pressure on Treasury officials. Ultimately removed two ministers and the evidence goes, stood in the way of a deal involving Petro SA where it wish to buy Engen Refinery.

Or it did not wish to, the pressure came from above that a deal should be done at great cost without due diligence exercised for an overpriced Engen refinery from the Malaysian owner of the furnace.

10 That evidence would have been explored. The New Clear deal and the activities in Russia where Minister Nene was involved and gave evidence as to, pressure put on him. What happened at Cabinet?

Why was this deal contemplated in the first place without sufficient background information? Why would the information only be investigated after an in principle decision was made in Cabinet?

20 This is something that not only Mr Zuma would have to answer to but other members of Cabinet as well and it will in due course be done Chair. Mr Zuma is not the only one who was part of such decisions.

Chair, that is a matter that could have cost the country dearly as we have heard. Why? The request by the chair of the SAA Board, Ms Dudu Myeni to open a new SAA route. Again, direct involvement in placing pressure

 M.A.

there. There are other examples Chair.

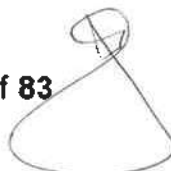
The closure of the bank accounts is another area where private banks took steps to close Gupta and Gupta related entities' bank accounts and there was a ministerial task team appointed.

In essence, the evidence goes to propose and to prevent that outcome and there has been substantial evidence in relation to that.

The interestingly and significantly there was – there
10 were at least two incidents of centralisation of power under the Presidency and under the State Security Agency and I will come to the latter point in due course. But there has been evidence that Mr Zuma initiated a process to remove the National Budget process from Treasury and to place in the hands of the President and the reasons for this require some investigation and explanation.

Chair, the removal of Mr Nene as Minister of Finance by Mr Zuma has been dealt with in evidence. That took place in December 2015 and that took place at the time
20 when according to the evidence Mr Nene stood in opposition to the new [indistinct – dropping voice] 00.53. Was there a relationship? That question needs to be put and needs to be answered.

The stated reason that Mr Nene's deployment was required to the BRICS Bank as being seriously questioned in



M-A.

evidence by more than one witness. That simply was an unconvincing and some say spurious reason. There were other reasons. What were those reasons? And were they part of this overall plan that emerges or possibly emerges from all the evidence?

It also appears that the Guptas had full knowledge of Mr Nene's removal and there was an alleged complaint on their part that Mr Nene would not "work with them." That evidence before you, Chair, needs explanation and answers.

10 And it was shortly before Mr Nene's removal that according to Mr Jonas there was an attempt to bribe him to take up the role of Minister of Finance, again that evidence is before you and that evidence needs to be dealt with.

These are the friends, close friends of Mr Gupta, close friends with Mr Zuma and his son and others in the family, particularly Mr Duduzane Zuma. What was going on here? What are the links, what was the purpose behind all these appointments and dismissals and were they to facilitate the outcome that we know actually happened?

20 Then there are the circumstances surrounding Mr Gordhan's removal by Mr Zuma, his sudden recall from London. There has been that evidence. Those too require clarification.

Where did the supposed State Security document Operation Checkmate come from? What was its status?



We know the evidence is that that document was put before the top six but its contents were rejected and then other reasons were stated but what was – why was this done? Why was it necessary to change the incumbent of the ministry there? The outcome and consequences, were they intended?

So the access to and use of a supposed intelligence document in an apparent attempt to justify Mr Gordhan's dismissal requires some explanation or clarification. We
10 know that Mr Zuma then sought to replace Mr Gordhan with Mr Brian Molefe and we know that he had had a recent and eventful journey through Eskom and Transnet with all that happened during that time.

We know that the top six objectives probably and that Mr Gigaba was appointed instead but those questions need to be explored.

Again to answer the question as to whether these are all coincidental, these individual pieces of evidence which ultimately pile up and appear to point in one direction. Is
20 that a fair conclusion? Was the outcome intended?

The appointment of Mr Gigaba's deputy, Mr Buthelezi, is another one issue that requires some investigation particularly as Mr Buthelezi had been implicated in allegations of serious malfeasance at PRASA and Mr Zuma was aware of it.



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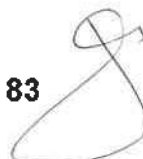
South African Revenue Services, another example, Chair. We know that there is evidence, perhaps to come, of Mr Zuma's direct relationship with Bain Incorporated and the firm of Mr Moyane as the SARS head and the involvement of Bain and Company and the supposed restructuring of SARS is well-documented in the Nugent report as having a disastrous outcome. But why, you know, Mr Zuma, did you have any personal involvement? What was the object of your personal involvement in your dealings with Bain and
10 with Mr Moyane? The outcome, was that an intended outcome?

We know, for example, that the Gupta family benefited from dubious decisions at SARS regarding controversial tax treatment. But that is just one of the outcomes.

The Waterkloof landing, Chair, that is another question.

When all the evidence before you is considered and all the evidence that was not forthcoming before you is
20 considered, the probabilities will have to be considered by you and this is a direct issue that needed to be raised with Mr Zuma. The Guptas are your friends, there is this huge logistical even to occur prior to the Gupta wedding.

These are your confidantes, your friends, your son is in close business relationship. Not only an aeroplane but



helicopters, police escorts and Mr Zuma knew nothing about it? On the face of it, it seems probable and some explanation needs to be given. His office was involved in compiling reports thereof and there is a brick wall between any knowledge that the Presidency had prior knowledge, knowledge at the time, post-knowledge. And then why would he obviously concur in the appointment of the alleged wrongdoer, the person who took the hit, Mr Koloane getting an appointment to the Netherlands as ambassador?

10 All those facts need explanation because they raise many more questions than just warrant putting the evidence to rest of the level that was given before you, Chair.

Just one small issue, here is a person who facilitated a most serious breach of national security by, on his version, lying and on his version facilitating the Gupta landing at Waterkloof. He goes with no doubt top security clearance as ambassador to the Netherlands. Lots of questions that require answers, Chair.

Then there is the Department of Communications and
20 GCIS, the appointments and dismissals that took place there, the need of GCIS to in effect finance New Age newspaper to advertising revenue and the like. That evidence also with the apparent action or non-action of Mr Zuma that requires to be put and explained.

But, once again, as one goes through all these



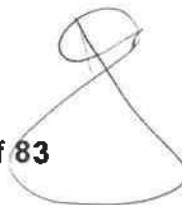
individual events, a bigger picture against the build-up and the question we come back to all the time was this a complete course of action designed to benefit certain parties illegitimately and beyond the prescripts of the law and the Constitution.

There is another example, Chair, that is the activities of BOSASA and the Department of Prison. Chair, the evidence has been that BOSASA relied heavily on government contracts worth on average R2.5 billion. There
10 has been direct evidence as to how BOSASA bribed officials, scale of about R66 million per annum, by estimate.

Mr Agrizzi claims that Mr Zuma had a close relationship with BOSASA's main shareholder and Chief Executive Mr Gavin Watson and they met frequently and there have been a number of allegations that have arisen out of that evidence.

BOSASA appeared to benefit Mr Zuma and the governing party in many ways. There is evidence that R300 000 a month was paid in cash to the Jacob Zuma
20 Foundation, usually by handing it to Ms Dudu Myeni but at least on one occasion directly to Mr Zuma.

Mr Agrizzi and others testified that BOSASA paid for and catered for functions worth millions of rands for Mr Zuma, his family and the governing party. We know of the



M-A

election core facility and at least one or even more generous donations to the ANC.

Now in themselves, companies do donate to political parties, we know that. The framework within which that takes place, the legal framework may change very shortly, but at the time donation was made. The question is, was there a *quid pro quo* there? And in this case there is evidence of the support, the monies paid directly and indirectly, the bribery.

10 The *quid pro quo* involving Mr Zuma, support was sought from Mr Zuma, protection from prosecution by the NPA. We know that BOSASA was not prosecuted despite evidence being before it for a period of many, many years, that seems to have changed now but for a limited period after being investigated by the Special Investigations Unit. That file lay dormant for almost a decade.

 That file, concerning the investigation into BOSASA's allegedly corrupt facility, was handed over to Mr Koppies at that time by Ms Dudu Myeni, whose expenses, we know, in
20 evidence, had been paid for by the Jacob Zuma Foundation. What was the former president's knowledge? He had been asked directly by Mr Watson to deal with this investigation and prosecution, so the evidence goes. What happens is that there is no prosecution, the matter lies dormant and the file then Ms Dudu Myeni hands over. What is going on here?



Is this yet another example of protection – and I will come law enforcement agencies in a moment – of protection of malfeasance, of allowing a system to operate without consequence.

And so we add BOSASA to the list, we add BOSASA to the file of allegations and it is difficult, Chair, to contemplate that this was all just matters happening in a coincidence of events over a period of time and that there was not a plan and intent and a guiding hand or guiding
10 hands behind it.

The Karoo fracking example is another example where Mr Zuma was asked to intervene to facilitate a change in regulations to allow that deal to go through. That evidence has been given but an example of Mr Gavin Watson on the one hand getting an organisation that obtain benefits to the tune of billions of rands from state owned or from government departments but gave donations and other benefits to members, senior officials within government and the executive and asked for a *quid pro quo* and
20 appear to have received a *quid pro quo* particularly in relation to the prosecution.

Who benefited from this all, Chair? There is evidence that Mr Duduzane Zuma benefited substantially from dealings and his involvement with the Guptas and Gupta-related entities.



Again the question may appear to some to have an obvious answer but the question needs to be asked, was it intended in the scheme of events when one looks at all the occurrences together, again beginning with attempts to influence appointments and dismissals at cabinet flowing down to the repurposing of SOEs followed by the corruption, the benefits of that flowing back to Guptas, Gupta-related entities and entities in which Mr Duduzane Zuma had an interest.

10 Was that consequence intended? Was it known? Did you do anything about it? Did you allow it to happen or did you cause it to happen? Those questions need to be answered and ultimately answered by yourself, Chair, with as much assistance as you can obtain.

There is evidence of direct payments to Mr Zuma, Chair. The Gavin Watson/BOSASA payments, R300 000 per month to the Jacob Zuma Foundation. Those require an answer.

20 The approximately R3 million paid to the Jacob Zuma Foundation by Ms Dudu Myeni, that evidence. The payments received in relation to the contract with Royal Security, evidence would have been given and a chance to put that before Mr Zuma would have been afforded. The evidence, again Mr Zuma would have been presented with this evidence, and given an opportunity to respond or to



think about how he would respond of monthly payments.

What we know is that there was a project initiated to make payments in a monthly amount of several million rand from SSA funds to Mr Zuma. There was a project.

The question is, was that project implemented to its fullest? The evidence is that that money went to a minister and it was the minister's – idea was that the minister would hand that money on. There is no direct evidence that money been handed on but it is an obvious
10 question to ask Mr Zuma, please tell us what happened there?

There is also evidence in relation to what happened with the sale of three farms or the purchase on sale of three farms, I will not go into detail there for the present, and other benefits. Certainly there is evidence of benefits to the ANC and it would have been asked were the Guptas ever asked for favours and did the Guptas ever grant favours?

We know that money was paid by BOSASA for ANC
20 events and that there is evidence of PRASA assets being used by the governing party at the time of elections.

But be that as it may, Chair, there are numerous pieces of evidence, do not give that full picture, particularly the use of cash which is untraceable by its very nature and we have evidence and more evidence to



come, Chair, that evidence comes to light, that much of the benefits, or many of the benefits received as a consequence or outcome of corrupt dealings in order to maintain – clearly in order to maintain the cooperation of all those involved in this network of individuals. Cash was used, cash is untraceable. There has been evidence and there will be more evidence. That requires an answer. This use of cash, the allegations in relation to the use of cash of [indistinct] 18.49, something that we have only
10 scratched the surface of in the investigations, Chair, and it is something that by its very nature is difficult to reveal.

Then we come to law enforcement agencies, Chair. I see I am way over time.

CHAIRPERSON: We can take the adjournment, tea adjournment, now or if you prefer we can – you can – we can go on, let you finish and then we take the adjournment. Maybe we should take it now?

ADV PRETORIUS SC: Yes, Chair, okay.

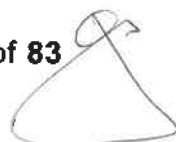
CHAIRPERSON: Okay, alright. We will take the tea
20 adjournment now, it is nearly twenty five to twelve. We will resume at ten to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may continue Mr Pretorius.

ADV PRETORIUS: Thank you Chair. Chair just to



summarise we have evidence, and you have heard evidence led before you of attempts of particular networks of individuals and entities to influence appointments and dismissals at the highest level. Both decisions ultimately were made by Mr Zuma in the period under review.

That then filtered down to appointments and dismissals and reorganisation of State Owned Entities and government departments. The benefits from illegal unlawful illicit dealings that occurred during that period was a consequence of that period and I have dealt with is that coincidence or was that intended come back to the very source where the influence was sought to be originated in the first place, but the question then arises Chair where were the defenders of our legal order whilst this was all happening, where was Parliament in its oversight role, where were the various oversight bodies, we know that the Public Protector intervened eventually, but very late, and where in particular were the law enforcement agency and the question arises were those law enforcement agencies deliberately disabled, deliberately influenced to allow this project, if it was a project, to continue to its logical outcome, to fruition, or is there some other reason why what happened within the sphere of law enforcement agencies, in relation to the evidence that you have been given Chair to explain it, and

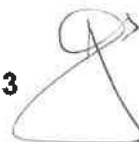


M.A.

that must be explained Chair and there are many who can explain, but Mr Zuma is one who could assist you in coming to a conclusion in that regard.

The evidence is reasonably overwhelming Chair, you can make a finding, but to get a complete picture one needs the complete evidence. The most stark example is the BOSASA example, I have dealt with it, the investigation, rampant corruption, SIU investigation, dormant for almost a decade, and we know that certain key
10 individuals appointed directly, or indirectly by Mr Zuma or persons acting under Mr Zuma, to interfere with that prosecution. I will come to some detail in a moment, but that's the starkest example, but there are others, so we know from evidence led before you Chair that Law Enforcement Agencies failed to detect, prosecute and prevent wide scale corruption during the period under review.

Why? Was this just coincidental yet again or was it intended that it be so. Law enforcement agencies the
20 evidence has been were considerably weakened in the fight against corruption and crime during that same period. It is instructive Chair that beyond the period that this commission has been concentrating on, we refer to it as the period under review, we know from evidence, and it is a fact that the National Director of Public Prosecutions has



a ten year plan. The intent of that is stability and effectiveness and independence. Not one National Director of Public Prosecutions has lasted that ten year term.

There are examples Chair of the law enforcement agencies being used to target persons who were intent on combating corruption, a list of them, days of evidence have been given before you in that regard. Conversely Chair there are several examples of persons or entities not being
10 prosecuted for corruption when they should have been. Again sheer coincidence or part of an intended plan?

Executive interference in the operation of law enforcement agencies there has been evidence before you that that has occurred, and again several previous appointments and dismissals have been placed before you by way of evidence within law enforcement agencies.

Now we know Chair that as President Mr Zuma had the power to appoint many of the most senior officials in law enforcement, including Ministers of Police, the National
20 Director of Public Prosecutions or Provincial and Special Directors of Public Prosecutions, the head of Special Investigations Unit, Commissioner of Peace, Commissioner of the South, so those all were direct appointees, I think that is correct Chair.

We know for example, you have heard extensive

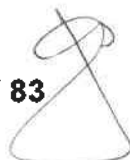


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evidence of the tenure of Mr Nxasana as head of the NDPP and it appears according to the evidence that Mr Nxasana was determined to hold Ms Jiba and Mr Mgwebi accountable for their conduct in a number of cases, including interference in the BOSASA prosecution. Their conduct has been criticised by the Courts over and over again. The very person who sought to hold them to account we know of the circumstances surrounding the termination of his employment as NDPP.

10 Chair we have numbers of examples in evidence of politically connected individuals being protected from the law, General Mgwebi is one example, you have heard extensive evidence about that. The interference in the prosecution of the BOSASA entity, the investigation and prosecution and the interference in the investigation and prosecution of Mr Panday, you have got that evidence. It is clear Chair, who was a business partner of two of Mr Zuma's family members, this needs – this is something that needs to be raised, it needs to be answered, why were

20 politically connected individuals apparently protected by law enforcement agencies. From the very top why were those appointments made, why was this not detected, why was it not dealt with? The glaring question of course is there can be no doubt that those in power knew about corruption taking place and the obvious question that ought



to have been asked by those in power, by oversight bodies at Parliament, is why is this happening and why is nothing being done to stop it happening.

Where is the accountability? We have got a range of – a powerful constitutional institution with vast powers and yet nothing is being done. Again, is this mere neglect, is it mere coincidence that at the time all the events highlighted by the evidence as happening law enforcement agencies are ...[indistinct] or is this part of an
10 overall and deliberate plan, and the evidence appears to indicate the latter was the case Chair and that requires an answer.

As the Constitutional Court said ...[indistinct] to the fundamental institutions of our democracy.

We also have a number of examples Chair of the prosecution of persons intent on combating corruption, the North West Unit for example and its activities.

CHAIRPERSON: Your voice is dropping, I don't know whether it is because – maybe the aircon is too high.

20 **ADV PRETORIUS SC:** Social media pointed that out to me in the break, and it has been reported, so it is a habit that I have built up for over 40 years it is difficult to break, I apologise.

CHAIRPERSON: Do your best. Ja, but I think the aircon the noise is just too high, so if somebody can turn it down



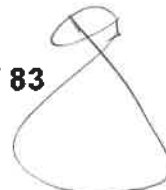
M-A

a little bit, even if not turn it off. Okay.

ADV PRETORIUS SC: So we have the contemplated prosecutions of Generals Dramat, Shadrack, Sibiya, those were persons investigating the Mdluli case, the Nkandla case, the Panday case, there are a range of examples but they fall under two heads Chair. Quite apart from the inaction and the failure to act, which itself is an important issue that needs to be canvassed, not only with Mr Zuma but with others too.

10 The prosecution of persons intent on combating corruption, a range of examples under that head, and secondly the protection of politically connected individuals from the law. Those two happened in tandem, they were positive acts on the part of law enforcement agencies. So law enforcement agencies were not asleep, they were entirely active, they had in charge of them persons appointed by Mr Zuma. So it is not enough to say this happened by default Chair, an active finance capacitated series of law enforcement agencies, not one, allowing this
20 to happen under its watch.

Again it is difficult to conclude that this was just yet another coincidence in the chain of events that is the subject matter of our terms of reference Chair and the evidence led before you, and it is something that needs to be explained by persons who were in charge.



M A .

Then Chair with regard to the Intelligence Agencies you heard substantial evidence, there was evidence previously from Messrs Shaik, Njenje and Magathuka in relation to the reorganisation of the State Security Agencies under Mr Zuma's watch. He issued a proclamation creating the amalgamation of which – of State Security Agencies under one director general about which you have heard evidence and the findings of the Mfumadi panel are stark, if I may just quote this something again
10 that would be for the former President. This panel of experts thereafter serious investigation and deliberation reach the following conclusion:

“Our key finding is that there has been a serious politicisation and fractionalisation of the intelligence community over the past decade or more, based on factions in the ruling party resulting in an almost complete disregard for the Constitution, policy, Legislation and other prescripts and turning our civilian intelligence community into
20 a private resource who serve the political and personal interests of particular individuals. We are concerned that the cumulative effect of the above led to the deliberate repurposing of the SSA.”

Now that finding in itself mirrors the evidence that you have of the reorganisation and repurposing at cabinet



M.A.

level, at SOE level, in government departments and here you have the same terminology used in relation to the State Security Agency, and we have heard that evidence in the past two weeks, I won't repeat it but in time it would have been put to the former president for his input/comment and for his evidence in that regard because he knew. Now that finding Chair is a finding that says this was no coincidental, it was a deliberate repurposing. The same question then will be asked in relation to the

10 purposing and reorganisation in SOE, repurposing and reorganisation in the cabinet, repurposing and reorganisation in relation to the Revenue Service, the Department of Mineral Resources. All that evidence that has piled up before you over three years and the question is are those words appropriate, is that finding appropriate, not only for the SSA but for all the other evidence that you have heard, that the cumulative effective the above all the evidence before you can only be explained by reference to a deliberate repurposing of State Organs, State Machinery

20 illicitly to benefit persons through the unlawful acquisition of State resources.

That is the essential question on which we would be concentrating with Mr Zuma, and all its component parts, because it is only when one puts all the component parts together one asks the question but didn't this happen in



that department, didn't this happen in that SOE, didn't it all happen at the same time? Was it not a consequence of a series of events that initiated this process in the beginning?

It may be that conclusion is unavoidable Chair, but one must hesitate before drawing that conclusion and look at a conspectus of evidence first to see whether it is the most reasonable or only conclusion that can legitimately be drawn.

10 I am not going to repeat the evidence of the SSA personnel, it is recent and well known to you Chair and the public, but what is important to in particular is the extent to which Mr Zuma is alleged to have benefitted himself in a way that according to the evidence acceded the mandate was not part of the mandate of the State Security Agency. Personal protection, the project in relation to money which we haven't heard all the evidence yet and we don't know all the evidence yet, but there will be further evidence in relation to payment of those monies at least to the first
20 stop in the journey intended for that money to the Minister concerned, and other projects.

If one will recall a speech that Mr Zuma gave to students at a university over a year ago, perhaps three years ago, where he emphasized that State Capture can only exist if government, the executive, Parliament and the



Judiciary are all captured or sought to be captured.

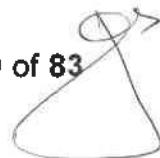
Well the obvious answer to that is you don't need to capture the judiciary because matters never get to it, they are halted at the law enforcement agencies, but it seems that some people thought that that might be appropriate to do, whether that finally came to fruition or not will be the subject matter of further evidence, but the project it extends further than just SOE's and particular government departments in relation to procurement. So the allegation
10 would go and so it would be put to Mr Zuma.

We had evidence of the Principal Agent Network Project and an investigation into the activities of that project and its association with Mr Arthur Frazer and that the evidence goes was shut down on the direct or indirect instruction of Mr Zuma. That is something that needs to be investigated, is this coincidental or is it part of the overall project.

Then Chair one has the attempts to influence appointments, appointments and dismissals being effected,
20 the consequences of those in government departments and SOE's, the flow, the illicit flow of money and the – basically the alleged theft of State resources flowing back to particular beneficiaries. One has that. One has outside of that whole process the questions that arise over the activities or failures of the law enforcement agencies from

at least Crime Intelligence, State Security Agency, the NPA and the like questions and many answers that have been put before you, but again in answer to the question how could this happen. As you have directed Chair one needs to look at the oversight body.

How could it happen that Parliament did not deal with this issue. How could it happen that Parliament failed or apparently failed according to the evidence, in its own constitutional duty. Those are questions that the Head
10 of State needs to deal with so that you can understand Chair what the answer is to that question, and there would be an answer, but the answer to that question is either found by you on the evidence before you, without answers from Mr Zuma or you have the benefit of their input. It is a collaborated effort to assist you to meet your terms of reference, it is not a war. It is not an attack on anybody, you want that evidence before you, you have taken every step possible, including steps that the – might have been seen as conciliatory but Chair the – this Commission is
20 not, as many have sought in defence of their own positions to paint it as an aggressive single-minded body that seeks to make premature finding. It has asked all concerned to contribute to its deliberation and it has invited or commanded a range of people from all sectors of the community to come before it to assist you, made repeated



calls for people to come forward Chair.

The one outstanding track in the evidence before you is that of the person that is head of the ship, the captain of the ship and it is a great pity you may be compelled to make findings in the absence of the person at the wheel of the ship, but so be it, it is not through lack of effort that that position has been reached.

The Regulatory Environment ...[intervenes]

CHAIRPERSON: Well you were mentioning earlier on
10 about – you were mentioning the stance taken by Mr Zuma,
you might not have referred to him by name, in regard to
the whole issue of State Capture that he was saying well
nobody says Parliament was captured, or the judiciary was
captured, but one wonders within the context of our
electoral system and the ...[indistinct] representation
system or maybe irrespective of that, whether those who
may have pursued the agenda of State Capture could have
said well if you capture the head of State, if you capture
the President you know that he is also the President of the
20 ruling party and if he is powerful in the ruling party then
members of the ruling party in Parliament might make sure
that – the party might instruct them not to pursue certain
matters, and therefore if you capture the President of a
country indirectly you can render even Parliament – you
can ensure that Parliament does not investigate matters



that it should investigate and I heard evidence about proposals or requests that were made that the Guptas be investigated and the committee did not do that.

We also – I also heard evidence how despite the fact that the SIU had conducted a certain investigation into BOSASA and had presented to the Correctional Services Committee, Portfolio Committee a report that members of that committee itself found to reveal – I can't remember the adjective they used or the Chairperson of the Commission
10 used to describe how horrific they found its way in terms of the conduct but nevertheless nothing was done by Parliament itself, by the committee itself to stop what was happening at Correctional Services, between Correctional Services and BOSASA.

ADV PRETORIUS SC: Yes. There is no doubt – well perhaps one should not put it that strongly, but there has been fair and convincing evidence that the Gupta family at the very least, let alone those in charge of the BOSASA and other institutions sought directly to influence or even
20 exercise a degree of control over the former President, that evidence is there. The degree to which he can explain the apparent cooperation that was lent to those efforts through appointments and dismissals, non-prosecutions, prosecutions and the like, the SSA evidence to the effect that the SSA investigation into the Gupta influence was



MA.

shut down, that evidence all requires explanation but there is just one point that needs to be made and that is that this would not have been possible it may be only through the influence of one person, but there are others too that perhaps should be called to account in that regard, and that is another issue that needs to be dealt with.

CHAIRPERSON: Yes, yes, and one should recall that early in 2019 I announced publically that I had a meeting with the current President and I had indicated that this
10 Commission could not be said to have properly completed its job without the executive, members of the executive who served under Mr Zuma, including him because he was the Deputy President, coming to the Commission and saying what they know and dealing with questions that the Commission will have, and I said the ruling party too this Commission cannot be said to have properly completed its job without the ruling party also coming before the Commission and say what it knew, when did it become
20 aware of certain things, what steps did it take to deal with those matters, or allegations of State Capture, and this is important because the party is the one that goes to the voters and say vote for us, and obviously usually there is already somebody that they present to save you if you vote for us in sufficient numbers and we have the majority this will be the President.



M.A.

Now the ruling party having heard evidence that has been led in this Commission, having become aware of a lot of things that we have had relating to allegation of State Capture and corruption during Mr Zuma's presidency, they ought to come to the Commission to say what do they have to say about the fact that they were the ruling party at the time and this was somebody they presented to the voters to say this will be the President, and of course there are other matters in relation to them being the ruling party.

10 They need to come now – I mentioned that publicly early in 2019 that I have mentioned it to the current president and he had not hesitated to say he would lead the government delegation to come and give evidence to the Commission.

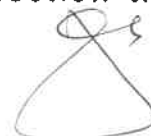
ADV PRETORIUS SC: Yes.

CHAIRPERSON: He has never changed from that position and it is the question of the Commission establishing the dates for that but he also told me that the ruling party, the ANC, also agreed that it would come and give evidence before the Commission.

20 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: So they have indicated that and arrangements will be made for that.

ADV PRETORIUS SC: There has been plenty of evidence to answer the first question that you pose frequently, Chair, and that is what happened but the question that needs to



be answer in relation to what you have just said, could it happen.

CHAIRPERSON: Yes, exactly.

ADV PRETORIUS SC: How could this happen?

CHAIRPERSON: Exactly, yes.

ADV PRETORIUS SC: Chair, the picture that has been painted thus far is not the end of the story and I will summarise what other elements there are to – the regulatory framework, the banks attempting to close bank
10 accounts because of what were perceived to be dealings fraught with risk and other questions arising over them, why would parliament – or not, sorry, why would the cabinet, why would the task team interfere with it? Those are questions that need to be answered.

Another question, the Financial Intelligence Centre, these illicit dealings somehow ought to have been picked up earlier. Why were they not picked up? The Financial Intelligence Centre, the evidence has been, gave plenty of information through to law enforcement agencies, that was
20 not acted upon.

But importantly, in the light of evidence that has been given in the last two weeks about the role of the State Security Agency, there was an attempt to delay the passing of the Financial Intelligence Centre Act which would have strengthened the activities of the – the



capacity and activities of the Financial Intelligence Centre Act but there was also a proposal that would be put to Mr Zuma that the Financial Intelligence Centre should be moved away from Treasury's jurisdiction into the security cluster. Now the significance of that on its own is one thing but seen in the light of all the other evidence, it is significant and it is something that requires answer.

And then, Chair, the importance of what the legal team has termed the narrative, an informed electorate is
10 essential to the operation of the democracy that our constitution seeks to establish and protect and to the extent that news or information is distorted, to the extent that population is misled as to what really is occurring, to that extent the fundamental aspects of our electoral democracy may be undermined.

So serious questions arise as to the attempts to influence the media, attempts to establish alternative and sympathetic media using state funds, all that evidence has been before you with relation to the New Age newspaper,
20 ANN7, the activities of the former President in attempting to deal with editorial policy in relation to ANN7 and their New – Sundaram's evidence you will have recalled. That whole conspectus of evidence needs to be put into the picture because the components of what might be alleged to be the state capture project would be incomplete if it did

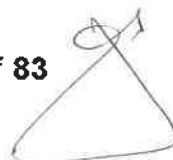


not have its public relations arm and there is evidence that indeed it did have a public relations arm ranging from attempts to influence media, to obtain what is euphemistically called positive news as opposed to negative news or critical news, to the involvement of Bell Pottinger in its campaign. All that evidence too will in due course be collated and put before you but it is an important part of the big picture.

So, Chair, there is more detail particularly in
10 relation to the lack of accountability that appears to have been a concomitant series of events accompanying everything that you have heard over the last three years.

In summary, and I am not going to go through them all because of far beyond my allotted time, and the evidence will come to the fore in due course, but the question of accountability or the lack of accountability, the lack of detection, action and accountability is central to the question as to whether this was just a coincidental series of events from beginning to end or whether it was the – the
20 outcome was intended and planned as part of what might be termed – you will in due course decide what is state capture and whether the evidence points to that conclusion.

Chair, when all the evidence before you, including evidence led and evidence still to come, is considered, at



least provisionally certain conclusions need to be tested if not made and those conclusions, provisional conclusions, questions even need – or have needed to be put to the captain of the ship, the person at the wheel, during the period under review, even if they are not final findings, provisional, question asked.

The various appointments and dismissals of ministers, state officials, SOE board and executives had consequences such as the corrupt appropriation of state resources on a massive scale. Were those consequences
10 coincidental or were they intended consequences? Among the beneficiaries of the alleged corruption were the very persons who influenced or attempted to influence the course of action right from the very beginning with the National Executive cabinet appointments and dismissal.

Vast amounts of state funds then flowed to a network of individuals and entities some of whom were associated with the very persons who sought to influence the project or alleged project in the first case. Was this
20 coincidental or planned?

No responsible state entity, parliament, at least for a time, law enforcement agencies, Chapter 9 institutions, at least for a time until the Public Protector report, were able to, were allowed to or did detect and put a stop to this pattern of contact(?) and its various component parts.



On the contrary, oversight and law enforcement mechanisms appear and the allegations are that they were deliberately harnessed to support the project or at least to prevent it being halted. All this was accompanied by public narrative or an attempted public narrative which attempted to defend and justify what was occurring and to undermine those who opposed it. Chair, this Commission has been the victim of that narrative as well but that is something for another day.

10 Other elements of our society colluded or appeared to collude or are alleged to have colluded in the success of what might be termed a project or enterprise.

The auditors profession, elements of the legal profession, was such collusion merely passive? Was it a failure to act or ought other elements of our society have been called to account in the overall scheme of the evidence that has presented?

And in the end, Chair, Mr Zuma through – and I stress, honest cooperation, might have assisted the
20 Commission to understand fully not only what happened but how it could have happened, Chair.

CHAIRPERSON: We are at twenty five to one. You are done. I am thinking that whether we should – I should say something now or until we finish or whether we should rather take the lunch break and we come back at two, so

before I announce what the Commission is going to do about what has happened. Have you got suggestions?

ADV PRETORIUS SC: Chair, considering the circumstances and what you as Chair would say about the nonappearance today and its outcome and consequences, they are significant and it is not for me to say, Chair, but some consideration perhaps ought to be given.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Although, Chair, on the other hand,
10 the consequences seem to be fairly clear.

CHAIRPERSON: No, we are very clear about what needs to be done. There is no confusion about what should be done, our law is not deficient in this respect at all but it might be appropriate to adjourn and then come back at two and then I will make my remarks about some of the matters that have been raised and then announce what the Commission – what next the Commission will do.

ADV PRETORIUS SC: At two, Chair?

CHAIRPERSON: Ja, at two.

20 **ADV PRETORIUS SC:** Thank you.

CHAIRPERSON: We are going to adjourn and we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I am not delivering a judgment or a ruling



because there is no ruling that I need to make but I do need to indicate what is to happen as far as the commission is concerned in the light of these latest developments involving Mr Jacob Zuma.

In terms of a summons that was issued by the Secretary of the Commission Mr Zuma was supposed to appear before the commission from today up to Friday to give evidence and to be questioned on various matters which have been investigated and are still being investigated by
10 the commission. Some of which were indicated by Mr Pretorius in his address to me this morning.

Because Mr Zuma had previously walked out of the commission or fled the commission when he was supposed to take the witness stand on the 19th of November 2020 even though he knew that he had been served with a summons to appear before the commission and to give evidence and be questioned and to remain in attendance until excused by the Chairperson he had walked out without permission and had not offered any explanation for his conduct to the
20 commission.


The commission feared that he would not comply with any further summons that could be issued against him by the commission and for that reason the commission applied – lodged an application to the Constitutional Court in the Constitutional Court for various orders but mainly for orders



that would compel Mr Zuma to comply with the summons issued by the commission and appear before the commission and answer questions that would be put to him and to remain in attendance and not leave without permission – without the permission of the Chairperson of the commission.

When the commission launched its application it served Mr Zuma with a copy of the papers and he was informed in those papers that if he wanted to oppose the application in other words if he did not want the
10 Constitutional Court to grant the orders that the commission was asking for he should file – he should indicate his intention to oppose and file before – in the Constitutional Court affidavits where he would set out his case and state why the Constitutional Court should not make an order compelling him to appear before the commission.

In the affidavit of the Secretary of the Commission one of the points that was made quite clear which Mr Zuma and his lawyers would have seen is that it was going to be argued before the Constitutional Court that the fact that Mr
20 Zuma was going to be pursuing a review application in the High Court to have my decision not to recuse myself reviewed and set aside by the High Court would not in law be a ground to justify him not appearing before the commission or not complying with the summons. That issue was placed in the papers. Mr Zuma and his lawyers would have seen



that and it was up to Mr Zuma and his lawyers if they thought that that was not correct in law or that that was wrong to have participated in the proceedings in the Constitutional Court and to have placed their argument that the fact that he was in – going to pursue a review application was a ground for him not to comply with the summons and not to appear before the commission.

They knew that that point was to be argued. They knew exactly what the commission would argue. They chose
10 not to contest that in the Constitutional Court. They chose not to participate in those proceedings.

One of the points also that was made in their founding affidavit deposed to by the Secretary of the Commission in that application to the Constitutional Court was the point that no witness before this commission including Mr Zuma has a right to remain silent once they take the witness back.

The commission raised this issue because when Mr Zuma's counsel presented his argument in support of the
20 recusal application on the 16th of November 2020 his counsel at some stage said that he could put Mr Zuma on the witness stand and ask him to say nothing.

So the commission realised that there seemed to be a view on the part of Mr Zuma's lawyers that a witness before this commission has a right to remain silent after



taking the witness stand.

So the commission raised this issue in the papers before the Constitutional Court and made it clear that it was going to argue that there is no such right in proceedings before the commission. And that such a right belongs to an accused person in criminal proceedings not in this commission.

So when Mr Zuma and his lawyers were served with the papers that the commission lodged in the Constitutional Court they knew that this is what – this is part of what the
10 commission would argue before the Constitutional Court.

What the commission said was that the only part which they could indicate is that the privilege against self-incrimination is available in appropriate circumstances to a witness who appears before the commission and that as far as Mr Zuma is concerned that privilege would apply to him as well but not the right to remain silent.

When therefore Mr Zuma and his lawyers decided that they were not going to oppose the commission's
20 application to the Constitutional Court and that Mr Zuma was not going to participate in those proceedings they knew that this was one of the issues that were going to be raised and if they believed that they had a case to the contrary it was up to them to place their arguments before the Constitutional Court to enable the Constitutional Court to find in their



favour if they were able to persuade the Constitutional Court. They chose not to do so either.

Mr Zuma had a full opportunity to put whatever reasons he believed to put before the Constitutional Court whatever reasons he believed justified him in not complying with the summons for him not appearing before the commission and allowed the Constitutional Court to decide whether those reasons were sound or not. He chose not to do any of them.

10 He was free to also say to the Constitutional Court you cannot compel me to appear before this Chairperson of this commission because of the following reasons if he thought that his reasons were sound and would be regarded as acceptable by the Constitutional Court.

It is not clear why if he thought he had good reasons why he should not be compelled to appear before the commission why he chose not to put those reasons before the commission – before the Constitutional Court.

20 The Constitutional Court handed down its judgment and made an order that he should appear before the commission. It made it clear that he has no right to remain silent once he takes the witness stand.

In doing so the Constitutional Court did not take away any rights that Mr Zuma may have had because even before the judgment of the Constitutional Court he did not have the

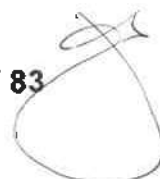


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right to remain silent in these proceedings. Actually those who follow the proceedings of the commission closely may remember that early in November I think on the 6th of November in the – or on the occasion when Ms Dudu Myeni appeared before the commission the evidence leader Ms Kate Hofmeyr addressed the question of the right to remain silent and the issue of the privilege against self-incrimination.

In that address which can be accessed by anybody
10 who would like to access it in the transcripts she made it clear that as far as the evidence leaders are concerned there is no right to remain silent. There was only the privilege against self-incrimination and indeed she referred to cases – to case law that is with the issue of privilege against self-incrimination by our courts and in this regard the re – she referred to a judgment of the Appellate Division in Magmoed which – or Magmoed versus Janse Van Rensburg and Others 1993 Volume 1 SA777 A for Appellate Division which dealt with that issue.

20 In that case too as long ago as that time the Appellate Division had made it clear that the privilege against refusal to give evidence on the strength of the privilege against self-incrimination is not there for the taking and that there must be reasonable grounds for an apprehension that the witness may incriminate himself or



herself.

That the Constitutional Court also said so it is not something that really had not been there before. There might be one or two aspects that were emphasised or added by the Constitutional Court but that the – there must be reasonable grounds before the privilege can be evoked had been dealt with by our courts before.

In fact either on the last day when Ms Myeni gave evidence or towards the end of her evidence I specifically
10 dealt or requested the legal team and it is in the transcript that they should carefully go through Ms Myeni's evidence to see whether all the questions that she refused to answer on the basis of a privilege whether there were reasonable grounds of that.

So I – in effect I did not make a ruling – any final ruling that she had correctly invoked it. I allowed that the legal team should go through the transcript carefully and then where they believe that there are no reasonable grounds she can be called back and she can – that issue can
20 be dealt with. Ms Myeni has not dealt with certain issues relating to Eskom and she is supposed to come back and when she comes back you can – once the legal team has carefully gone through her evidence and all the questions she refused to answer she can be asked questions about the existence or non-existence of reasonable grounds for her



apprehension that she would not incriminate herself if she answered certain questions.

Do I repeat my request to the legal team to please go through that evidence and come to a – take a view so that it can be dealt with properly?

So with regard to Mr Zuma the law would be the same that would apply to his evidence. The Constitutional Court has not taken away any rights of his as far as that privilege – the privilege against self-incrimination is concerned.

10 It is a pity that Mr Zuma has decided not to appear before the commission today. In defiance of the summons issued by the commission and in defiance of the order of the Constitutional Court our highest court in the land.

It would be a pity if anybody did it but that it was – this was done by a former President of the Republic someone who twice stood before the nation and took an oath that he would uphold the constitution of the Republic and protect it is a great pity.

20 The commission did not just rush to issuing summonses against Mr Zuma to compel him to appear before it. The commission did not just rush to the Constitutional Court to get an order to compel Mr Zuma to appear before it. The commission did so when it was clear that he really was not prepared to comply with the summons.

And the Constitutional Court has made it clear in its



judgment that a witness who has been summoned to appear before the commission is not supposed just to come to be present here. He or she must come to testify and answer questions and that he or she may not leave before the proceedings are completed or before he or she is excused by the Chairperson.

On the 19th of November Mr Zuma left the proceedings of the commission before they were completed and without permission from the Chairperson even though a
10 few minutes before he left he had been reminded by Mr Pretorius that it was not up to him to just up and go.

An order of any court is binding on those to whom it applies. A summons is also binding on the person to whom it is directed and if a person has been issued with a summons – has been served with the a summons to appear in court or in any forum or tribunal and he and she thinks that the summons should not have been issued or the summons is irregular it is not up to that person to just ignore the summons or to defy it.

20 His or her obligation is to approach the courts and tell the courts why he or she says the summons should not have been issued or why he says the summons is irregular and should be set aside.

And only if he or she succeeds in getting the court to set the summons aside is he or she entitled not to appear.



But as long as the summons has not been set aside it is valid and binding on the person and he or she must comply with the summons.

That principle was stated by the Constitutional Court in the context of the Public Protector's Remedial action in the Nkandla matter and Mr Zuma should know that principle.

In this case he has decided to ignore the summonses issued by the commission and not to go to court to have them set aside if he thought they were invalid or they were
10 irregular but to just ignore them as if they do not exist.

First he walked out of the commission proceedings on the 19th of November.

Second despite having been served with a summons to appear before the commission in the week beginning on the 18th January 2021 he decided to not – not to appear even after he had been reminded by the commission that the fact that the judgment of the Constitutional Court had not been given did not mean that the summons had been suspended or set aside and that he should appear he decided not to
20 appear.

He has done the same thing again.

This is very serious because if it is allowed to prevail there will lawlessness and chaos in the courts. Because there may be other who will decide to follow his example when they are served with summonses and other court

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processes and decide that they can ignore them. Summonses and subpoenas get issued in our courts every day throughout the breadth and length of 00:24:04 in the Magistrate Courts in the High Courts and in other tribunals and if the message that is sent out is that people can ignore or disregard or defy summonses and orders of courts that get issued by various courts every day in our country and that they can defy those with impunity there will be very little that will be left of our democracy.

10 Our constitution tells us in – tells us that we are all equal before it. We are all subjects to the constitution and the law and we are all required to obey orders of office and if we are not happy we are not supposed to just sit back we should take steps to approach appropriate courts to appeal or to have those orders reviewed and when it is the highest court of the land that is the highest court of the land and we – you are bound whether you like the order or not you are bound by it and you must comply.

20 There should be no two legal systems in regard to business. There should be no rules for some and other rules for others. We should all be subject to the same rules.

 Whether I am the Deputy Chief Justice of the Country or I am the Chief Justice of the Country; I am the President of the Country; I am the former President of the Country we should all be subject to the same rules.

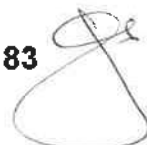
That is the constitution and all our laws.

There are witnesses who are supposed to appear before the commission next week and in the weeks after that. Some may be wondering what will happen because they too may have been issued with summonses by this commission.

There are more than 250 witnesses who have come – who have appeared before me over the past 3 years. Many of them have appeared without being compelled. Some have
10 been compelled and they subjected themselves to the law and appeared.

None of those more than 250 something witnesses has asked me to recuse myself. Only Mr Zuma has done so. I have been – I have just completed 24 years of service on the bench as a Judge and many litigants have come and gone and appeared before me literally thousands in trials, motion court and appeals and only Mr Zuma out of all these has ever asked me to recuse myself.

But it is fine because he is entitled to raise whatever
20 issues or concerns he has but then they must be dealt with within the legal system and if he is not happy with my decision he is free to take the next steps in terms of review but as we understand the position he is not entitled because of that to refuse to appear before the commission and to refuse to comply with the summons and to refuse to comply



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with an order of our highest court.

Even all of these circumstances as I said earlier on before lunch I have to indicate what the commission will do and our law is clear there is no luck 00:29:25 on this matter.

The commission views Mr Zuma's conduct in a very serious light particularly because it is repeated conduct. The commission has not treated Mr Zuma 00:29:52. He has no valid or sound reasons for not appearing before the commission.

10 The commission has taken note that in this type of situation the law makes provision that it may apply for what is called – it may institute what is called contempt of court proceedings. The commission will do so.

What that entails is that the commission will make an application to the Constitutional Court which is the court that made the order that Mr Zuma has defied and seek an order that Mr Zuma is guilty of contempt of court and if the Constitutional Court reaches that conclusion then it is in its discretion what to do.

20 One of the things it can do is to impose a term of imprisonment on Mr Zuma. Another would be for it to impose a fine. The commission will approach the Constitutional Court and ask it to impose a term of imprisonment on Mr Zuma if it finds that he is guilty of contempt of court.

It will be up to the court what it considers appropriate



but that is what the commission's position is.

Mr Zuma will be given a full opportunity to oppose that application if he wishes to and place before the Constitutional Court whatever facts or arguments he wishes to place before it and the Constitutional Court will decide.

That is all I wanted to say. I think it clear what the commission will do.

ADV PRETORIUS SC: Noted thank you Chair.

CHAIRPERSON: We are going to adjourn the proceedings.

- 10 There will be no proceedings tomorrow. If the commission is able to make arrangements to bring some witnesses and make use of some of the days this week it will announce but this whole week has been set aside for the hearing of Mr Zuma's evidence and he is not here – he will not be here the rest of the week.

We adjourn.

INQUIRY ADJOURNS SINE DIE



M-A.

JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

15 FEBRUARY 2021

FINAL STATEMENT ON CONSTITUTIONAL COURT DECISION COMPELLING ME TO APPEAR BEFORE THE COMMISSION OF INQUIRY INTO STATE ALLEGATIONS OF STATE CAPTURE AND MY REFUSAL TO APPEAR BEFORE THE ZONDO COMMISSION

1. On 1 February 2021 I issued a statement in which I set out my position and attitude towards what I referred to as an unprecedented decision of the Constitutional Court, which effectively stripped me off my constitutional right as a citizen and created, as some of our courts have been doing to me, jurisprudence that only applies to Jacob Gedleyihlekisa Zuma.
2. I took this extra-ordinary step not to undermine the Constitution but to vindicate it, in the face of what I view as a few in the judiciary that have long left their constitutional station to join political battles. I took it after my observation that there are some concerning tendencies slowly manifesting in the judicial system that we should all fear. It is my political stance and mine alone.
3. Today, unprovoked, Deputy Chief Justice Zondo decided to propagate some political propaganda against me. In my absence he and Pretorius SC decided

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on what they have always sought to do, turn all the narratives against me into evidence. In his long-prepared speech, Pretorius SC presented what Deputy Chief Justice Zondo literally called evidence against me. Realizing that they had forfeited the opportunity to present the evidence to me, they did what has become their hallmark at the Commission in making submissions to each other and playing politics to influence public opinion.

4. That Deputy Chief Justice Zondo could mislead to the nation is something that should concern us all. In justifying his position earlier, he stated that it was my legal team that said I would come and exercise my right to silence. Those who know the truth will know that when my legal team made this reference, it was in the context of an example and suggestion of how a more responsible way forward could be found.
5. His conduct today fortifies my resolve and belief that he has always sought to prejudice me. In what seemed like Pretorius SC's closing argument, it appeared that the script thereof was already written for the report of the Commission. In his typical approach, he smuggled new allegations about me that were obviously intended to ambush me. He has prejudiced my children, my family as he presented his version that he always sought to place in Commission's report.
6. The Deputy Chief Justice concluded by saying my contempt constitute grounds for him to approach to the Constitutional Court to seek a sentence. Ofcourse he will get it. I am not certain that ordinarily that is how contempt



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proceedings would commence, but I have accepted that Deputy Chief Justice Zondo and due process and the law are estranged.

7. Now that it seems that my role in the Commission has come to an end, I wait to face the sentence to be issued by the Constitutional Court. Accordingly, I stand by my statement of 1 February 2021 and no amount of intimidation or blackmail will change my position as I firmly believe that we should never allow for the establishment of a judiciary in which justice, fairness and due process are discretionary and are exclusively preserved for certain litigants and not others.
8. Many in our society have watched this form of judicial abuse but choose to look the other way merely because of their antipathy towards me. They choose to lay the blame at my doorstep and fail to confront head-on the judicial crisis that is unfolding in our country.
9. The Zondo Commission has today again showed how it is short of the attributes necessary to conduct an independent, fair and impartial investigation or hearings that involve me or that contradict their script on state capture. Judge Zondo has today again displayed questionable judicial integrity, independence and open-mindedness required in an investigation of this magnitude. Upon being advised by my legal team in open proceedings that it would have been more prudent to have more than one person preside over a commission of this nature, Judge Zondo answered that he could not do this since he risked a dissenting voice when the report is written. What judge says this as a reason and justification not to be assisted in such a mammoth



task? What type of society accepts such an explanation from a Deputy Chief Justice who sits in the apex court with ten other judges in order to enrich, sometimes by dissent, the quality of judgments?

10. What society looks the other way when a judge adjudicates a matter involving his own disputed facts? What judicial system tolerates a judge admitting that he concealed a fact in his statement relating to whether he had ever met with me during my tenure as President? I invite all of those who care to look closely at my replying affidavit in the recusal application as well as the Deputy Chief Justice's delayed admission that his statement had not been accurate. Indeed, as this admission stared us in the face, all looked the other way in their consistent attempts to conceal or downplay the obvious errors of the Chairperson of the Commission.

11. Although my statement was a response to the judgment of the Constitutional Court, my reservations about the Commission and its lawfulness are well recorded. I stand by my reservations and that the Commission was conceptualized as part of the campaign and sponsored multi-sectoral collaboration to remove me from office. Faced with this obvious unlawful appointment of the Commission, the Chief Justice endorsed it. Later, and indeed unsurprisingly, Judge President Mlambo also endorsed this unprecedented breach of the principle of separation of powers between the executive and the judiciary. No matter how long we deny it or ignore it, the illegality of that decision to allocate to the judiciary a constitutional function of the President will stubbornly stare us in the face.



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12. The Commission approached the Constitutional Court in total disregard of the fact that I was taking its ruling on the recusal application on review. This calculated stratagem was to frustrate my chances of even challenging their subpoenas in our courts. The Commission obviously ran to seek a licence to act with impunity. I still persist that there was no basis or dispute necessitating the Commission to approach the Constitutional Court and that there was no factual basis for presumption that I would defy the subpoena. I have already presented myself to the Commission on two occasions when called upon to do so.

13. Fed with absolute lies, the Constitutional Court assumed that I or my legal team had threatened that I would defy or refuse to answer. You only have to peruse the records of the date of the recusal application to know that my legal team was at pains to suggest a responsible way forward. The submission by the Commission that a threat was made that I would defy or refuse to answer is a blatant falsehood fabricated on behalf of the Commission and entertained by the judges of the Constitutional Court.

14. My lawyers, as a courtesy, advised the Constitutional Court that I would not participate in the proceedings. The judges of the Constitutional Court concluded that my election not to waste their time deserves a cost order against me. It has become common place for some of our courts to make these costs orders against me in order to diminish my constitutional right to approach courts.

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15. It was submitted on behalf of the Commission, something it seem to have been accepted by the Constitutional Court that; I am "accused No 1" at the Commission. Labelling me in this fashion is deeply offensive to me but is also clear evidence that the Commission treats me as an accused, not a witness.
16. The Constitutional Court went further, accepting as a fact, the Commission's submissions that I had a constitutional duty to account to it (for the wrongdoing). I have followed the evidence of many witnesses at the Commission, including those alleged to have implicated me and elected that none of them had any case of substance against me. However, the Commission sought to deliver me at all costs and in this endeavour is prepared to break every rule of justice and fairness.
17. It is that type of judicial conduct that I protest against, not our law or our Constitution. It is not the authority of the Constitutional Court that I reject, but its abuse by a few judges. It is not our law that I defy, but a few lawless judges who have left their constitutional post for political expediency. I respect the law and have subjected myself even to its abuse for the past 20 years. I have presented myself to the Zondo Commission twice and therefore there was no factual justification for the order given by the Constitutional Court. None whatsoever.
18. I protest against those in the judiciary that have become an extension of political forces that seek to destroy and control our country. I seek no special treatment from the judiciary. I ask them to remain true only to their oath of office and their duty to treat everyone as equal before the law. I do not ask them or any of them or you to develop any affection for me. I only seek to

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vindicate what we fought for so that even when society is in turmoil, as it will from time to time, we will have a judiciary that refuses to join the lynching mobs.

19. As it has become common place in our country in cases that relate to me, my statement has been met with the bigotry that has become the hallmark of our sponsored opinion makers. Instead of pausing to consider whether the so-called constitutional crisis may be emerging from the conduct of some of our courts themselves, the debate has been conducted in the usual binary, simplistic and biased terms, seeking to shield what I regard as a few in the judiciary that have forsaken their oath of office to **"...uphold and protect the Constitution and the human rights entrenched in it, and will administers justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law."**
20. I do so not to undermine the Constitution or the law, but to express my own protest about those in the judiciary that have turned their back on their fundamental task in society. I take this stance because I believe that judges should never become agents of ruling classes in society.
21. So, I take this stance not because I refuse to accept that my Presidency like any other was not perfect, but because we continue to allow some in the judiciary to create jurisprudence and legal inconsistencies that only apply to me. To date, nothing has been said about Judge President Mlambo's contradictory rulings on the powers and remedies of the Office of the Public



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Protector, not because none can see the contradictions, but because they care less about the Constitution than they do about seeing me lynched and punished.

None can claim not to see that the recent judgment of the Constitutional Court is a travesty of justice. That we accept a judgment based on mere conjecture and speculation about my future conduct is a betrayal of the Constitution that many refuse to confront as they scapegoat me for every malady in society.

22. The debate has tended to focus on me, with many suggesting that I regard myself as above the law or that I do not recognize our Constitution and our law. They know as well as I do, that is not the case. Some have argued that if I do not appear before the Zondo Commission I must be jailed or stripped of presidential benefits or pension. Well, for the record, I am the one that suggested that I do not mind defending myself against the sanction that accompanies my principled stance. Secondly, it should naturally please them that, should I fail to defend myself before the relevant contempt forum, I will face jail term.

23. The suggestion that I would be enticed with pension and benefits to abandon my principled stance against what I see as bias by a few in the judiciary, can only come from people who believe that money can buy everything. When I joined the ANC and fought for democracy, I did not do so for money and benefits. This, to me, is a foreign tendency to some of us who have been freedom fighters.

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24. I am grateful however, to many comrades, who have sought to hear my side of the story and have understood my frustration. I am grateful for their support and their courage to stand with me rather than to appease, at my expense, those who seek to control our economy, judiciary and our country.
25. Some in our so called intelligentsia have become blinded by their prejudice towards me, they agree that the court may take away my right to remain silent, yet they fail to recognize that the Zondo Commission has already extended this right to at least three witnesses that appeared before it. Where is the consistency in this approach?
26. I demand no more than justice, fairness and impartiality, all of which are attributes we should not have to remind some of our judges to possess. They promised the country they possessed these attributes the day they applied for judicial office and took their oath of office. We should not have to remind some of them of this.
27. If we paused, in any case that involves me, and asked whether many of the decisions taken, and attitudes adopted are not merely driven by the antipathy towards me. What legacy are some of our judges leaving for future generations?
28. When Judge President Mlambo can flip flop on the same principle simply to punish me, what kind of judges do we have? What justice are we serving and what law will be followed when I am long gone. I know that instead of



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confronting these questions I am raising, many will resort to sarcasm, and seek a response that blames me. In any event, that is what has led us to this point. The failure to see our law beyond one individual we seek to punish.

29. We sit with some judges who have assisted the incumbent President to hide from society what on the face of it seem to be bribes obtained in order to win an internal ANC election. We sit with some judges who sealed those records simply because such records may reveal that some of them, while presiding in our courts, have had their hands filled with the proverbial 30 pieces of silver.
30. I repeat, it is not the law against which I protest, as I refuse to subject myself to Zondo Commission. I protest against our black, red and green robes, dressing up some individuals that have long betrayed the Constitution and their oath of office. It is those who allow it and look the other way that must do some reflection. You do not have to like me to do this reflection. It is a choice we must make because this country and our law will and must outlive Jacob Zuma.
31. Finally, I restate that my statement is no breach of the law. It is a protest against some in the judiciary that have sold their souls and departed from their oath of office. It is my respect for the law that obliges me to reject the abuse of law and judicial office for political purposes. The law I respect, its abuse I will not.

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32. I restate that my review of the recusal ruling remains undetermined and this is part of my reservation about presenting myself to the very presiding officer whose decision I am taking on review. I have no doubt that I will lose it like many other cases. Be that as it may, I am entitled to have it determined or at least recognized.
33. Ordinarily I should have the faith to approach the Chairperson of the Commission or our courts to seek whatever remedy would stay the proceedings until my review is determined. However, the antipathy of some of the courts and the Commission towards me has made it futile for me to exercise my constitutionally guaranteed access to courts. Not only will I be dismissed, but I will also be punished with punitive costs for approaching the courts.
34. I am in the process of revising all matters I have before our courts, except the criminal matter, as it has become clear to me that I will never get justice before some of the current crop of our judges in their quest to raise their hands to seek political acceptance at my expense. I have observed in hearings how some of our judges have directed their antipathy towards my counsel in hearings and am grateful that my legal team, under testing circumstances have kept their professional composure.
35. I am aware that that our judiciary and magistracy have a number of men and women of integrity, many of whom are shunned when matters are allocated. I respect them and must not be understood not to recognize them or that I am

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tainting all of them with the same brush. Unfortunately, many of them, for their refusal to be part of the syndicate or to forsake their oath of office, they will never be allocated matters wherein pre-determined outcomes are demanded.

36. I respect our citizens and our law. History will soon reveal that it is only some in our courts that have been captured to serve political ends and to undermine the Constitution, which is the supreme law of the land. I will not join those who seek to do this.

37. As you sharpen your pens to condemn me, I reiterate that I stand by my earlier statement and will not appear before a process that is not impartial. I stand by the decision not to forsake the law and our Constitution. I choose to protest in order to restore our constitutionally enshrined principle of an independent judiciary.

ISSUED BY:

JACOB GEDLEYIHLEKISA ZUMA

A handwritten signature in black ink, consisting of a stylized, looped initial 'J' followed by the initials 'M.A.'.



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

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**


TO: MR JACOB ZUMA

C/O: MR ERIC T MABUZA
Mabuza Attorneys
1st Floor, 83 Central Street
Houghton, 2198

EMAIL: eric@mabuzas.co.za

1. By virtue of the powers vested in me, in my capacity as Chairperson of the above-mentioned Commission, by Regulation 10(6)¹ of the Regulations of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud In the Public Sector Including Organs of State, I hereby direct you, **Mr Jacob Zuma**, to:

¹Regulations 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

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1.1. deliver on or before 18 September 2020 to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:

1.1.1. you state whether you admit or deny the allegations made about or against you-

(a) in the affidavit of Mr Andile Zola Tsotsi dated 13 February 2020 a copy of which is annexed hereto marked "A";

(b) in the statement of Mr Nicholas Hugh Linnell dated 21 November 2017 a copy of which is annexed hereto marked "B";

(c) in the affidavit of Mr Nicholas Hugh Linnell dated 9 March 2019 a copy of which is annexed hereto marked "C";

(d) in the affidavit of Mr Tshediso John Matona dated 17 March 2020 a copy of which is annexed hereto marked "D".

1.1.2. you state, if you deny or dispute any allegation or statement made about, or, against, you in the said affidavits or statements or affirmed declarations, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered therein insofar as they refer or relate to you.

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public

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holidays) of receipt of this directive, contact, or, communicate with the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. Should you have difficulty in reaching the Secretary or Acting Secretary or should the Secretary or Acting Secretary not return your call or respond to your letter or emails, you may contact **Ms Farrhah Khan at FarrhahK@commissionsc.org.za and 060 770 1518.**

3. If, in order to prepare the affidavit, or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c) and (d) of the Regulations of the Commission, as amended.

Regulation 8(2) reads:

"8 (1) . . .

(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."



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Regulation 11(3)(a) and (b) reads:

- "11 (1) ...
(2) ...
(3) No person shall without the written permission of the Chairperson--
(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
(b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."

Regulation 12(2)(c) and (d) reads:

- "12 (1) ...
(2) Any person who
(a) ...
(b) ...
(c) wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);
(d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or
(e) ...
is guilty of an offence and liable on conviction -
(i) in the case of an offence referred to in paragraph (a), (c), (d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or
(ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months."

DATED IN JOHANNESBURG ON THIS 27th DAY OF August 2020.



JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

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and

**CHAIRPERSON: JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

A handwritten signature consisting of a stylized, looped shape.

M. A.

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COPY



2nd Floor, Hillside House
 17 Empire Road
 Parktown
 Johannesburg
 2193
 Tel: (010) 214-0651
 Email:
inquiries@sastatecapture.org.za
 Website:
www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
 CAPTURE,**

**CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
 STATE**

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
 REGULATIONS OF THE COMMISSION**

TO : FORMER PRESIDENT, MR JACOB ZUMA
C/O MABUZA ATTORNEYS, C/O MR ERIC MABUZA
ADDRESS : 1ST FLOOR
 83 CENTRAL STREET
 HOUGHTON
 JOHANNESBURG
TEL : (082) 561 1067
EMAIL : eric@mabuzas.co.za;
lindive@mabuzas.co.za

NAME: THOMAS
 SURNAME: SIBUYI
 DATE: 11/09/2020
 TIME: 16:20
 SIGNATURE: *[Handwritten Signature]*


1. By virtue of the powers vested in me in my capacity as Chairperson of the above-mentioned Commission by Regulation 10(6)* of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud In

*Regulations 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

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the Public Sector Including Organs of State, I hereby direct you, Mr Jacob Zuma, to deliver to the Secretary or Acting Secretary of the Commission on or before 28 SEPTEMBER 2020 at the address given above an affidavit or affirmed declaration in which:

- 1.1. you state whether you admit or deny the allegations made about, or, against you in the affidavit of Mr Popo Molefe dated 17 February 2020 which was submitted to the Commission for the purpose of its investigations and the relevant parts of which are attached to this directive marked "A"; and
- 1.2. you state, if you deny or dispute any allegation or statement made about, or, against you in Mr Molefe's affidavit, the grounds on which you base your denial and give your full version in regard to the allegations or statements or issues or matters or incidents covered in that affidavit which refer, or, relate to you.
2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within three business days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance. In that event the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration and you will not pay anything for such assistance.). Should you have difficulty in reaching the Secretary or acting Secretary or should the Secretary or acting Secretary not return your call or respond to your letter or your emails, you may contact Ms Farrhah Khan at 060 787 8073 or at farrhahk@commissionso.org.za.

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3. If, in order to prepare the affidavit, or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c) and (d) of the Regulations of the Commission, as amended.

Regulation 8(2) reads:


"8 (1) . . .

- (2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

Regulation 11(3)(a) and (b) reads:

"11 (1) . . .

(2) . . .

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- (3) No person shall without the written permission of the Chairperson—
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

Regulation 12(2)(d) and (e) reads:

“12 (1) . . .

(2) Any person who


(a) . . .

(b) . . .

(c) wilfully hinders , resist or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2) and

(d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration

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pursuant to a directive issued by the Chairperson under Regulation 10(6).

is guilty of an offence and liable on conviction-

- (i) in the case of an offence referred to in paragraph (a), (c), (d) or (e) to a fine, or to imprisonment for a period not exceeding twelve months; and
- (ii) in the case of an offence referred to in paragraph (b) to a fine, or to imprisonment for a fixed period not exceeding six months."

DATED AT JOHANNESBURG ON THIS 8th DAY OF SEPTEMBER 2020.



JUSTICE RMM ZONDO

DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

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



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