

**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU NATAL DIVISION, PIETERMARITZBURG)**

CASE NO:

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

THE MINISTER OF POLICE

First Respondent

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

Second Respondent

**MINISTER OF JUSTICE AND
CORECTIONAL SERVICES**

Third Respondent

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

Fourth Respondent

RAYMOND MNYAMEZELI ZONDO NO

Fifth Respondent

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

Sixth Respondent

THE HELEN SUZMAN FOUNDATION

Seventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HUBRECHT ANTONIE VAN DALSEN

do hereby make oath and state that:

1. I am an adult male legal counsellor of the seventh respondent, the Helen



Suzman Foundation ("**the HSF**"), situated at 6 Sherborne Road, Parktown, Johannesburg, a non-governmental organisation whose objectives are to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights. The HSF is cited as the seventh respondent in the notice of motion in this matter (and the fifth respondent in the rescission application referred to in this matter). The HSF was admitted as *amicus curiae* in the two Constitutional Court matters described herein.

2. I am duly authorised to depose to this affidavit on behalf of the HSF. The facts contained in this affidavit are, to the best of my knowledge, both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge. Where I make legal submissions, I do so on the strength of the advice of the HSF's legal representatives.
3. As described below, Mr Zuma has brought / prefaced various threads of litigation:
 - 3.1 the urgent application before this Court, styled as Part A;
 - 3.2 a Part B challenge to the constitutionality of the Criminal Procedure Act;
and
 - 3.3 a rescission application in the Constitutional Court.
4. These papers address only the first thread, namely the urgent interdict proceedings.



INTRODUCTION

5. As the Constitutional Court has held, the President is "*a constitutional being by design, a national pathfinder, the quintessential commander-in-chief of State affairs and the personification of this nation's constitutional project*".¹
6. The head of the Republic must thus be beyond reproach; must personify our constitutional democracy and its values and must, above all, always act in the best interests of the Republic. He is required to be a nation-builder, promoting unity within the Republic, advancing the rights of her citizens and guarding her from harm. Of all our nation's citizens, it is he who bears the greatest responsibilities, and it is he who is the most accountable to the law.
7. These observations apply equally to those who have held the high office of President but no longer do, such as the subject of this case, ex-President Mr Jacob Zuma. This is particularly so where the matters concern his time in office as President.
8. Instead of upholding his oath and responsibilities, Mr Zuma defied and vilified the law and the judicial branch, which is tasked with interpreting and giving life to law. Despite this, Mr Zuma is desperately seeking to avoid any accountability and is intent on plunging the Republic into a constitutional crisis, attempting to have this Court – a High Court – subvert the order of the highest Court in the land, the Constitutional Court, such that he may be afforded a reprieve which only the Constitutional Court may grant. He wants this reprieve pending the outcome not only of a hopeless application for rescission before the Constitutional Court, but also pending Part B constitutional challenge to

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

legislation which he raises in this Court. The latter challenge could, of course, take years to resolve, which appears to be Mr Zuma's strategy. Perhaps more importantly, that challenge obviously has no prospects of success because the majority of the Constitutional Court in its judgment of 29 June 2021 already rejected these very points.

9. Despite a definitive ruling by our highest Court that it is constitutionally permissible and necessary to commit Mr Zuma to prison for his contempt of its order, Mr Zuma argues that this Court should suspend that order so he can reargue the very issues decided by the Constitutional Court.
10. In so doing, Mr Zuma attempts to make a mockery of the judiciary, the Constitution of the Republic and everything our democracy holds dear.
11. As is now notorious, Mr Zuma was afforded every opportunity to participate before the Constitutional Court in relation to the proceedings which resulted in the Constitutional Court judgment and order dated 29 June 2021 ("**the CC judgment**" and "**the CC Order**" respectively). Mr Zuma was even afforded the somewhat extraordinary opportunity to make submissions to the Constitutional Court after the hearing of the contempt case, which opportunity he elected to decline.
12. Mr Zuma not only elected not to participate in those proceedings, but proceeded publicly to scandalise the Court and impugn the judiciary, repeatedly.
13. In a detailed judgment which considered all aspects of the case, including the very legal issues Mr Zuma now belatedly raises, the Constitutional Court found Mr Zuma guilty of contempt of court and sentenced him to 15 months' imprisonment.



14. Mr Zuma now – optimistically – contends that:
- 14.1 because his views differ with those of the majority of judges in the Constitutional Court, the CC Order is the product of a patent error and can be rescinded;
- 14.2 his sentence of imprisonment should be stayed – potentially for years – whilst he runs a constitutional challenge against the very legislation already considered and processes affirmed by the Constitutional Court; and
- 14.3 this High Court has the competency to suspend a final order of the Constitutional Court, despite the clear hierarchy of judicial authority.
15. The Republic of South Africa is a constitutional democracy. Mr Zuma's case strikes at the heart of that constitutional democracy, seeking to subvert an order of the highest court in the land in the context of a profoundly important project, namely the uncovering of corruption and state capture at the State Capture Commission.
16. Quite simply, Mr Zuma seeks to be a law unto himself: a law higher than the Constitution and an authority higher than the Constitutional Court. And he now seeks to enlist this Court's help in his efforts at subverting the Constitutional Court. His case is self-serving and legally unsustainable, both technically and substantively, for the reasons which follow.
17. In addressing the issues below, I note that the majority of the issues raised by Mr Zuma constitute argument, and will, as such, be addressed in legal argument.



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

LACK OF JURISDICTION

19. Fundamentally, this Court does not enjoy jurisdiction to interfere with, much less suspend, an order of the Constitutional Court. Mr Zuma's application is thus stillborn under the rule of law.
20. It is trite that a court order stands and must be strictly obeyed until set aside by a higher court, and even the same court which granted the original order does not have the competence to nullify its effect or interfere with that order except in very limited circumstances in the context of variation / rescission. It is to the Constitutional Court alone that Mr Zuma can look for a suspension or variation of the CC Order.
21. In many instances, the Constitutional Court, acting in its appellate function, sets aside, substitutes or amends the order of a High Court or the Supreme Court of Appeal ("**the SCA**"). In those instances, the Constitutional Court order – technically – also assumes the status of a court in such division.
22. But the order in this case is of a fundamentally different nature. In this instance, the Constitutional Court granted direct access. The CC Order thus does not replace any order of an underlying court – it is an order of the Constitutional Court alone. The Constitutional Court has exercised original jurisdiction, and the High Court has no powers of intervention or suspension in relation to the CC Order. The Constitutional Court in its judgment firmly stressed that the Constitution itself has taken away the right of appeal where direct access is warranted, that direct access was warranted in this case, and



that the CC Order was aimed at protecting the integrity of the judicial process through the dignity of the Constitutional Court itself.

23. As such, this Court – a High Court – is not vested with any jurisdiction to suspend the operation of that order. Yet this is exactly what Mr Zuma asks this Court to do – effectively to overrule the Constitutional Court's unequivocal order that Mr Zuma is "*ordered to submit himself to the South African Police Service, at Nkandla Police Station or Johannesburg Central Police Station, within five calendar days from the date of this order, for the Station Commander or other officer in charge of that police station to ensure that he is immediately delivered to a correctional centre to commence serving the sentence [of 15 months' imprisonment].*"
24. It is thus not correct that every court has the inherent power to stay the execution of another Court's order, as Mr Zuma states. It is trite law that Courts are bound by the decisions of courts hierarchically superior to them: as such, when the Constitutional Court orders imprisonment within a certain time period, it is only the Constitutional Court which can stay or amend such order. In any event, on a proper interpretation, it is only the court which granted an order which has the power to suspend it.
25. Until that happens, both Mr Zuma and this Court are bound by the command in section 165(5) of the Constitution: orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts.
26. Seen in that correct light, the Constitutional Court decided to exercise its formidable direct access power (reserved for the truly exceptional cases). It is



not open to Mr Zuma to suggest that a lower court can thwart our highest Court's will. If the main case was sufficiently important to be entertained directly by the Constitutional Court, then the question of suspension is likewise one that only the Constitutional Court can address. This is reinforced by the fact that the rescission application has been brought by Mr Zuma before the Constitutional Court.

27. The fact that the CC Order may be executable within the geographic jurisdictional territory of this Court is simply irrelevant when it comes to assessing the question of judicial competencies in relation to such order.
28. This Court thus simply does not enjoy the jurisdiction or legal competence to entertain this matter.
29. I address the remainder of the grounds herein on the basis that this Court, contrary to what is set forth above, assumes jurisdiction.

STANDING: GIVEN THE (ONGOING) CONTEMPT, MR ZUMA HAS MADE OUT NO CASE FOR WHY HE IS PERMITTED TO APPROACH THIS COURT

30. So this Court enjoys no jurisdiction to interfere with or undermine an order of our highest Court.
31. But, in any event, our Courts have repeatedly held that a litigant challenging a contempt order is not permitted even to approach a court to challenge that order until he / she has obeyed the order (and purged his contempt). This is so even if the order may be wrong or if the litigant believes it to be wrong.
32. The judicial authority vested in all courts obliges courts to ensure that there is compliance with court orders to safeguard and enhance their integrity, efficiency, and effective functioning.



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

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

"4. Mr Jacob Gedleyihlekisa Zuma is ordered to obey all summonses and directives lawfully issued by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Commission).

5. Mr Jacob Gedleyihlekisa Zuma is directed to appear and give evidence before the Commission on dates determined by it.

6. It is declared that Mr Jacob Gedleyihlekisa Zuma does not have a right to remain silent in proceedings before the Commission.

7. It is declared that Mr Jacob Gedleyihlekisa Zuma is entitled to all privileges under section 3(4) of the Commissions Act, including the privilege against self-incrimination."

35. He has also signalled his intention not to comply with the CC Order (which requires him reporting to the South African Police Service within 5 **calendar** days from 29 June 2021, being by **5 July 2021**). He is thus in flagrant defiance of two orders of the Constitutional Court.

36. His ongoing contempt for the Constitutional Court's orders is not only on legal display through the case he has launched in this Court, but is aligned with public statements made by his foundation, the Jacob Zuma Foundation (from which Mr Zuma has not distanced himself), after the Constitutional Court issued its order on 29 June 2021. A copy of the statement, dated 30 June 2021, is attached as "**AA1**". In it, the Jacob Zuma Foundation "*denounces Judge Kampempe (sic) judgment as judicially emotional & angry and not consistent with our Constitution*". This is itself contemptuous and scandalous of the Court.

37. Even if this Court could then hear his challenge, he would first have to comply with the 28 January 2021 Order and the CC Order.
38. Mr Zuma is thus not entitled to self-help by choosing to ignore the Constitutional Court's order while attempting to bring this case before this Court. The rule of law does not permit it.
39. His continuous flouting of the Constitutional Court's authority, and continuing contempt of its orders, impedes the cause of justice and imperils the rule of law.
40. Mr Zuma has disintitiled himself, through his conduct, from an audience before this Court, until he fulfils his court-ordered obligations.

RESCISSION IS UNSUSTAINABLE

41. Mr Zuma's rescission application – which is one of the pillars which he contends warrants this Court suspending the CC Order – is fatally defective. It is procedurally unsound and unsustainable on the merits. It bears no prospects of success, establishes no *prima facie* right and thus cannot ground the relief Mr Zuma seeks. Mr Zuma fails to meet the essential requirement for the granting of a rescission of judgment, in that he cannot demonstrate that he is not in wilful default – a fundamental requirement as accepted by case law.

Waiver / peremption of right to approach the Constitutional Court

42. Mr Zuma has – unequivocally – indicated that he refused to recognise the Constitutional Court's jurisdiction and would not participate before it. The final salvo in this regard was the 21-page letter Mr Zuma addressed to the Constitutional Court in response to the 9 April 2021 directive inviting him to make submissions regarding sanction for contempt and, if committal was



deemed appropriate, *"the nature and the magnitude of the sentence that should be imposed, supported by reasons."* A copy of this directive is annexed marked **"AA2"**.

43. Mr Zuma elected not to file the requested affidavit, and instead filed a 21-page letter (annexed marked **"AA3"**). This letter was widely circulated throughout the country. In this letter, Mr Zuma indicated that his position was that the Constitutional Court proceedings lacked legitimacy; the directions were a sham; the Constitutional Court was embarking upon *"political gimmicks"* and engaging in *"political or public management"* of a decision already made; that the proceedings constituted *"an extraordinary abuse of judicial authority to advance politically charged narratives"* etc.

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

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

...

"[62] The Constitutional Court must know that it will imprison me for exercising my constitutional rights and for that I leave it to you and your court. Clearly, the Constitutional Court deems it appropriate and lawful to impose a criminal sanction of incarceration of a person without hearing oral evidence from such an accused person. Contrary to popular sentiment, peddled by sponsored legal analysts and editors, I do not seek to undermine our Constitution or to create any constitutional crises. I have accepted that my stance has consequences..."

45. Two important consequences arise:



- 45.1 First: Mr Zuma has indicated, unequivocally, that he leaves it to the Constitutional Court to decide the issue, without his representations. Having made and communicated that election, he cannot back-track, criticise the Court for not affording him an opportunity to make submissions and now – belatedly – attempt to make the very submissions asked of him on 9 April 2021. Quite simply, he – publicly and with great fanfare – washed his hands of the matter and stated that he left the matter for the Constitutional Court to deal with. He also accepted that this stance may have consequences.
- 45.2 This was a public election by Mr Zuma that the Constitutional Court would indeed deal with the matter, and would do so in the face of his objections and without his further submissions. It is thus not open to him to re-open the matter. He has thus waived his rights and / or is preempted from now seeking to re-open the matter, through rescission, and to make submissions. His refusal to participate, coupled with his acceptance of the consequences of his stance, means that he lacks standing to bring the rescission application.
- 45.3 Second: Mr Zuma repeatedly complains that he was not afforded an opportunity to make submissions and he has been convicted without a trial. The Constitutional Court in its judgment has made it plain that he was afforded the very opportunity he complains he was denied – namely a right to make representations pertaining to sanction (and the merits). He was afforded this opportunity twice: once in the ordinary course, as a litigant, and then again through the directive. But he elected not to participate. Having refused to appear or participate, he cannot now raise



his own non-participation as a ground of rescission for the order of contempt made against him.

46. As such, Mr Zuma lacks standing to bring the rescission application, as his previous position, publicly communicated, amounts to a waiver or peremption of any ability to challenge the CC Order.

No prospects of success

47. Mr Zuma's rescission application does not trigger any of the jurisdictional prerequisites which warrant rescission and has no prospects of success. All the considerations regarding prospects of success have already finally been made by the Constitutional Court.

48. As per Uniform Rule 42(1):

"The court may, in addition to any other powers it may have mero motu or upon the application of any party affected, rescind or vary—

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

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

(c) an order or judgment granted as the result of a mistake common to the parties."

49. Mr Zuma was admittedly, contemptuously and by his own election absent from the proceedings – this was not due to a service or citation failure, but due to Mr Zuma's deliberate decision not to participate. A decision not to participate does not suffice to qualify as "absent" as envisaged in Rule 42(1)(a) above. This Court is bound by the Constitutional Court's final findings regarding Mr Zuma's election not to appear before it, and the consequences of that election, being that he stood to be committed to prison for contempt.



50. Moreover, the order was not erroneously granted: the Constitutional Court was, through Mr Zuma's letter, aware of his contentions as to the procedural hurdles which prevented him from being committed absent a trial. Plainly, the Court was aware of and grappled with these issues, but determined, as our highest Court, that its order was procedurally sound and constitutionally compliant. The Constitutional Court expressly dealt with the procedural issues Mr Zuma now raises, and the absence of a trial. It is not for Mr Zuma now to try re-open those findings through a rescission application. The Constitutional Court has already determined the very procedural challenge he prefaces in making the CC Order. This Court is bound by those findings, and cannot find differently that Mr Zuma has prospects of success on this score either.
51. There is no ambiguity in the CC Order, and no patent error or omission. A patent error or omission does not mean that a subject of the order believes that the Court erred on the merits and should have reached a different substantive decision. Instead, in the context of rescissions, patent error refers to an error by the Court whereby the judgment obviously does not reflect its intention. There is no case to this end nor one that is pleaded. The Constitutional Court said precisely what it meant, in the clearest terms.
52. Finally, there is no mistake common to the parties. None has been pleaded.
53. Mr Zuma contends that the Constitutional Court may have erred as it failed to consider certain factors, such as his age, health, the effect of Covid-19 or what imprisonment could mean for an ex-President. These are not grounds for rescission and there is further no basis for this Court to infer or conclude that the Constitutional Court was not well aware of all of these factors. In any event, an applicant for rescission on the grounds that the court erred is required to show, *inter alia*, that but for the error he relies on, the Court could not have



granted the impugned order. In other words, the error must be something that the Court was not aware of at the time the order was made and which would have precluded the granting of the order. This is clearly not the case in this instance. In addition, if Mr Zuma felt strongly about these factors, he should have made representations when he was given that opportunity.

54. To the extent that Mr Zuma takes issue with the process used by the Constitutional Court and argues that he could not be committed without a trial, that is not a new argument in favour of rescission which can serve before this Court or even the Constitutional Court. The majority judgment deals with this very point, in some detail. The Constitutional Court has held against Mr Zuma in this regard. The Constitutional Court thus considered and ruled upon this issue. The issue is *res judicata* – that ruling too is binding on this Court.

55. This is, however, what Mr Zuma openly contends for:

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

"[60.2] I have nowhere to appeal, hence my application to have the same Constitutional Court that convicted and sentence without a civil or criminal trial reconsider, vary or rescind its orders. Yet the Constitutional Court erroneously declared that "the right of appeal does not arise" in my case."

56. The rescission application is thus nothing less than a disguised appeal and is impermissible.

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



58. Ultimately, Mr Zuma fails to trigger any of the jurisdictional prerequisites for rescission. His factual arguments were already known to the court and / or do not suffice to trigger Rule 42, and his legal arguments have already been considered and disposed of by the highest Court, through findings which are not open for reconsideration by this Court.
59. The rescission application thus has no prospects of success and cannot ground any rights. Its lack of prospects is, moreover, fatal to the interim relief sought.

THE "PART B" CONSTITUTIONAL CHALLENGE

60. For the reasons set out above, Mr Zuma's Part B constitutional challenge to the Criminal Procedure Act is ill-fated. The Constitutional Court considered whether the law permitted for committal for contempt of court in the circumstances complained of by Mr Zuma and determined that indeed it did. It performed a complete legal analysis in this regard to reach the conclusion that its order was a lawful one – this issue was not simply bypassed or ignored, as Mr Zuma's papers suggest. Instead, the regime was expressly endorsed as being constitutionally compliant. That is the law, even if Mr Zuma may disagree with it.
61. An attempt to revive this argument formally in the High Court is thus destined to fail, both procedurally and substantively.
62. In any event, even if this is not so, Mr Zuma identifies no reason why he falls to be afforded a stay of imprisonment whilst his challenge runs. A challenge to the constitutionality of legislation may take years to be determined, considering appeal and confirmation hearings. Mr Zuma thus optimistically



seeks to stave off imprisonment whilst he litigates for years, on an issue already finally determined by the Constitutional Court.

63. Mr Zuma does not require interim relief to run this litigation, and has made out no case why the interim relief is necessary or plausibly justified in order to pursue Part B in this Court.
64. Additionally, the approach adopted by Mr Zuma would be completely destructive of the criminal justice system – the precedent created would be that, if a prisoner challenges the legislation under which he / she was imprisoned, he / she is to go free until the determination of that challenge. One can immediately appreciate why that cannot possibly be the default position and why it should not be entertained.
65. The Part B challenge is thus still-born too – the Constitutional Court has carefully and finally had its say on the constitutionality of these proceedings under the very law that Mr Zuma now contends is open to constitutional challenge.

THE PUBLIC INTEREST AND EFFECTS ON THE ADMINISTRATION OF JUSTICE

66. Mr Zuma contends that he litigates in the public interest, and that it is in the interests of justice that he be afforded the interim relief sought.
67. The Constitutional Court is the arbiter of where the public interests lies in this case, and it has already determined that it requires Mr Zuma to be imprisoned. This Court is bound by those findings.



68. In any event, Mr Zuma's reflections on where the public interest lies is in truth destructive of the public interest, and transparently driven only by his self interest.
69. Mr Zuma has – openly – challenged and condemned the judiciary. He has refused to comply with a subpoena issued by the State Capture Commission, which in itself is contemptuous. More-so, however, he has openly and deliberately defied the ruling of the Constitutional Court made on 28 January 2021 in the January CC Order.
70. Having openly defied this Order, Mr Zuma was served with papers by the State Capture Commission and was aware that the State Capture Commission sought, *inter alia*, a declaration of contempt accompanied by an unsuspended sentence of imprisonment. Mr Zuma publicly indicated that he would not be participating in that process, filed no papers and had no representatives make argument at the hearing.
71. In a somewhat extraordinary indulgence, Mr Zuma was then invited by the Constitutional Court, on 9 April 2021, to make submissions regarding appropriate sanction for contempt, and submissions regarding potential committal. A copy of the relevant Constitutional Court directive is already annexed marked "**AA2**".
72. Again, Mr Zuma refused to do so, releasing a public statement to this end.
73. The Constitutional Court then found Mr Zuma to be in contempt and ordered committal, for all the reasons set out in the CC judgment.
74. Further, this was no ordinary case of contempt:



- 74.1 it was by an ex-President in relation to matters concerning conduct while he was President;
- 74.2 in the face of a Constitutional Court order; and
- 74.3 in the context of the State Capture Commission and its truth-seeking role, which was dealing with one of, if not the greatest, threat to our Republic, namely corruption. Mr Zuma has figured heavily in the evidence before it.
75. Against this backdrop, Mr Zuma contends that it is in the public interest that the Constitutional Court's order be wholly negated; that he face no consequences for his deliberate, calculated and continuing refusal to comply with (1) the State Capture Commission subpoena and (2) the January CC Order; that he – unlike others – be afforded special treatment at the State Capture Commission and be entitled not to attend or participate; and that his scandalous attacks on the judiciary be permitted to stand without consequence.
76. None of these outcomes is in the public interest or the interests of justice. Each and cumulatively, they are in fact destructive of the interests of justice, and would do great harm to the administration of justice. They suggest that court orders may freely be ignored, and – if an order is granted with which one disagrees, even by the Constitutional Court – this too can be ignored without consequence.
77. Further, the practical effect of Mr Zuma's position would be disastrous for certainty and finality under the rule of law – namely that where a party elects not to participate in a hearing but loses, that order must then be suspended so as to afford the party a right to challenge the order that eventuated. This is not



in keeping with the constitutional imperatives that judicial authority be respected and court orders be obeyed and implemented, and would be inimical to the proper administration of justice.

78. Finally, as aforesaid, the proposition that Mr Zuma must escape imprisonment whilst he is permitted to run a constitutional challenge against the Criminal Procedure Act is farcical.
79. Mr Zuma thus fails to appreciate where the public interest lies. That interest lies in the CC Order being upheld and given effect to, for all the reasons set out in the CC judgment.

THE LATEST CONSTITUTIONAL COURT DEVELOPMENTS

80. In the afternoon of 3 July 2021, the Constitutional Court handed down directions in Mr Zuma's rescission application before it, setting down the hearing for 12 July 2021. A copy of these directions is annexed marked "AA4".

81. This is entirely irrelevant to these urgent interdict proceedings, however. It is trite that a rescission application does not itself pend the execution of the order to which it relates. Hence Mr Zuma's rush to this Court for his interdict application. And the fact that the rescission application may soon be heard does not:

81.1 mean that it will soon be decided – many months may pass, if necessary, whilst the Constitutional Court deliberates (although it is submitted that the rescission application falls summarily to be dismissed);

81.2 mean that the administration of justice will be served by pending the CC Order until the rescission application is decided (assuming that this Court had that power, which it does not); and



- 81.3 have any bearing on the merits (or lack thereof) of this case.
82. No matter when the Constitutional Court decides the rescission application, Mr Zuma falls to be committed, as per the CC Order, in the interim.
83. What is abundantly clear is that Mr Zuma remains stridently defiant. He has no intention to abide by the CC Order nor does he intend to appear before the Commission and participate in those proceedings. In fact, his position – publicly stated – is that there should be no investigation into corruption at all. I attach an article published in *The Citizen* newspaper on 4 July 2021 marked "AA5" and highlight the following remarks allegedly made during an address outside his Nkandla home the day before :
- 83.1 *"It will be difficult for me to hand myself over for imprisonment when I have done nothing wrong";*
- 83.2 *"This to me is a clear indication that that lawmakers, and even maybe those that are in power do not have an idea of what it means to be in power and to be in charge of taking care of the laws"*
- 83.3 *"I would like to remind you that even during the times when this commission was formed, I made remarks that one day there will be consequences because they were asking me to do something never before done";*
- 83.4 in the context, allegedly, of a statement that South Africa was the only country in the world to ever request its officials to investigate their own government and matters of governance: *"Not even a single one, and if you do that – it means you have no idea of the meaning of ruling because each and every country has its own secrets that are never spoken publicly";* and
- 83.5 *"your support has been immensely important and hopefully, it will make those that are in power to realise that they are ruling over human beings and they cannot just take decisions lightly"*



84. The above clearly demonstrates that, to this day, Mr Zuma believes himself to be above the law and the Constitution, and continues wilfully to defy orders of the highest court and will do so whilst deliberately desecrating the Constitution and the judicial system in its entirety.

COSTS AND CONCLUSIONS

85. The Constitutional Court has, in a lengthy and reasoned judgment, considered whether Mr Zuma is in contempt of Court and whether it can order committal to imprisonment in the circumstances. Carefully aware of his constitutional rights, and after affording Mr Zuma every conceivable opportunity to participate and make representations, the Constitutional Court handed down the CC Order and ruled on the constitutionality of committing Mr Zuma to prison.

86. Mr Zuma – after electing not to participate or make any submissions to the Constitutional Court – now urgently, in a remarkable display of hypocrisy, asks this Court, a High Court, to interfere with the CC Order and afford him respite so he can, *inter alia*, make submissions to the Constitutional Court.

87. This Court has no competence to subvert or suspend the CC Order, however.

88. Moreover, Mr Zuma is a delinquent who remains in wilful defiance of two Constitutional Court orders. Until he purges his contempt, he should not be permitted to approach this Court for relief.

89. Even if this Court does assume jurisdiction (which is denied), Mr Zuma fails to satisfy the test for interim relief. He does not need any interim protection to run his rescission or Part B litigation.



90. Court orders must be obeyed on pain of contempt. Mr Zuma must now face the consequences of his deliberate legal stratagems, and be incarcerated forthwith in accordance with the CC Order.
91. Given that Mr Zuma's application is an abuse of process and in view of his contumelious conduct, Mr Zuma should be mulcted in a punitive costs order. The HSF was cited by Mr Zuma as a respondent in this litigation, presumably because the HSF had featured as an *amicus curiae* in the Constitutional Court litigation. If Mr Zuma's application is dismissed, then the HSF seeks the costs of having been drawn to Court by Mr Zuma as a named respondent. If Mr Zuma's application is granted, then the HSF contends that it should be exempted from paying any costs on the basis that its affidavits and arguments were clearly advanced by it as an NGO in the public interest, in good faith, and subject to the *Bio-Watch* principle.

WHEREFORE I pray that the application be dismissed, with costs on the scale as between attorney and client, including the costs of two counsel.



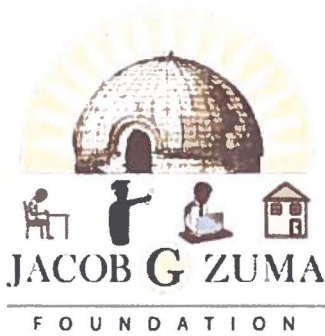
HUBRECHT ANTONIE ANTON VAN DALSEN

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at PRETORIA on this the 04 day of JULY 2021, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.




COMMISSIONER OF OATHS

Full names: NDIPHUHO MURGALI
Business address: 71 DUNNICK AVE PRETORIA
Designation: SGF
Capacity: POLICE



30 June 2021

JGZF RESPONSE TO JG ZUMA'S CON COURT JUDGEMENT

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

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

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

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

Breaking the cycle of intergenerational poverty

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

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

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

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

For Inquiries Contact:
JGZF Spokesperson - Mr Manyi
+27(82) 582 4918





CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 52/21

In the matter between:

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

Applicant

and

JACOB GEDLEYIHLEKISA ZUMA

First Respondent

MINISTER OF POLICE

Second Respondent

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

Third Respondent

HELEN SUZMAN FOUNDATION

Amicus Curiae

DIRECTIONS DATED 9 APRIL 2021

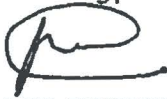
The Chief Justice has issued the following directions:

1. The first respondent is directed to file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021 on the following issues:
 - a) In the event that the first respondent is found to be guilty of the alleged contempt of court, what constitutes the appropriate sanction; and

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

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

3. Further directions may be issued.



**MR DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT**

TO: STATE ATTORNEY, JOHANNESBURG

Attorneys for the Applicant
Tenth Floor, North State Building
95 Albertina Sisulu Road
JOHANNESBURG

Tel: 071 401 6235

Email: johvanschalkwyk@justice.gov.za

Ref: J Van Schalkwyk/1544/18/P45



AND TO: MR JACOB GEDLEYIHLEKISA ZUMA

First Respondent

Kwadakwadunuse Homestead

KwaNxamalala, Nkandla

King Cetshwayo District

KwaZulu-Natal

c/o MABUZA ATTORNEYS

Attorneys for the First Respondent

First Floor

83 Central Street

Houghton

JOHANNESBURG

Email: eric@mabuzas.co.za

Ref: Mr E T Mabuza



AND TO: STATE ATTORNEY, PRETORIA

Attorneys for the Second and Third Respondents

316 Thabo Sehume Street

Pretoria Central

PRETORIA

Email: ichowe@justice.gov.za

Ref: Mr I Chowe

c/o GENERAL E GROENEWALD

Email: groenewaldd@saps.gov.za

AND TO: WEBBER WENTZEL INCORPORATED

Attorneys for the Amicus Curiae

90 Rivonia Road

Sandton

JOHANNESBURG

Tel: 011 530 5867

Tel: 011 530 6867

Email: vlad.movshovich@webberwentzel.com / pooja.dela@webberwentzel.com /

dylan.cron@webberwentzel.com / daniel.rafferty@webberwentzel.com /

dee-dee.qolohle@webberwentzel.com

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



JACOB GEDLEYIHLEKISA ZUMA

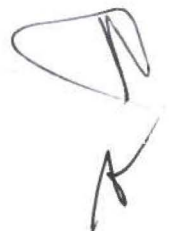
KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

14 April 2021

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

Dear Chief Justice

1. I received your directions dated 9 April 2021 in which you direct me to "file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021" to address two theoretical questions relating to sanction.
2. The questions are framed on the presumption that the Court that heard the application of the Chairperson of the Commission of Inquiry into State Capture, Fraud and Corruption in Public Entities ("Zondo Commission") has not determined the merits of whether I am guilty of contempt of court.
3. I have thought long and hard about the request in your directives. I have also been advised that addressing a letter of this nature to the court is unprecedented as a response to a directive to file an affidavit. However, given the unprecedented nature of my impending imprisonment by the Constitutional Court, we are indeed in unprecedented terrain.



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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a smaller, more complex signature.

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

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

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

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

A handwritten signature in black ink, consisting of a large, stylized letter 'D' or 'O' followed by a long, sweeping horizontal stroke that ends in a small hook.

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

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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'K' or similar character, followed by a smaller, more fluid signature.

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

13. This means that both the Zondo Commission (acting as the executive arm of government) and the Constitutional Court are bound by the “democratic values of human dignity, equality and freedom.
14. The Constitutional Court was to be the enduring monument of our constitutional order, representing our victory over the apartheid system. It is the only innovation by the founders of our constitutional order in the structure of our judiciary that was established to champion a judicial system that would be the bulwark against injustice and oppression.
15. It was established to represent an irrevocable covenant between the people and their government of human dignity, the achievement of equality and the advancement of human rights and freedoms.
16. In order to ensure that our new system of constitutional democracy would have an enduring constitutional legacy, we decided that we would only appoint worthy arbitrators, whose historical experience and sense of humanity would connect with the spirit and ethos of our constitutional system. This is because our Constitutional Court would not have to be prompted to perform its central constitutional mission.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a smaller, more fluid signature.

17. The Constitutional Court would represent freedom for everyone, and with it, I believed that we would be safe from the unjust and oppressive political narratives that had routinely found credibility in the courts of oppression. It is no secret that dominant narratives come from the dominant and moneyed classes in our society.
18. Ideally, such narratives should not sway our apex court on how to deal with a particular litigant.
19. The men and women who were to serve on it would not conduct the affairs of the Court with arrogance and oppressive tendencies. In the words of our national hero Nelson Mandela on 14 February 1995 at the inauguration of the Constitutional Court, on behalf of the people of South Africa he said to the then Chief Justice Arthur Chaskalson:

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

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



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

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

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

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



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

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

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



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

- 25.1. The condemnatory political comments by Acting Justice Pillay in her judgment about me are but one example.
26. My decision not to participate in the contempt of court proceedings was based on my belief that my participation would not change the atmosphere of judicial hostility and humiliation reflected in its judgment against me. It is my view or my feeling that the judges of the Constitutional Court do not intend to ensure that they address disputes involving me in a manner that accords with the independence, impartiality, dignity, accessibility, and effectiveness of the Court.
27. One of the astonishing facts is indeed the presence of Acting Justice D Pillay as a member of the panel of the Constitutional Court considering my dispute, a judicial officer whose judicial antipathy towards me is well recorded in a court judgment and an order for my arrest while I was in hospital, sitting comfortably as a panelist pretending to exercise impartial judicial authority in a case that would determine whether I should be arrested and imprisoned for not complying with a court order. I found the participation of Acting Justice Pillay particularly disturbing and a clear indication of her unmitigated lack of discretion and a deeply irresponsible exercise of judicial power. Her gratuitous comments in a judgment against me in a dispute involving my comments on Derek Hanekom and her



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

28. Your directive, Chief Justice provides that I must answer the questions in a 15-page affidavit within 3 days. Regrettably, if I accede to your request, I purge my conscientious objection for having not participated in the proceedings of the Constitutional Court. So, please accept this letter as the only manner in terms of which I am able to convey my conscientious objection to the manner in which your Constitutional Court Justices have abused their power to take away rights accorded to me by the Constitution. I invite you to share this letter with them as it is relevant to the directions that you have issued. I make this request having been advised that this letter is not a pleading.
29. After agonising over how to respond to your direction, Chief Justice, I came to the conclusion that the directions are an attempt to get me to make submissions that would assist those judging me on the question of sanction.
30. Chief Justice, while giving me a right to a hearing is something I could commend, there are intractable problems with the nature and scope of the right that you have afforded me. The right to hearing in respect of sanction reduced to 15 pages which must be provided to the Court within 3 days does not appear to be made as a good faith attempt to give me a right to hearing but to sanitise the procedural infirmities of the procedures of the Constitutional Court. More importantly, the conditions for my right to a hearing do not appear to fully engage

A handwritten signature in black ink, consisting of a large, stylized initial 'D' or 'D' followed by a smaller, more fluid signature.

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

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

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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a smaller, less distinct mark.

34. I have no doubt that the Zondo Commission has become a complex project controlled by my political foes. Even though I established the Commission, I was aware that it had been proposed as part of the campaigns to force me out of government.
35. The Zondo Commission has an insurmountable problem which the Court failed to even reflect on: whether it was competent for the judges of the Constitutional Court to adjudicate a matter involving their own colleague and a Deputy Chief Justice for that matter? The Constitutional Court failed to reflect its reasons for adjudicating a dispute involving their colleague.
36. The contempt proceedings were not brought to vindicate the integrity of the Zondo Commission rulings or directives – for as I listened to the arguments made before the Court by the Commission – it expressly does not seek to enforce my further participation in the Commission. In fact, it was stated vociferously on behalf of the Commission that all it wants is my incarceration and not my appearance before it.
37. What the Zondo Commission did was to avoid utilising the statutorily prescribed procedures for enforcing its directives, it created conditions for holding me in contempt of court rather than in contempt of the Zondo Commission. Had the Zondo Commission utilised the procedure prescribed in the Commissions Act to enforce its rulings, I would have been entitled to raise many defences. Approaching the Constitutional Court as a court of first and final instance violated my constitutional rights.



38. As I understand it, the Zondo Commission publicly declared its decision to file a charge of contempt with the NPA in compliance with the Commissions Act. That statutorily prescribed approach was abandoned for the inexplicable convenience of the Zondo Commission and with no regard to the effects that such a position would have on my constitutional rights. This clearly demonstrated that the Court had abandoned its constitutional mission for the sake of promoting the entrenchment of political narratives of alleged acts of state capture, fraud and corruption by me.
39. I therefore believed that the Constitutional Court would not succumb to the temptation of promoting political narratives. The Court simply ignored that the Chairperson of the Zondo Commission had publicly announced that he would have me prosecuted on a criminal charge of contempt. To date I have not received summons to appear in a criminal court to answer any question in terms of the Commissions Act alleging that I should be found guilty of defying the Zondo Commission.
40. The fact that the Constitutional Court failed to detect the abuse of the procedure adopted by the Zondo Commission demonstrates that they too have adopted the political view that there is something that I did for which it is justified to strip me of my constitutional rights.
41. I was further advised that the Constitutional Court, as the supreme custodian of guaranteed constitutional rights would not countenance a situation in which an executive arm of government would request it to strip me of my constitutional

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of loops and a long, sweeping tail that extends downwards and to the right.

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

42. I was convinced that the Constitutional Court, acting as the ultimate custodian of our constitutional rights, would not deprive me of my right to appear before a tribunal or Commission of Inquiry that is fair and impartial. This to me was akin to forcing me to appear before someone who had tortured me to give a statement about my alleged criminal conduct involving my political activism. It is for that reason that the Commission has been trying very hard to pretend that my review application does not exist. I have reviewed the decision of Deputy Chief Justice Zondo refusing to recuse himself.
43. In that review I also demonstrate that not only has he told falsehoods on oath, but became a judge in his own matter.
44. I believed that Constitutional Court would respect the authority and obligation of the High Court to determine the merits of my review application and therefore, do nothing that would undermine the fair and impartial adjudication of that matter.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a smaller, more fluid signature.

45. The intervention of the Constitutional Court based on political conveniences in the work of the Zondo Commission to me was not only bizarre and premature but demonstrated further that I could not place my trust in the independence, impartiality, dignity, accessibility, and effectiveness of the Court. It was clear to me that the decision to approach the Constitutional Court was an abuse of our judiciary.
46. As a starting point, I do not believe that the Zondo Commission was established in a manner that is consistent with the Constitution. Deputy Justice Zondo's own appointment was unconstitutional as it was done by the Chief Justice – who too was complying with an illegal directive of the Public Protector and an unlawful order of the Gauteng High Court.
47. Chief Justice, you know that you do not have the power, either in terms of the Constitution or by any known convention in political or constitutional governance to participate in the appointment of a Commission of Inquiry established in terms of section 84(2)(f) of the Constitution.
48. You essentially appointed the Deputy Chief Justice Zondo to be Chairperson of the Commission and you did so in the face of a glaring breach of the separation of powers doctrine. The appointment of the Commission failed to uphold the Constitution by accepting the re-allocation of constitutional powers exclusively assigned to the President in terms of the Constitution for the political convenience of the time. In fact, you will recall that you first gave me the name of Justice Desai and thereafter the name of Deputy Chief Justice Zondo. What



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

49. DCJ Zondo is simply disqualified to preside over my evidence by virtue of his prejudice towards me for reasons set out in my review application. Approaching this Court was a clear stratagem to sidestep the review. That the Commission even published that I had to demonstrate my seriousness about the review for it to file the necessary record and answer is simply disingenuous, to say the least.
50. The Zondo Commission, as the Court, knows or should know that there is no case of criminal contempt against me.
51. What the Constitutional Court judgment did was to take away my right to have my review application heard and determined. I could not continue to subject myself to a hearing before the very Commissioner who was biased. This was brought to the attention of the Court in a submission in which my review application was described by the Commission's Counsel as "hopeless".
52. It is not a criminal offence to have a dispute with an administrative agency over its eligibility to adjudicate my dispute. I have a legitimate dispute with the Chairperson, Mr Zondo and I am taking steps to have that ventilated in the courts through a judicial review, which has been ignored by the Commission and the Constitutional Court in its determination of this matter in its previous order.

Handwritten signature or initials, possibly 'D' and 'K', located at the bottom right of the page.

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

CONCLUSION

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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a smaller, more complex signature.

56. I also have a duty to protect my constitutional rights even at the risk of being imprisoned. I have just turned 79 years as I write this letter. I have not known the peace and the freedom that I committed the most active years of my life to. However, I watch the Constitutional Court which is charged with ensuring the safety of my constitutional rights, violate them with judicial impunity. What the Zondo Commission has done is inexcusable and I will live to see my vindication when – after squandering billions of much needed public revenue, an independent court reviews and set aside the findings of the Commission on the basis that it was not established in accordance with our Constitution.
57. A lawfully established Commission would be an asset in making recommendations to the executive that could be accepted, considered, and possibly implemented. How an unlawfully established Commission of Inquiry is capable of assisting the executive to govern correctly eludes me.
58. Just so you do not believe that I have avoided answering your direction, here is my answer. There is no precedence for what the Constitutional Court has allowed to take place in its sacred forum. As stated above, I am ready to become a prisoner of the Constitutional Court and since I cannot appeal or review what I see as a gross irregularity, my imprisonment would become the soil on which future struggles for a judiciary that sees itself as a servant of the Constitution and the people rather than an instrument for advancing dominant political narratives. My impending imprisonment by the Constitutional Court will be a constitutional experiment because it does not appear that it was created as a court of first and final instance to hold the powers of imprisonment and incarceration.

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page. It consists of a large, stylized letter 'D' or 'O' with a horizontal line through it, and a separate, smaller letter 'K' below it.

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

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

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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a smaller, more fluid signature.

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

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

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

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a smaller, less distinct mark.

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

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

ISSUED BY:

JACOB GEDLEYIHLEKISA ZUMA

A handwritten signature in black ink, appearing to be 'J. Zuma', located in the bottom right corner of the page.



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 52/21

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

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

First Respondent

RAYMOND MNYAMEZELI ZONDO N.O.

Second Respondent

MINISTER OF POLICE

Third Respondent

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

Fourth Respondent

and

HELEN SUZMAN FOUNDATION

Fifth Respondent

DIRECTIONS DATED 3 JULY 2021

The Court has issued the following directions:

1. The application is set down for hearing on Monday, 12 July 2021 at 9h00.
2. Any opposing respondents must file answering affidavits by Tuesday, 6 July 2021.

3. The applicant must file a replying affidavit, if any, by Wednesday, 7 July 2021.
4. Written submissions must be lodged by the applicant by Thursday, 8 July 2021.
5. Written submissions must be lodged by the opposing respondents by Friday, 9 July 2021.
6. The hearing will take place on a virtual platform. Directions will be issued in due course.
7. Further directions may be issued.



**MR DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT**



AND TO: NTANGA NKUHLU INCORPORATED

Attorneys for the Applicant
Unit 24 Wild Fig Business Park
1492 Cranberry Street
Honeydew

JOHANNESBURG
Email: mongezi@ntanga.co.za
Tel: 072 137 7104

c/o M. Ndimma Incorporated
11th Floor, Schreiner Chambers
94 Pritchard Street
JOHANNESBURG

AND TO: STATE ATTORNEY, JOHANNESBURG

Attorneys for the First and Second Respondents
Tenth Floor, North State Building
95 Albertina Sisulu Road
JOHANNESBURG

Tel: 071 401 6235
Email: johvanschalkwyk@justice.gov.za
Ref: J Van Schalkwyk/1544/18/P45



AND TO: STATE ATTORNEY, PRETORIA

Attorneys for the Third and Fourth Respondents

316 Thabo Sehume Street

Pretoria Central

PRETORIA

Email: ichowe@justice.gov.za

Ref: Mr I Chowe

c/o GENERAL E GROENEWALD

Email: groenewaldd@saps.gov.za

AND TO: WEBBER WENTZEL INCORPORATED

Attorneys for the Fifth Respondent

90 Rivonia Road

Sandton

JOHANNESBURG

Tel: 011 530 5867

Tel: 011 530 6867

Email: vlad.movshovich@webberwentzel.com / pooja.dela@webberwentzel.com /

dylan.cron@webberwentzel.com / daniel.rafferty@webberwentzel.com /

dee-dee.qolohle@webberwentzel.com

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



NEWS

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

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

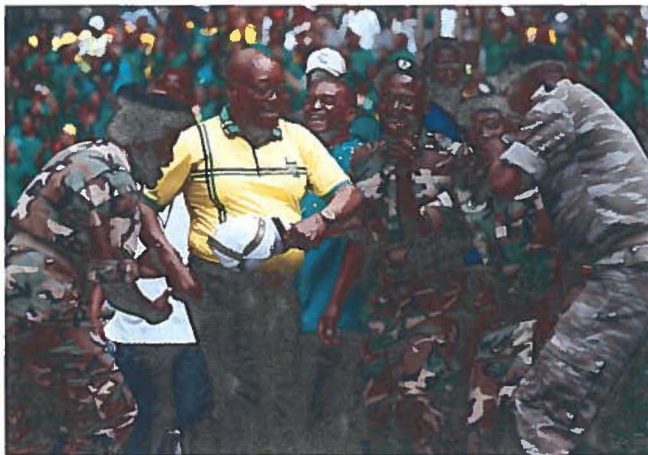


By [Siyanda Ndlovu](#)
Digital Journalist

3 minute read

4 Jul 2021

10:22 am



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

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

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

In his address to the *Amabutho*, he made it clear he had done nothing wrong and would not be [handing himself over to the police as ordered by the apex court](#).

He insisted that he knew nothing about the charges related to his 15-month sentence handed by Khampempe, and took a swipe at the judiciary, warning that those in power will one day live to "regret" their decisions.

ALSO READ: [ConCourt agrees to hear Zuma's contempt rescission case](#)

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

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

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

NEWSLETTERS 

Get the news you choose straight to your inbox every day

[SUBSCRIBE](#)

MOST POPULAR

[PAST 24 HOURS](#) [PAST WEEK](#)

- [LOTTO](#) PowerBall results: Friday, 02 July 2021
- [LIFESTYLE](#) Kelly Khumalo opens up about Senzo Meyiwa's betrayal
- [MULTIMEDIA WATCH:](#) Are Enhle Mbali and Black Coffee overcompensating?
- [PHAKAAATHI](#) Mamelodi Sundowns tie six stars to long-term deals
- [LIFESTYLE](#) Who is Ze Nxumalo? Miss SA Tamaryn Green's fiancée

EDITOR'S CHOICE

[LIFESTYLE](#) Agilitee: Somizi linked to 'fake billionaire' through new deal

[HORSES](#) Kommetdieding brings it home for the small guys

[NEWS WATCH:](#) 'Eye of fire' swirls in Gulf of Me

Me
sp
yea
NE
adv
ruli

We are conducting a quick survey to help us better understand what our site visitors like and to learn a little bit more about you

[Start](#)

Get our news in your inbox

Your email

[SUBSCRIBE](#)

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

Zuma said that the whole idea of the [Commission of Inquiry into allegations of State Capture](#) was wrong.

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

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

ALSO READ: [Zuma and cronies stoop to new low](#)

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

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

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

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

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

Read more on these topics

- [constitutional court judgement](#)
- [jacob zuma](#)
- [nkandla](#)
- [State Capture Commission](#)

A red rectangular button with the text "Win! with The Citizen" in white, where "Win!" is in a large, stylized font. Below it, in a smaller font, is "with The Citizen". At the bottom of the button is a dark grey rounded rectangle containing the text "FIND OUT MORE" in white.

A light blue banner with the text "For more news your way" in bold red. Below it, in smaller black text, is "Download The Citizen App for IOS and Android". At the bottom are two dark grey buttons: one with the Apple logo and "Download on the App Store" and another with the Google Play logo and "GET IT ON Google Play".

RELATED ARTICLES



We are conducting a quick survey to help us better understand what our site visitors like and to learn a little bit more about you

Start

Get our news in your inbox Your email SUBSCRIBE



SOUTH AFRICA

Police 'investigating' disaster management act defiance in Nkandla

20 MINS AGO



SOUTH AFRICA

Zuma's arrest still imminent despite rescission approval by ConCourt

1 HOUR AGO



SOUTH AFRICA

Daily news update: No jail for Zuma yet, Joburg mayor hospitalised, Kommetdieding wins Durban July

6 HOURS AGO



SOUTH AFRICA

KZN Premier expresses concern over Nkandla gatherings

5 HOURS AGO

Taboola Feed

Tuff-Luv Universal Tablet 7" - 10" Front window Or Vent Mount for Ipad

R159

TAKEALOT | Sponsored

SHOP NOW

Halle Berry's Daughter Used to Be Adorable, But Today She Looks Insane.

Insurance Queen | Sponsored

Celine Dion Revealed The Real Reason Of Her Weight Loss

AlphaCute | Sponsored

Modern Deep-Button Headboard

R2298

TAKEALOT | Sponsored

SHOP NOW

Girl Waves At Police Officer Through Her Window Everyday... Then He Decides To Check Up On Her House...

Trendscatchers | Sponsored

Where Richard Gere Lives At 71 Left Us In Tears.

Star Law Post | Sponsored

Woman Refuses To Take Bag Off Seat, Get Taught A Lesson

Trendscatchers | Sponsored

Thousands of pretty single women are looking for men in Benmore

Check them out on this free dating

dating.com | Sponsored

23 Most Deadly Creatures On The Planet

Travel Den | Sponsored

Michael Douglas' Divorce Settlement Is Out Of This World

Living Magazine | Sponsored

We are conducting a quick survey to help us better understand what our site visitors like and to learn a little bit more about you

Start

Get our news in your inbox

Your email

SUBSCRIBE

X

investing.com | Sponsored

This Picture Of Meghan Markle's Wedding Is Not Edited, Look Closer

BuzzSuper | Sponsored

20 Worst Airport Landings No One Was Supposed to See

Travel Den | Sponsored



The Citizen

f 



iab.
south africa



Press Council



prc

Publisher Research Council

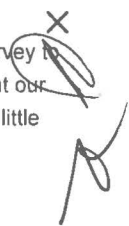
About us
Code of Conduct
Contact us
Jobs at The Citizen
Advertising Rate Card

NEWS
COVID-19
BUSINESS
SPORT
PHAKAAATHI

LIFESTYLE
TRAVEL
MULTIMEDIA
MOTORING
HORSES

© 2021 The Citizen. All Rights Reserved. [Privacy Policy](#)

We are conducting a quick survey to help us better understand what our site visitors like and to learn a little bit more about you



Start

Get our news in your inbox

Your email

SUBSCRIBE

