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

Case No:

In the matter between:

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

SUBMISSIONS ON BEHALF OF THE APPLICANT

BACKGROUND TO RELIEF SOUGHT

1. The applicant was sentenced to 15 months imprisonment for the crime of civil contempt of court by the Constitutional Court in a judgment delivered on 29

June 2021. In terms of paragraphs 5 and 6 of the order, the Applicant was ordered to submit or surrender himself to a police station in Nkandla Police Station, alternatively in Johannesburg Central Police Station within 5 calendar days from the date of that order to be delivered to a correctional centre to commence serving the sentence, failing which, the Minister of Police and the National Commissioner of the South African Police Services are ordered to, within 3 days thereof, to take all steps that are necessary and permissible in law to ensure that the Applicant is committed to prison to serve his sentence, In essence, to arrest him.

2. On receipt of the judgment and orders, the Applicant filed two applications. The first application is to the Constitutional Court. The second is the present urgent application to this Court. The application to the Constitutional Court is for the rescission and setting aside of the orders granted against the Applicant on a number of grounds, including that the orders were granted against him without a trial having been conducted in breach of the Commissions Act and the provisions of the Criminal Procedure Act, 1977 ("CPA"). The relief sought in this court is two-fold and set out in Part A and B of the Notice of Motion. The order in Part A is for a stay of execution of the committal orders of the Constitutional Court, pending the final determination of the relief sought in the Constitutional Court, and in Part B of this application. In Part B of the orders sought in this Honourable Court, the Applicant seeks a declaratory order that the provisions of the CPA are unconstitutional in that there is no requirement that the crime of civil contempt in such as the present circumstances should be dealt with in accordance with that Act and the Constitution.

3. The 1st, 3rd and 6th respondents abide the decision of the Court and in that regards have filed notices to abide. These are the Ministers of Police and Justice and Corectional Services, and the President. The 3rd and 4th respondent are the Commission of Inquiry and the Acting Chief Justice Zondo, oppose the relief sought on a number of grounds that we deal with later. So does the Helen Suzman Foundation ("the HSF"), which was an amicus curiae in the original proceedings.

4. We address the following issues in support of the relief sought in Part A of the Notice of Motion.

    4.1. The locus standi of the Commission to oppose the relief sought against parties who are abiding the decision;

    4.2. The nature of these proceedings;

    4.3. Jurisdiction of the Court to entertain the relief sought;

    4.4. The merits of the two-pronged main applications;

    4.5. Whether the Applicant meets the requirement of an interim interdict and/or a suspension order;

    4.6. Conclusions.

***LOCUS STANDI* OF THE COMMISSION TO OPPOSE THE RELIEF SOUGHT**

5. This Honourable Court will be aware that the main and pertinent respondents in the particular interim relief sought in this matter, namely the Minister of Police and the National Commissioner of the South African Police Service

have filed a Notice to Abide. So has the President of the Republic of South Africa. In the circumstances, what is the legal interest of the Commission in the immediate execution of a committal order of the Constitutional Court under these circumstances? The Commission is a statutory body created by the executive – President – to assist the executive in its duties. The executive branches for whose benefit the Commission was established do not contest the application to have the committal order of the Constitutional Court suspended pending the final determination of applications that are relevant to the lawfulness of those committal orders – in this and the Constitutional Court.

6. Given the position of the executive branches of government on this application it is unclear on what constitutional and legal interest the Commission opposes the orders other than for the sole purpose of advancing punitive objectives. The Applicant is not asking the Court to interfere with the conviction and sentence of the Constitutional Court. It is not being requested to review the committal sentence. It is simply being asked to stay the execution of the order granted under section 172(1)(a) and (b) of the Constitution as it relates to the crime of civil contempt of court. The power to hold the execution of the imprisonment orders pending a determination of the constitutional relief sought in this court and that in the Constitutional Court is in section 172(2)(b) of the Constitution. The principle in section 173 of the Constitution allows the High Court to order that the execution of a committal order be suspended – not overturned – is to ensure that the Applicant's case in this and the Constitutional Court regarding the lawfulness or appropriateness of his imprisonment order is fully addressed. To do it differently would have meant the following:

6.1. The Constitutional Court is approached to suspend its own committal orders pending the execution of its own committal orders. If the Applicant had to follow this route, that would have to be done within the five days in which his committal had been ordered. However the Applicant cannot challenge the constitutionality of the CPA in so far as allows the conviction of a person accused of a crime of civil contempt of court without a trial being conducted and outside the provisions of the CPA, on a direct and urgent basis.

6.2. The constitutionality of the CPA is not a matter over which the Constitutional Court has primary jurisdiction in terms of section 167(4) of the Constitution. It must first be brought before the High Court. In simple terms, the Constitutional Court does not have immediate jurisdiction to entertain Part B of the present application.

6.3. It is also clear that the suspension of the execution of the imprisonment order is in the interest of justice and that the High Court may order such suspension in terms of section 173 to develop the law on the crime of civil contempt of court and taking into account the interests of justice.

7. Strictly speaking, the Commission's legal interest ended when it successfully obtained an order of committal against the Applicant. It cannot be a legal interest of the Commission to oppose proceedings, execution of the arrest and for the stay of the committal warrant, as opposed to its existence. In other words, the Commission's legal interest does not extend beyond what it has already achieved in the Constitutional Court. In the circumstances and to put

it mildly, it is rather bizarre that the only two parties without any direct legal interest in the relief sought should oppose the interim orders for the suspension of the committal orders.

8. Our Courts must be firm in dealing with crime but do not have as the ultimate judicial objective, the immediate execution of arrest and imprisonment orders – especially where those committal order are attacked on a basis that prima facie raises serious and legitimate constitutional grounds.

9. This takes us to the issue of whether the Applicant has made out a case for the suspension of the execution order pending the outcome of proceedings in this and the Constitutional Court. But before doing so, it is necessary to dispose of another issue relating to the *lis pendens* and *stare decisis* raised by the applicant.

JURISDICTION OF THE COURT

10. Section 171 of the Constitution provides that all courts function in terms of national legislation and their duties and procedures must be provided for in terms of national legislation. The Superior Court 10 of 2013 was promulgated to give effect to section 171 of the Constitution. Section 169 regulates the jurisdiction of the High Court. The High Court may decide any constitutional matter that 'only the Constitutional Court may decide ot is assigned by legislation.'

11. Section 172(2)(b) of the Constitution provides that a "court which makes an order of constitutional invalidity may grant a temporary interdict or other

temporary relief to a party, or may adjourn the proceedings, pending the decision of the Constitutional Court on the validity of that Act or conduct. Section 172(2)(d) says that any person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

12. Section 173 gives the Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own pocess, and to develop the common law, taking into account the interests of justice.

13. Those opposing the relief sought in this application submit that this Court does not have the power to suspend the execution of an order of the Constitutional Court pending the resolution of a matter before this and that Court. This Court is not being asked to interfere with the merits of the order of committal. All that it is asked is to suspend its execution for a time until the Applicant has exhausted the applications that he is entitlted to bring by law in this and the Constitutional Court.

14. The Applicant's objection of jurisdiction would have no merit if the order of suspension was in respect of an order granted by the High Court. They argue that only the Constitutional Court has jurisdiction to suspend its own orders. There is no constitutional or statutory prohibition that they rely on to bar this court from suspending the execution of the Constitutional Court's orders pending the outcome of this and the application before the Constitutional Court. But the Commission and HSF are wrong on the jurisdiction of this Court to adjudicate this matter for a number of reasons.

15. Firstly the circumstances of this case are described in the judgment of the Constitutional Court as extraordinary and exceptional in many respects, including the conviction and sentence of the Applicant for a crime of civil contempt for a period of fifteen months without resort to the Criminal Procedure Act. That observation is made in the minority judgment. If this conviction had been by the High Court after a trial, the High Court or the Constitutional Court would have the power to suspend the committal order pending the outcome of an appeal by the convicted person. The Applicant would be entitled to bail pending the outcome of his appeal to a higher court. In this case, the Applicant has no appeal against the Constitutional Court and therefore seek an order of suspension pending the rescission application – the only possible legal route for him to challenge his conviction and sentence.

16. Section 14(2) of the Superior Courts Act, for the hearing of a criminal case as a court of first instance, a court of a division must be constituted in the manner prescribed in the applicable law relating to the procedure in criminal matters. Although the crime of civil contempt is a crime for which a person may be convicted and imprisoned, this can be done by a court not constituted in the matter prescribed in the CPA as in this case. The Constitutional Court is not a criminal court but a court constituted in terms of the Constitution with wide appeal jurisdiction on constitutional matters. It does not have the jurisdiction to conduct a criminal trial as the lower courts but is the ultimate appeal court.

17. The Commission and the HSF do not submit that this Court has no jurisdiction to suspend the execution of the committal orders had those orders been granted by it or the Magistrates Court, pending the determination of Part B of

the Notice of Motion or even the determination of the rescission application before the Constitutional Court. The High Court would have jurisdiction to suspend its order of committal in terms of section 172(2)(b) of the Constitution. The objection to the High Court's jurisdiction is to the suspension of the committal orders of the Constitutional Court pending the determination of proceedings in the High Court and that Court.

18. This approach to jurisdiction amplifies the extraordinary nature of the Constitutional Court exercising its jurisdiction as a court of first and last instance in matters involving criminal proceedings. It also amplifies why the relief sought in Part B is critical for the equal application and protection of the Criminal procedure to all criminal matters as required in section 14(2) of the Superior Court Act. The Constitutional Court has itself made its plain why there is a higher threshold for approaching it as a court of first and last instance on any matters including constitutional matters. Even where the Constitutional Court has exclusive jurisdiction in matters referred to in section 167(4) of the Constitution, the Constitutional Court has constantly emphasized the benefits of the views of other courts in hearing those matters before it deals with them as a court of final appeal on constitutional matters. The rules for direct access to the Constitutional Court make it clear that such access must be exercised in the clearest of cases and not in all cases which involves the adjudication of constitutional issues.

19. A sensible approach – one that is consonant with the dignity jurisprudence of this country is to suspend the execution of a committal order – particularly

because of its implications on the dignity of the person involved – pending the resolution of the disputes that are pending in this and the Constitutional Court.

The nature of the proceedings

20. The approach taken by the respondents in respect of both the issue of jurisdiction and the merits seems to labour form two fatal mistakes in respect of:

20.1. the nature of the present proceedings; and

20.2. the applicable constitutional provisions.

21. Part A of this application relates to interim relief *pendent lite* to preserve or freeze the *status quo* pending the determination of the main dispute by the Constitutional Court.

22. The law of such interdicts is summarised in Chapter 6 of Pollak on Jurisdiction, which is attached hereto for the convenience of the court.

23. The relevant passage states that:

> ""*In the case of an interdict pendent lite it does not matter that the lis in question is before another court, even a foreign court, nor that the pending issue between the parties is subject to determination by a tribunal or body other than a court of law.*"[1]

[1] "Pollak on Jurisdiction" 2nd edition by Daivd Pistorius page 117

24. In the present case, it is clear that the act wihc is sought to be prohibited, ie the arrest and/or the incarceration, will take plce within the area of jurisdiction of this court.

25. Moreover, this court is n to called upon to determine the main rescission application so it is irrelevant htatr the rescission application is taking place in the Constitutional Court.

26. The best illuistration of this principle comes form trhe decision in *National Gambling Board v Premier of KZN*,[2] where the Constitutional Court unanimously held that:

> ""*In an application for an interim interdict the dispute is whether, applying the relevant legal requirements, the status quo should be preserved or restored pending the decision of the main dispute. At common law, a court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the status quo. It does not depend on whether it has the jurisdiction to decide the main dispute.*
>
> *Whether a High Court will have jurisdiction to grant interim relief pending a matter exclusively within this court's jurisdiction does not depend on the form or effect of the interim relief. It depends on the proper interpretation of the relevant provision and on the substance of the order; does it involve a final determination of the rights of the parties or does it affect such final determination? If it does not, the High Court will, depending on the provision that grants exclusive jurisdiction, have jurisdiction to grant interim relief.*"

[2] 2002 (2) SA 715 (CC) at paragraphs [49] and [50]

27. It follows, *a fortiori,* that in proceedings such as the present, where the mian relief does not even fall within the exclusive domain of the Constitutional Court, the jurisdiction of the High Court cannot be ousted.

28. Moreover, what is significant is that the Constitutional Court, in its wisdom, delegated the execution of the arrest order to the Minister of Police and the National Commissioner of Police. The High Court has jurisdiction over those parties. It is also common cause that it has territorial jurisdiction. In those circumstances, the High Court has jurisdiction over the matter. More importantly and because of the specialist nature of the issues of arrest and committal, the two opposing parties do not have the legal competence to force the state authorities on how and when to perform their constitutional tasks.

29. Lastly, the relief sought is not confined to the common law interdict but the applicant also seeks a suspension order in terms of section 172(1)(b) of the Constitution, based on the fact that the rescission application is essentially based on a declaration of constitutionality as pronounced by the minority judgtment.

30. The requirements for such a suspension order depend entirely on the just and equitable jurisdictidon of this Honourable Court,[3] read with section 172(2)(b), which deals with interim relief.

LIS PENDENS* and/or *STARE DECISIS

[3] *EFF v Gordhan* 2020 (8) BCLR 916 (CC) at paragraphs 113 and 114

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

32. It would therefore be improper for this Honourable Court to proceed without giving any legal effect to such directions. It would also offend protocol and the due deference which must be given to the apex court by all lower courts.

33. By grantig leave to have the application before it heard, the Constitutional Court has opened for the Applicant the door to have it revisit its orders of committal. The apex court has taken a preliminary view that the application should be heard as a matter of urgency. To order the immediate committal of the Applicant under these circumstances may result in a constitutiuonal violation that could have irreparable damage to the life and liberty of the Applicant but could ultimately bring the administration of justice into disrepute were the Constitutional Court to agree with the Applicant or even to vary its committal to prison to a suspended sentence after hearing the Applicant's case. This court cannot rule out that possibility without pre-empting the decision of the apex court. Nor is it permissible to determine the issue while it is pending before that court.

34. The further grounds on which the Commission and the HSF rely on to oppose the relief sought by the Applicant is that there are no reasonable prospects of the Constitutional Court revisiting its committal orders – by either varying them or overturning them altogether. This Court must be cautious not to delve into the merits of the application before the Constitutional Court. It must defer to that Court but create the opportunity by suspending the operation of the committal order. Granting a suspension order is also reasonable in light of

the directions of the Constitutional Court itself. This Court may only deal with whether the Applicant has made out a case for a suspension of the committal order pending the determination of its constitutional challenge to the CPA on the crime of civil contempt of court. On that too, this Court cannot decide the merits of that question. It determine whether the Applicant makes out a prima facie case for the relief sought in Part B.

35. Although the directions admittedly do not carry the force of an order, they must be given some effect and cannot be simply ignored or wished away.

TEST FOR RESCISSION UNDER RULE 42

36. The Commission's submission that no case for a rescission application in the Constitutional Court has been made out is wrong. First, the issue of whether or not the Applicant has made out a case for a rescission of the contempt of court and incarceration orders will be decided by the Constitutional Court itself – which has granted leave to have the matter heard by it on 12 July 2021. Secondly, based on the facts which the Commission appears to have deliberately omitted to mention to the Constitutional Court, a case for rescission has been made on the basis of incomplete facts. Thirdly, the application to the Constitutional Court was in itself an abuse of court intended to subvert the binding procedures of the Commissions Act and the Chairperson's rulings on my non-appearance – with the consequence that the crime of civil contempt of Court was not dealt with in terms of the CPA.

37. The following facts were not presented to the Court. They should have been presented by the Commission which was seeking to avoid relying on the provisions of the Commissions Act to seek direct access to the Constitutional

Court to enforce summons granted in terms of the Commissions Act. The following facts which were not presented in the Constitutional Court make out prima facie case for the rescission of the order of the Constitutional Court.

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

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

39. The Chairperson was unequivocal that the applicant's appearances at the Commission would be subject to his ruling above which made it clear that such scheduling would consider and be informed by the Applicant's medical team's

medical report. It appears that the Chairperson did not comply with his ruling. More importantly, it appears that the Chairperson did not disclose the scope of his order in so far as it is capable of being interpreted as the Applicant did – which is that his attendance at the Commission was to be determined once the Chairperson had met with the Applicant's medical team.

40. If it is true that the Chairperson of the Commission failed to inform the Constitutional Court about the Applicant's medical situation, it is possible that the Constitutional Court may revisit its committal orders by reference to that material fact, which was not taken into consideration.

41. The Applicant further alleges that the Commission did not present to the Constitutional Court the following facts;

41.1. The Commission's attitude towards the issue of the Applicant's review application especially whether it intended to oppose the application. This is because, there is evidence that while the Chairperson of the Commission has filed a notice to oppose, he has neither filed the rule 53 record and an answering affidavit. The two letters from the State Attorney disclose that the Chairperson has done nothing to ensure that the challenge to his impartiality is resolved to ensure that the Applicant is in a position to know his legal position in relation to appearing before him.

41.2. Having refused or failed to respond to the review application, it appears that the Chairperson's approach was to simply refuse to have his impartiality determined by the High Court but without expediting the resolution of the impartiality challenge instead embarked on highly

prejudicial procedural violations that should rightly be regarded as an abuse of power and the courts. They are the following:

41.2.1. First, the Chairperson publicly announced that he would invoke his powers under the Commissions Act to report the Applicant's alleged conduct as a criminal offense to the SAPS. That would be consistent with the procedure prescribed in the Commissions Act which is the controlling statute for Commissions of Inquiry.

41.2.2. Second, instead of complying with his rulings in relation to the Applicant's non-appearance at the Commission (in terms of the Commissions Act), the Chairperson invoked an extraordinary summary procedure for the enforcement of Commissions summons, with no reference to the Commissions Act.

41.2.3. Third, the Chairperson's decision to abandon his ruling to deal with the Applicant's non-appearance at the Commission in accordance with the procedure of the Commissions Act is in itself prima facie unlawful, irrational and violates the subsidiarity principle. Having decided to invoke the provisions of the Commissions Act to address

ther Applicant's failure to comply with the Commission summons, it is doubtful that the Chairperson was entitled to approach the Constitutional Court as a court of first and last instance on the grounds that he advanced therein.

42. In all the pleaded circumstances and as appears at ex *facie* the judgment, a *prima facie* cse for rescission is well made.

CONCLUSIONS ON THE HISTORICAL CONTEXT

43. Once more the conclusions do not bear out in the light of facts that were not disclosed to the Constitutional Court. We summarize them below as follows:

43.1. The Chairperson of the Commission ruled that he would meet with the Applicant's doctors to ascertain how to schedule his appearances before the Commission with due regards to such medical reports. He failed to comply with this ruling.

43.2. The Chairperson in complete disregard of his own ruling that he would meet the medical team of the Applicant to receive a medical report that would assist him in scheduling appearances, issued summons.

43.3. The Chairperson's handling of the Applicant's medical claims gave the Applicant a reasonable basis on which to approach the Court for a recusal application.

43.4. The Chairperson adjudicated the application and based his ruling on the statement that he had read in public disputing the Applicant's version of evidence.

43.5. The Chairperson of the Commission has simply ignored that review application – failing to file the rule 53 record as well as an answering affidavit. Having failed to respond to the review application, the Chairperson of the Commission, then issued summons for the Applicant to appear before the Commission. That was an unreasonable abuse of the Commissions' powers.

44. The omitted facts ground a reasonable basis on which the Constitutional Court may rescind its own judgment.

45. More importantly, it is clear on the facts above that the Constitutional Court may well have decided not to impose a custodial sentence had the Commission indicated to it that:

45.1. The Applicant had disclosed to it the existence of a medical condition. The Chairperson had made a ruling to meet with the Applicant's medical team to receive their medical report which would assist his scheduling of the Applicant's appearances.

45.2. The Commission Chairperson failed to meet with the Applicant's medical team.

45.3. The Commission Chairperson also failed to comply with its ruling in regards to the Commissions Act which he had said he would invoke to deal with the Applicant's non-appearance.

45.4. That the Commission had exhausted the prescribed statutory remedies of the Commissions Act and were coming directly to the Constitutional Court as a last resort;

CONCLUSIONS

46. The relief sought in these proceedings does not undermine the Constitutional Court's orders. It preserves them pending the determination of legitimate constitutional questions in this and the Constitutional Court. It is no longer our law that an accused person is sentenced to imprisonment without a trial.

47. In fact, the Applicant is entitled to be tried in terms of the CPA for the crime of contempt. That is what the Supreme Court of Appeal held in a judgment handed down after the Constitutional Court had handed down its orders in this case. In the judgment of Minister of Cooperative Governance and Traditional Affairs v De Beer and Another [2021] ZASCA 95 (1 July 2021) the Court had to deal with the issue of whether the Applicant in that case had committed the crime of contempt of court. The contemnor in that case had insulted the Court in the most crude manner in a letter to the court (as opposed to a situation where opinions were raised in the public domain as part and parcel of public discourse on judges and judgments). Mr de Beer and the LFB wrote a letter to the Registrar of the SCA to respond to an apology that had been tendered to him and the LFB. It is necessary to quote the insult to the court as set out in para117 of that judgment:

> "1. The email dated 17th instant received from the Chief Registrar, Ms Van der Merwe, which carried your answer to our letter dated 10th instant, refers.

2. After careful consideration of your official response, writer has decided to herewith inform you that the **entire Supreme Court of Appeal may stick its fictitious "apology" to us in its arse" (own emphasis added)**

3. As the leader of the institution, you have allowed the COVID-19 flimflam to take over the Court's judicial fucntionility and for it to desecrate the institution to the point bof pure codswallop which it is today – nothing but a mere extension of Government's narrative; a Court which had lost its independence and which has become incapable ofm protecting the Constitution of the Republic of South Africa and of protecting the very rights which the Constitution and Bill of Rights afford the people.

4. Let writer remind you, Madam President of the Court, that neither you nor anyone of your judicial colleagues are divine and the Court still belongs to the people of South Africa, and not the Government, which acts merely as their steward.

5. …

6. Ler God's water run God's acre.

48. The SCA found these remarks to constitute the crime of contempt. In paragraph 119 of the SCA judgment it held the following:

"119. The last written communication from Mr de Beer and the LFN is crude, gratituously insulting, clearly contemptuous and intended to denigrate this court. The Constitutional Court has most recently warned that unjustifiable defamatory and scurrilous utterances against judicial officers will not be tolerated. In the present circumstances there seems to us to be no alternative but to refer this judgment to the National Director of Public Prosecutions (the NDPP) for her attention. In doing so we are mindful that Mr de Beer is a layperson. However, even for a layperson the statements are beyond the pale and there is no excuse for his conduct or that of the LFN. The Registrar is directed to take the necessary steps to ensure that this judgment is brought to the attention of the NDPP.

49. The Applicant's case is more clear in its claim for a rescission of judgment. The conviction and sentence for contempt of court was not in accordance with the Commissions Act which sanctions the application of the CPA to a crime against the Commission. The sentence of the Constitutional Court was reached without a trial as the SCA did in the case referred above. This is what amplified the need to determine the constitutional challenge of the Applicant in Part B of the Notice of Motion.

50. In the circumstances, the application for the relief sought in Part A should be granted pending the determination of Part B and the Constitutional Court application.

COSTS

51. LKJLFSJJ

DC MPOFU SC

T MASUKU SC

NB BUTHELEZI

N XULU

Chambers, Johannesburg,
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6 JULY 2021