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

Case No: 4686/21P

In the matter between:

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

FOURTH AND FIFTH RESPONDENTS

HEADS OF ARGUMENT

INTRODUCTION

1. For three reasons, this Court should dismiss the application with costs. Firstly, there is no jurisdiction. Secondly, the Applicant has alternative remedies, at his disposal, which he has elected not to utilize. Third, the underlying application to the Constitutional Court for the rescission is

manifestly unmeritorious. It is premised on falsehoods, material non-disclosures and a manifest failure to meet the standard for rescission.

2. We shall start with the objection based on jurisdiction.

3. Before we do so, it is necessary to record the order sought by the Applicant. This application is concerned only with Part A. The relevant paragraphs in the Notice of Motion are 2.1 and 2.2.

   3.1 In paragraph 2.1, the Applicant seeks an order *"staying and or suspending the execution of the relevant orders in the aforementioned orders*", pending the application for rescission of judgment, which has been instituted before the Constitutional Court.

   3.2 Secondly, in paragraph 2.2 the applicant seeks an interdict against the First and Second Respondent "from executing the orders in paragraphs 4, 5 and 6 of the aforementioned judgment."

4. Thus, explicitly the application is about preventing the implementation of an order of the Constitutional Court. The question is whether it is permissible for the High Court to *"suspend the execution of an order of the Constitutional Court."* We submit that it is plain that it does not. We explain shortly why.

5. It is trite that jurisdiction must be decided upfront, as an anterior question, before the merits of the claim can be considered. The Constitutional Court has held:

"Where the jurisdiction of the court before which a review application is brought is contested, a ruling on this issue must precede all other orders. This is because a court must be competent to make whatever orders it issues. If a court lacks authority to make an order it grants, that order constitutes a nullity. Scarce judicial resources should not be wasted by engaging in fruitless exercises like making orders which cannot be enforced."[1]

THIS COURT HAS NO JURISDICTION

6. The relevant paragraphs of the order of the Constitutional Court are as follows:

6.1 Mr Zuma is sentenced to undergo 15 months imprisonment. (paragraph 4 of the order).

6.2 Mr Zuma is ordered to submit himself to the South African Police at Nkandla Police Station or Johannesburg Central Police Station within 5 calendar days from the date of this Order. The Station Commander or other officer in charge of the Police station relevant is to ensure that he is immediately delivered to a Correctional Centre to commence serving the sentence of 15 months imprisonment. (paragraph 5 of the order)

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[1] Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition Commission of South Africa v Waco Africa (Pty) Limited and Others (CCT158/18; CCT179/18; CT218/18) [2020] ZACC 2; 2020 (4) BCLR 429 (CC) at para 200.

6.3 In the event of his failure to submit himself, the Minister of Police and the National Commissioner of the South African Police should *"within 3 calendar days*" take the appropriate steps to ensure that Mr Zuma is delivered to a Correctional Centre in order to commence serving the sentence of 15 months imprisonment. (paragraph 6 of the order)

7. There is no application to rescind paragraph 3 of the Order, in terms of which Mr Zuma was found to be guilty of contempt of Court.

8. The Constitution establishes the hierarchy of courts. At the apex is the Constitutional Court. In terms of section 167(3)(1) the Constitutional Court *"is the highest Court of the* Republic". It is also the final Court of appeal.

9. Section 173 of the Constitution grants the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa *"the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interest of justice.*".

10. This section does not grant the High Court any powers to suspend the execution of a judgment or decision of the Constitutional Court. Rather the High Court has powers to suspend its own decisions.

11. In *Molaudzi*[2] the Constitutional Court held:

[2] *Molaudzi v S* 2015 (2) SACR 341 (CC).

"[34] The power in section 173 must be used sparingly otherwise there would be legal uncertainty and potential chaos. In addition, a court cannot use this power to assume jurisdiction that it does not otherwise have." [Underlining added].

12. A High Court is also precluded from interfering in the affairs of lower courts. In *Oosthuizen v Road Accident Fund* (258/10) [2011] ZASCA 118; 2011 (6) SA 31 (SCA) the Supreme Court of Appeal held:

> *"[17] A court's inherent power to regulate its own process is not unlimited. It does not extend to the assumption of jurisdiction which it does not otherwise have. In this regard see National Union of Metal Workers of South Africa & others v Fry's Metal (Pty) Ltd where this Court stated that:*
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> > *'While it is true that this Court's inherent power to protect and regulate its own process is not unlimited – it does not, for instance, "extend to the assumption of jurisdiction not conferred upon it by statute". . . .'*
>
> *[18] Section 173 does not give any of the courts mentioned therein, including the high court, carte blanche to meddle or interfere in the affairs of inferior courts. Historically, the high courts have always had supervisory powers over the magistrates' courts by way of for example review in terms of s 24 of the Supreme Court Act 59 of 1959 and s 304 of the Criminal Procedure Act 51 of 1977. Moreover, a high court may only act in respect of matters over which it already has jurisdiction. A high court can therefore not stray beyond the compass of s 173 by assuming powers it does not have.*
>
> *[19] Courts have exercised their inherent jurisdiction when justice required them to do so. In this regard the following dictum*

by Botha J in Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis & another[6] *should be noted.*

> *'I would sound a word of caution generally in regard to the exercise of the Court's inherent power to regulate procedure. Obviously, I think, such inherent power will not be exercised as a matter of course. The Rules are there to regulate the practice and procedure of the Court in general terms and strong grounds would have to be advanced, in my view, to persuade the Court to act outside the powers provided for specifically in the Rules. Its inherent power, in other words, is something that will be exercised sparingly. As has been said in the cases quoted earlier, I think that the Court will exercise an inherent jurisdiction whenever justice requires that it should do so. I shall not attempt a definition of the concept of justice in this context. I shall simply say that, as I see the position, the Court will only come to the assistance of an applicant outside the provisions of the Rules when the Court can be satisfied that justice cannot be properly done unless relief is granted to the applicant.'*

This dictum must be read alongside what has been stated above. A high court can only act as described in this dictum when it already has jurisdiction over the case."

13. Notably, section 172(1)(b) does not grant the High Court powers to suspend the operation of judgments of the Constitutional Court. In its plain language it provides that when deciding a constitutional matter *"within its power*", a Court *"may make an order that is just and equitable*". Justice and equity do not grant the High Court the power to regulate the enforcement of judgments of the Constitutional Court.

14. The applicant's argument is that the High Court has jurisdiction to grant interim relief where a matter is within the exclusive jurisdiction of the Constitutional Court. This is an overstatement. The judgment in *United Democratic Movement v President of the RSA and others*[3] did not make that ruling. It held:

> *"A high court has jurisdiction to grant interim relief designed to maintain the status quo or to prevent a violation of a constitutional right where legislation that is alleged to be unconstitutional in itself, or through action it is reasonably feared might cause irreparable harm of a serious nature."*

15. This is clearly inapposite. This cannot be compared with an instance where the High Court suspends the enforcement of a judgment of the Constitutional Court. This Court lacks jurisdiction to hear this matter. The application should be dismissed.

AN ALTERNATIVE REMEDY IS AVAILABLE TO THE APPLICANT

16. The applicant may approach the Constitutional Court urgently in terms of Rule 12 of the Constitutional Court Rules. In that event, the Chief Justice *"may dispense with the forms and service provided for*" and give directions as to how the matter would be dealt with.

17. The Constitutional Court clearly has the power to suspend the execution of its own orders, which it must exercise with due regard to the interests of justice.

[3] At para 32.

18. In various contexts, the Constitutional Court has engaged with applications for extensions or suspensions of the operation of its own orders.[4]

19. The primary factor which the Constitutional Court takes into account whether or not to extend or temporarily suspend the operation of its order is whether it is in the interest of justice to do so. Its powers derive from sections 172(1)(b), and 173 of the Constitution.

20. The applicant has an alternative remedy. He is entitled to approach the Constitutional Court for a suspension of the judgment. If he does so, he will have to satisfy the Court of a real and substantial injustice. But he has not done so.

21. The applicant has been expressly invited by the Fourth and Fifth Respondents to approach the Constitutional Court. He has not done so. He cannot complain if this application is dismissed for lack of jurisdiction, bearing in mind his election in these proceedings to approach the wrong forum.

22. There is a reference in the replying affidavit to the latter written by the South African Police Service to the Constitutional Court in which it is intimated that the police would rather await the outcome of this application and the rescission application before deciding whether or not to effect the arrest on the applicant. This letter is not germane to this

[4] See for example: *Minister of Justice v Ntuli* 1997 (3) SA 772 (CC); *Sibiya v Director of Public Prosecutions, Johannesburg High Court* 2006 (2) BCLR 293 (CC); *Ex Parte Minister of Social Development* 2006 (4) SA 309 (CC); and *Teddy Bear Clinic for Abused Children v Minister of Justice & Constitutional Development* 2014 (1) SACR 327 (CC).

application. It reflects only the views of the police ministry. The police cannot suspend the operation of an order of the Constitutional Court.

THE APPLICANT REMAINS IN CONTEMPT

The duty to comply is not suspended

23. The application should be dismissed because the applicant is under a duty to comply with the order of the Constitutional Court. The mere institution of this application does not absolve him from this duty.

Pending rescission does not suspend duty to comply

24. It is clear that an order of a court is not suspended pending rescission. A court order is automatically suspended only where an application for leave to appeal has been instituted. The judgment of Meyer J in *Erstwhile Tenants of Williston Court & Another v Lewray Investments (Pty) Ltd & Another*[5] held the following at paragraphs 18 to 20:

> *"The provisions of section 18 of the Superior Courts Act must be interpreted in accordance with the established principles of interpretation … contextually read, I am of the view that had it been the intention of the legislature for the operation and execution of a decision which is the subject of an application for rescission also to be automatically suspended, then such decision would have been expressly included in section 18(1). The legislature would have expressed its intention to include such decision in clear and unambiguous language.*

[5] *Erstwhile Tenants of Williston Court & Another v Lewray Investments (Pty) Ltd & Another* 2016 (6) SA 466 (GJ)

The contrary interpretation would result in the absurdity that the filing of any unmeritorious application for rescission could fail the operation and execution of a decision which is the subject of such application … But a person against whom the decision which if the subject of an application for rescission was given can always approach a Court under Rule 45A to suspend its execution pending the finalization of an application for rescission. …

The Superior Courts Act commenced on 23 August 2013. Its section 18 only provides for the automatic suspension of the operation and execution of a decision pending an application for leave to appeal. No other provision of the Superior Courts Act provides for the automatic suspension of the operation and execution of a decision which is the subject of an application to rescind, correct, review or vary an order of Court. There is also nothing which indicates an intention on the part of the legislature to broaden the automatic suspension of the operation and execution of decisions beyond those included in section 18. A Court can always be approached under Rule 45A to suspend the operation and execution of orders not included in section 18. But their operation and execution are not automatically suspended."

25. For good reasons, an order of the highest court must be enforced:

"The rule of law and legal certainty will be compromised if the finality of a court order is in doubt and can be revisited in a substantive way. The administration of justice will also be

adversely affected if parties are free to continuously approach courts on multiple occasions in the same matter."[6]

Pending interdict does not suspend duty to comply

26. The applicant has sought to interdict the exercise of power by the First and Second Respondent, as ordered by the Constitutional Court. But he has omitted to deal with the fact that the first part of the order directs him to submit himself. He has refused. He has accordingly taken the law unto his own hands. He has elected, once again, to disobey the order of the Constitutional Court, by not submitting himself to the police station, as ordered.

27. The time limit by which the applicant should have handed himself over to the Police has lapsed. Merely instituting an application does not suspend the order of the Constitutional Court. In this case, there is no order before the Constitutional Court for the suspension of anything. This is so because a textual reading of Constitutional Court order 6 reveals that it was predicated on the Applicant's non-compliance with what is ordered in paragraph 5. In other words, the order is paragraph 6 becomes operational *"[in] the event that Mr Jacob Gedleyihlekisa Zuma does not submit himself to the South African Police Service as required by paragraph 5. . .*"

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[6] *Molaudzi v S* (CCT42/15) [2015] ZACC 20; 2015 (8) BCLR 904 (CC) at para 37.

28. The present case before the High Court does not entitle the applicant to refuse to comply.

29. The legal position is set out in *City of Tshwane Metropolitan Municipality v Afriforum & Another*[7], where the Constitutional Court stated:

> *"It needs to be stated categorically, that no aspect of our law requires of any entity or person to desist from implementing an apparently lawful decision simply because an application, that might even be dismissed, has been launched to hopefully stall that implementation. Any decision to that effect lacks a sound jurisprudential basis and is not part of our law. It is a restraining order itself, as opposed to the sheer hope or fear of one being granted, that can in law restrain. To suggest otherwise, reduces the actual rant of an interdict to a superfluity*".

30. Similarly, as noted by, Meyer J final judgments can be frustrated by *"unmeritorious rescission applications*". In this present matter, the rescission application is being prosecuted before a wrong forum – this is a fundamental error in the approach of Mr Zuma.

31. Mr Zuma, was never entitled to refuse to submit himself to the Police. Submitting himself, would not disentitle him to pursue his rescission application, or any bail application in terms of the Criminal Procedure

[7] *City of Tshwane Metropolitan Municipality v Afriforum & Another* 2016 (6) SA 279 (CC) at para 74.

Act 51 of 1977. But he has refused to do so. His refusal is a further example of contempt of Court.

32. While the *City of Tshwane* judgment was concerned with enforcement of administrative decisions, the aggravation in this case is that it is concerned with judgments of the Constitutional Court. Not only is Mr Zuma's conduct aggravated contempt, it is also a direct breach of the country's fundamental law.

33. Section 165 of the Constitution deals with judicial authority.

34. In terms of section 165(3) it is clear *"that no person…may interfere with the functioning of the Courts.*" Mr Zuma's deliberate refusal to submit himself to the police in terms of the Constitutional Court order is an interference with the functioning of the Courts. If court orders can be disobeyed, at will and without consequences, the Constitution will be reduced into a mere paper tiger.

35. Section 165(5) of the Constitution states that *"an order or decision issued by a court binds all persons to whom and organs of state to which it applies.*"

36. By his conduct, Mr Zuma has placed himself above judicial authority. He has defied the Constitution.

Remedy for the ongoing contempt is a dismissal

37. Since the applicant remains in ongoing contempt, the application should be dismissed for this reason. Our law provides a clear remedy

for a party in the position of Mr Zuma who approaches the court to legitimate his contempt of court. So long as the contempt continues, it is a bar to the proper administration of justice:

> "… *I am of opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impeded the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."*[8] *(own emphasis)*

38. This has been endorsed by the Constitutional Court, which held:

> *"[33] Notwithstanding the existence or otherwise of any agreement, this was not an adequate and proper reason for non-compliance with the August Order. Given the serious nature of the conduct that was conceded, it is hardly acceptable or appropriate for this Court to engage in speculation or an oral contestation from counsel in respect of such a significant issue. Further, considering the relief that the applicant was seeking, he should have proceeded with greater care in ensuring that he was in compliance with the August Order. As mentioned earlier, this matter does not deal with formal contempt proceedings and the requirement of purging related contempt. However, the principle need to preserve the integrity of justice is present here, and there is an undoubted need to assess whether conduct that could compromise that integrity is remedied.*
>
> *[34] Under the circumstances and for the reasons given, I conclude that on what is before us, there is no evidence that the applicant had remedied his conduct. This conclusion then leads to the question as to whether the interests of justice are served by allowing the applicant to ventilate his argument in respect of the merits of the appeal.*

[8] *Byliefeldt v Redpath* 1982 (1) SA 702 (A)

> *[35] Those interests will not be best served and will be undermined if the applicant is allowed to proceed and deal with the merits of the appeal in the absence of him remedying his conduct by complying with the August Order. It will dilute the potency of the judicial authority and it will send a chilling message to litigants that orders of court may well be ignored with no consequence. At the same time, it will signal to those who are the beneficiaries of such orders that their interests may be secondary and that the value and certainty that a court order brings counts for little. For all these reasons, and in particular that the subject matter of this litigation involves the best interests of the child, the interests of justice strongly militate against the applicant's pursuing his application."*[9] [Underlining added].

39. The applicant does not intend to comply with the order. He does challenge the finding of contempt of court. That means he will remain in contempt of court. A party who is in contempt, but explicitly states that he shall not comply should not be heard by a court.

40. For this reason too, the application should be dismissed.

41. The rescission case is wholly without merit. The facts set out in the answering affidavit should dispel any notion that Mr Zuma was unfairly treated at any stage. There is simply no basis for any claim about a prima facie right in relation to Part B.

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[9] S S v V V S (CCT247/16) [2018] ZACC 5; 2018 (6) BCLR 671 (CC)

THE APPLICANT'S UNMERITORIOUS CASE

Part B: Rescission before the Constitutional Court

42. The application before this Court must be seen for what it is – this is an application for an order from this Court, to legitimate the applicant's continued contempt of and disregard for the court's authority.

43. In his founding affidavit in these proceedings, the applicant states that his rescission application in the Constitutional Court is instituted in terms of rule 42 of the Uniform Rules of Court, read with rule 29 of the Constitutional Court rules. Rule 42 permits a Court to rescind its own order if it was sought and obtained in error and in the absence of the person affected by the order.

44. The word 'absence' in the rule does not mean someone who elected not to take part in the court proceedings.

45. The applicant would be entitled to the rescission order if he could show it was obtained in his ignorance.[10] The SCA in *Freedom Stationary* posited the principles thus:

> *"An applicant or plaintiff would be procedurally entitled to an order when all affected parties were adequately notified of the relief that may be granted in their absence*." [Underlining added].

46. The applicant could never seriously allege that the orders sought to be rescinded were obtained without his knowledge. On his version, the

[10] *Freedom Stationery (Pty) Ltd v Hassam* 2019 (4) SA 459 (SCA) at 467G–H.

applicant was aware of all the proceedings before this Court, that ultimately led to the order for his imprisonment. Notwithstanding his knowledge of the orders that were being sought against him, he remained steadfast in his defiance.

47. His admission that he had knowledge of the proceedings is consistent with the evidence. The Commission instituted an application in the Constitutional Court in December 2020, wherein it sought an order directing the applicant to comply with its summons and appear before in in January and February 2021.[11] The applicant was served with those papers. Instead of filing answering papers or an explanatory affidavit before the Constitutional Court, his attorneys of record (on his instruction) wrote a letter to the Registrar of the Constitutional Court, which read as follows:

> "*We are instructed by our client, President JG Zuma that he will not be participating in these proceedings <u>at all</u>.*"[12] [Underlining added].

48. The Constitutional Court's judgment was handed down on 28 January 2021. It ordered the applicant to appear before the Commission. After delivery of that judgment, the applicant's attorneys, and no doubt, on his instruction, addressed a letter to the Commission advising, "*as a matter of courtesy*" that the applicant would not present himself at the Commission. This was notwithstanding an order of the Constitutional Court which required him to present himself to the Commission.

[11] Commission's AA, para 27.
[12] Annexure AA6 to the Commission's answering affidavit.

49. This led the Commission to an application before the Constitutional Court, wherein it sought an order declaring that the applicant was in contempt and court, and seeking his committal to prison for a period of time. As a consequence of that application, the Constitutional Court issued directions as follows:

49.1 1 March 2021, wherein it requested the applicant to file an answering affidavit (if any), and written arguments by certain dates stipulated in those directions. The application did not file either of those documents.[13]

49.2 19 March 2021, inviting the applicant to respond to an affidavit that was filed by the Helen Suzman Foundation. The affidavit did not respond to those allegations.

49.3 6 April 2021, giving the applicant a further opportunity and inviting him to made submissions to the Court of (essentially) what the thought would be an appropriate sanction, in the event that he was to be found in contempt of Court.

50. The 6 April invitation was an opportunity for the applicant to actually respond to the Court in the manner that he was invited to do, and place before the Court his concerns, including the concerns now raised in his

[13] Commission's AA, para 47.

replying affidavit.[14] This, he did not do. Instead, he addressed a 21 page letter to the Court. The upshot of that letter[15] was this:

> "*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."* [Underlining added].

51. Having made that election, all be in on "*conscientious"* grounds, disentitled him from seeking the rescission of the Constitutional Court's order, on any basis.

52. There is something deeply troubling about the applicant's attitude. He has, on his own version, made elections not to participate in proceedings before the Constitutional Court, because he did not deem those proceedings legitimate. Instead of submitting to the Court's authority and putting his case before it, he chose to be a law unto himself. He has now turned to courts to assist him: (a) in the enterprise of being) a law unto himself, and (b) continue to threaten South Africa's *grundnorm.*

Part B: Challenge to Criminal Procedure Act, 1977

53. The applicant has protested about his Part B which relates to the intended application to challenge the Criminal Procedure Act 51 of

[14] RA, paras 31 – 32.
[15] Annexure AA8.1 to the Commission's AA.

1977 for not providing for a trial before sentencing in contempt cases. This argument is without merit. The procedure for contempt has been debated by our courts. It has been found to be compatible with the Constitution. In *Fakie NO v CCII Systems (Pty) Ltd*[16] the Court conducted an extensive analysis of the law of contempt, the procedure followed and the provisions of the Constitution and ultimately decided that the procedure is constitutional:

> *"There can be no reason why these protections should not apply also where a civil applicant seeks an alleged contemnor's committal to prison as punishment for non-compliance. This is not because the respondent in such an application must inevitably be regarded as an 'accused person' for the purposes of s 35 of the Bill of Rights. On the contrary, with respect to the careful reasoning in the Eastern Cape decisions, it does not seem correct to me to insist that such a respondent falls or fits within s 35. Section 12 of the Bill of Rights grants those who are not accused of any offence the right to freedom and security of the person, which includes the right not only 'not to be detained without trial',* ***35*** *but 'not to be deprived of freedom arbitrarily or without just cause'.* ***36*** *This provision affords both substantive and procedural protection,* ***37*** *and an application for committal for contempt must avoid infringing it.*
>
> *And in interpreting the ambit of the right's procedural aspect, it seems to me entirely appropriate to regard the position of a respondent in punitive committal proceedings as closely analogous to that of an accused person; and therefore, in determining whether the relief can be granted without violating s 12, to afford the respondent such substantially similar protections as are appropriate*

[16] *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

to motion proceedings. For these reasons, the criminal standard of proof is appropriate also here."[17]

CONCLUSION

54. We have argued that the application for a stay ought to be dismissed, for three reasons. The first is that this Court does not have jurisdiction to entertain it. The second is that the applicant does not satisfy the standard for an interim interdict. This is so for two reasons:

54.1 there is an alternative remedy available to him; that of approaching the Constitutional Court under rule 12 of the Rules of the Constitutional Court.

54.2 the balance of convenience does not favour the granting of this application. Stated otherwise, it would be harmful to the rule of law and the constitutional order (that this Court ought to protect), for the court to permit itself to be used to give legitimacy to the applicant's brazen disregard of the courts and their authority.

54.3 The applicant's concerns about his health are not supported by any evidence, whatsoever. It is simply not possible to work out from the papers filed by the applicant whether in fact there will

[17] At para 24 and 25. See too: *S v Mamabolo* (CCT 44/00) [2001] ZACC 17; 2001 (3) SA 409 (CC).

be harm arising from his incarceration, the nature of such harm and the extent to which it would be irreparable.

55. The third reason is that seen within its broader context (the rescission application), this application is void of any merit.

56. The application stands to be dismissed with costs.

TEMBEKA NGCUKAITOBI SC
NYOKO MUVANGUA
Chambers, Sandton
6 July 2021

AUTHORITIES

1. *Byliefeldt v Redpath* 1982 (1) SA 702 (A)
2. *City of Tshwane Metropolitan Municipality v Afriforum & Another* 2016 (6) SA 279 (CC)
3. *Erstwhile Tenants of Williston Court & Another v Lewray Investments (Pty) Ltd & Another* 2016 (6) SA 466 (GJ)
4. *Ex Parte Minister of Social Development* 2006 (4) SA 309 (CC)
5. *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).
6. *Freedom Stationery (Pty) Ltd v Hassam* 2019 (4) SA 459 (SCA)
7. *Minister of Justice v Ntuli* 1997 (3) SA 772 (CC);
8. *Molaudzi v S* 2015 (2) SACR 341 (CC)
9. *S v Mamabolo* (CCT 44/00) [2001] ZACC 17; 2001 (3) SA 409 (CC)
10. S S v V V S (CCT247/16) [2018] ZACC 5; 2018 (6) BCLR 671 (CC)
11. *Sibiya v Director of Public Prosecutions, Johannesburg High Court* 2006 (2) BCLR 293 (CC);
12. *Teddy Bear Clinic for Abused Children v Minister of Justice & Constitutional Development* 2014 (1) SACR 327 (CC)