IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 52/21

In the application for admission as *amicus curiae* of:

COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION	Applicant

In re:

JACOB GEDLEYIHLEKISA ZUMA	Applicant

and

THE COMMISSION OF INQUIRY INTO STATE CAPTURE, FRAUD AND CORRUPTION IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	First Respondent
RAYMOND MNYAMEZELI ZONDO NO.	Second Respondent
THE MINISTER OF POLICE	Third Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fourth Respondent
HELEN SUZMAN FOUNDATION	Fifth Respondent

FILING NOTICE

TAKE NOTICE THAT the Council for the Advancement of the South African Constitution ("**CASAC**") presents herewith for service and filing –

CASAC's written submissions.

DATED at **JOHANNESBURG** on this the **9th** day of **JULY 2021**.

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CASAC'S WRITTEN SUBMISSIONS

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INTRODUCTION AND OVERVIEW

1 Rescission is rarely sought and is granted only in the narrowest of circumstances to cure an injustice that would otherwise result. A party who was absent from proceedings may gain entry to re-do the litigation where they were excluded from it through no fault of their own and with good reason. But only a final decision of a court that contains an obvious ambiguity or error or arose from a mutual mistake may be corrected.

2 If rescission were to become common and frequent, then it is the finality of litigation that would become rare and be delayed.

3 The risk in this application for the rule of law is that finalised disputes are permitted to reanimate.

3.1 If this application succeeds in expanding the circumstances in which rescission is granted, finalised disputes would be exhumed and the losing side would seek to resuscitate arguments.

3.2 Rescission would be sought of every decision made by our courts in a litigation. An interlocutory decision could be revisited, further delaying finalisation of our courts' consideration of the merits of a litigation.

3.3 Rescission would be interposed before -- and after -- a leave to appeal application regarding a judgment of the merits of a dispute. All of this would increase parties' costs and waste judicial resources.

4 The harm done to the rule of law will be counted in more than time, costs and judicial resources. The rule of law rests on the principle of finality. Certainty and

respect for a judicial decision are undermined if opportunities, in addition to existing appeal rights, are created to reconsider its merits. Compliance with a final decision will be deferred and uncertainty will flourish. The foundations of the rule of law will be eroded.

FACTUAL BACKGROUND

5 On 29 June 2021, this Court handed down a final judgment in which it found that former President Jacob Zuma ("**Mr Zuma**") had acted in contempt of its order, dated 28 January 2021, compelling him to appear and give evidence before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("**Commission**"), on dates determined by it.[1]

6 Following an application for committal by the Commission and a hearing on 25 March 2021, this Court held that the appropriate sanction was that Mr Zuma is sentenced to 15 months committal and ordered to surrender himself to the South African Police Services within 5 calendar days of the order.[2] Despite being directed to hand himself over by Sunday, 4 July 2021 Mr Zuma ultimately only did so on Wednesday, 7 July 2021 at the eleventh hour.

7 On Friday, 2 July 2021 and before handing himself over, Mr Zuma launched an urgent application, styled as a rescission application in terms of Rule 42 of the Uniform Rules of Court read with Rule 29 of the Constitutional Court Rules, 2003

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[1] *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* (CCT 52/21) [2021] ZACC 18 at para 3 of the Order.

[2] Above at para 4 of the Order.

("**Rules**"). He seeks the rescission of paragraphs 3 and 4 of this Court's order. He also seeks that paragraphs 3, 4, 5 and 6 of this Court's order be set aside.[3]

8 These written submissions are prepared on behalf of the Council for the Advancement of the South African Constitution ("**CASAC**"). These written submissions limit themselves to the following three discrete arguments regarding rescission and its relationship with the rule of law:

8.1 Firstly, CASAC contends that the rule of law requires the finality of judgments. Legal certainty and the credibility of the legal system depend on parties' acceptance of judgments as final and to comport their conduct to the pronounced outcome. This is true even if there may be grounds on which to disagree with the Court's finding – such as where there is a dissenting minority view expressed. The rule of law is undermined when a litigant, who (i) had ample opportunity to ventilate any grounds of opposition or defences during the course of litigation, and (ii) expressly elected not to participate in proceedings on legal advice, then brings a rescission application upon receipt of an unfavourable and final judgment. CASAC argues that this Court should not permit the distortion of the rare remedy of rescission, in the manner that the applicant in these proceedings seeks to do. The approach advanced by Mr Zuma in these circumstances destabilises the administration of justice by introducing persistent uncertainty into the legal system, which in turn undermines the rule of law. Altering the law of rescission to permit it to be sought to revisit

[3] Notice of Application p 1.

the merits of a litigation as a disguised appeal would wreak havoc on our legal system.[4]

8.2 Secondly, that the purpose of Rule 42 is to assist litigants who have suffered injustice through no fault of their own. It is neither a backdoor appeal nor a tactic to avoid the enforcement of a court order.[5]

8.3 Thirdly, that the rule of law, and credibility of the legal system, would be undermined if a Court could not consider relevant public statements or conduct by a litigant where these directly contradict a version placed before this Court on oath. This power stems not only from the power of this Court to regulate its own processes (including the use of contempt proceedings) but is expressly provided for in law.[6]

CASAC'S INTEREST AND ROLE AS AMICUS CURIAE

9 CASAC is committed to advance the South African Constitution to ensure democratic politics and the transformation of our society. Its interest in these proceedings stems from its mandate and its lengthy involvement in the establishment and workings of the Commission, and its earlier involvement in this contempt litigation before this Court. CASAC's role and interests are discussed in detail in its founding affidavit in the application for admission as an

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4 CASAC Founding Affidavit p 5 para 11.1.

5 CASAC Founding Affidavit p 5 para 11.2.

6 CASAC Founding Affidavit p 5 para 11.3.

amicus curiae.[7] It also seeks leave to make limited oral submissions at the hearing of this application, as set out in its Notice of Motion.

FINALITY IN LAW IS CRITICAL TO THE RULE OF LAW

Mr Zuma's rescission application undermines the principle of finality

10 The rule of law demands respect for the principle of finality.

10.1 Litigation flows in one direction through the canals constructed by our rules of procedure to a point of finality.

10.2 From the initiation of litigation, that course travels past opportunities to dispute the choice of forum, joinder of parties, service and formulation of pleadings, evidence supporting the cause of action and, finally, arrives at the merits of the dispute.

10.3 The parties to the litigation chart their course at each point on that journey. Parties make choices that determine the nature, scope and design of the litigation. These cumulative choices determine what is before the courts for determination. The rule of law demands recognition of the significance of each choice and respect for each election made by a litigant.

10.4 Once the court of first instance has made its determination of the dispute, it has then completed its function. It is *functus officio* ("having performed its office").

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[7] CASAC Founding Affidavit p 6 paras 12 – 18.

10.5 A disappointed litigant may then choose to pursue an available appeal. The court of first instance relinquishes its responsibility for the dispute and passes it on to the appellate courts.

10.6 Once this litigation course reaches its end -- once the highest court in our appellate hierarchy that has entertained an appeal has pronounced on a matter -- the litigation is finalised.

10.7 That last decision is the final word on the dispute. The losing side may disagree with the final outcome, but it must accept that outcome and comply with it, or else the rule of law is weakened.

10.8 The losing side cannot seek to turn back the tide of the litigation to an earlier point where it could have made a different strategic choice that could have altered the course or outcome of the litigation.

10.9 A litigation remains finalised even if there is a minority dissenting view expressed in a final judgment of an appellate court. The rule of law recognises only the majority view as the pronouncement of the state of the law and its determination of a dispute is the outcome of that dispute. The recordal of a dissenting view, and the vigorous engagement with it by the majority view, enriches our jurisprudence, but leaves the outcome undisturbed. It does not dilute the potency or finality of the order.

11 Legal certainty is another essential element of the rule of law.[8] It too is promoted by the doctrines of *res judicata* and *functus officio*. This Court explained the

[8] *Mighty Solutions CC t/a Orlando Service Station v Engen Petroleum* Ltd [2015] ZACC 34; 2016 (1) SA 621 (CC); 2016 (1) BCLR 28 (CC) at para 36: “Furthermore, legal certainty is essential for the rule of law – a constitutional value.”

importance of both finality and certainty in *Zondi v MEC Traditional and Local Government Affairs*[9]:

> *"Under common law the general rule is that a Judge has no authority to amend his or her own final order. The rationale for this principle is twofold. In the first place a Judge who has given a final order is* functus officio*. Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases. The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order."* *(own emphasis added)*

12 More recently in *Molaudzi*, this Court held that "*the underlying rationale of the doctrine of* res judicata *is to give effect to the finality of judgments; and an attempt to limit needless litigation and ensure certainty on matters that have been decided by the courts*".[10]

13 Expanding the circumstances in which rescission is granted undermines and erodes these foundations of our litigation procedures and of the rule of law.

The potential for abuse of process

14 Whilst the general rule in our law is that an order of court stands as valid and effective[11], exceptions exist. Rescission is an exceptional remedy granted on narrow grounds and in a limited set of circumstances. It is permissible only in

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9 [2004] ZACC 19; 2006 (3) SA 1 (CC); 2005 (4) BCLR 347 at para 28.

10 *Molaudzi v S* [2015] ZACC 20; 2015 (8) BCLR 904 (CC); 2015 (2) SACR 341 (CC) at para 16.

11 *Clipsal Australia (Pty) Ltd v GAP Distributors (Pty) Ltd* 2009 (3) SA 305 (W) at 311I-313E; *Colverwell v Beira* 1992 (4) SA 490(W) at 494A-C; *Bezuidenhout v Patensie Sitrus Befeerdeed Bpk* 2001 (2) SA 224 (E) at 229B-C.

the limited case of a judgment obtained by fraud, mistake of law or erroneous default.[12]

15 To succeed in his application, Mr Zuma must bring himself within the narrow grounds set out in Rule 42. But Mr Zuma is not an aggrieved litigant who, through no wilful error on his part, obtained an unfavourable outcome in this Court.[13] He is, as numerous judgments have stated, the author of his own misery.[14]

16 We submit that regret at the outcome of a deliberate legal strategy of indifference to known and ongoing litigation does not normally create grounds for rescission, and that the available grounds of rescission ought not to be expanded to accommodate these circumstances.

16.1 Mr Zuma's rescission application offers a belated answer to the merits of the contempt case made against him by the Commission, rather than to identify any errors or mistakes that satisfy the requirements of a valid rescission. His founding affidavit in this application, although styled in the form of a rescission, seeks to advance defences and arguments that have been available to him for all of the months during which the contempt proceedings were litigated before this Court.[15]

17 This, CASAC contends, is an abuse of court procedure for a purpose outside of that intended for the rule. To permit it here is to permit every other litigant to

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[12] *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape* [2003] ZASCA 36; [2003] 2 All SA 113 (SCA) at para 4.

[13] CASAC Founding Affidavit p 11 para 23.

[14] *Zuma v Office of the Public Protector and Others* [2020] ZASCA 138 at para 40.

[15] Zuma Founding Affidavit p 29 paras 73 – 94.

return to every other court to revisit every other final judgment *albeit* with different legal strategies. This would inundate the courts' rolls with unmeritorious and frivolous applications to re-litigate the merits of decided matters. [16]

Lack of certainty affects the status of litigants

18 Not only does a threat to finality risk overwhelming the courts, but it also brings prolonged uncertainty as to the status of the parties to the litigation. Litigants approach our courts to receive timely clarity regarding their legal rights and obligations. And once that clarity has been finally established, to arrange their affairs accordingly.[17]

19 The confusion wrought by the mere setting-down of this application[18] is a forecast of what would follow throughout our court system if rescission were made more readily-available by this Court. This application presents an opportunity for this Court to emphasise to litigants that rescission is not there for the asking, the requirements of Rule 42 must be met.

20 One need only consider routine disputes concerning nationality, divorces and curatorships, breaches of contract or delictual claims. Were this Court to delay finality by expanding the opportunities for rescission in litigation, the result would be further delays on the necessary final determination of these important questions of status and legal entitlement.

21 This is highly undesirable.

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[16] CASAC Founding Affidavit p 10 para 22.

[17] CASAC Founding Affidavit p 11 para 25.

[18] See Minister of Police and National Commissioner of South African Police Service's letter to this Court dated 5 July 2021 and Mr Zuma's letter to this Court dated 7 July 2021.

Compliance with unfavourable outcomes

22 One further undesirable consequence of expanding the availability of rescission is that it will defer compliance with unfavourable outcomes in litigation. The rule of law demands that the losing side accept an unfavourable outcome and comport their conduct to its terms. That compliance will be deferred if rescission becomes readily available and is remade to permit reconsideration of the merits of a dispute after final judgment.

23 For all of these reasons, CASAC urges this Court to leave the strict requirements of rescission undisturbed.

THE PURPOSE OF RESCISSION

24 The purpose of Rule 42[19] is to assist litigants who, unlike Mr Zuma, have suffered injustice through no fault of their own or to correct an obviously wrong judgment or order, such as where an order does not reflect the decision of the Court.[20]

24.1 It is neither a backdoor appeal of the merits of a final decision nor a tactic to avoid the enforcement of or compliance with a final court order.

24.2 Rescission seeks to remedy the harm caused to a litigant's rights or interest by a clear mistake and on satisfactory explanation. This is why the applicant for rescission is required to adduce proof that the judgment or order could not lawfully have been granted, that it was granted in

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[19] *Schutte v Nedbank Limited* [2019] ZAGPPHC 950 from paras 23 – 28.

[20] *Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz* 1996 (4) SA 411 (C) at 417.

the absence of a party and that such party's rights or interests were affected by the judgment.[21]

24.3 This purpose of the remedy of rescission is met through the careful consideration of all of the relevant circumstances and, for this reason, a court is vested with a discretionary power to grant rescission relief only upon satisfaction of the requirements.[22]

25 Each of the circumstances catered for by Rule 42 would be an unjust circumstance in which to permit a final court order to stand.

25.1 The strategic choice not to participate in a litigation does not become an absence from litigation for purposes of Rule 42(1)(a).[23]

25.2 The mistaken choices made by a litigant that disadvantaged them in a litigation and doomed them to an adverse outcome are not the ambiguity, patent error or omission which Rule 42(1)(b) seeks to cure.

25.3 The unilateral decision of one litigant as to their attitude to litigation is not the mutual mistake required for Rule 42(1)(c) to come to their assistance.

26 None of these circumstances accommodate a litigant who wishes to reverse their earlier decision not to participate in litigation that was brought to their notice, or who wishes to address new arguments on the merits of a matter.

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[21] *Mutebwa v Mutebwa* 2001 (4) SA 193 (TkH) at para [15].

[22] *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 354 (A) at 352-3.

[23] Freedom Stationery (Pty) Limited and Others v Hassam and Others [2018] ZASCA 170; 2019 (4) SA 459 (SCA) at para 32.

EXTRA-CURIAL STATEMENTS AND CONDUCT OF MR ZUMA ARE RELEVANT AND ADMISSIBLE

27 The final submission CASAC wishes to make to this Court is that the extra-curial statements and conduct of Mr Zuma are both relevant to and admissible in its consideration of his application.

28 In paragraph [19], the Court's judgment addresses the admission of contemptuous public statements released by, or on behalf of Mr Zuma. That evidence was admitted through the Law of Evidence Amendment Act.[24] Mr Zuma, in his founding affidavit, says that this Court erred in that it assumed that he was the author of those statements and/or that they were intended to insult the Court.[25] This was further compounded, he argues, by the admission of the hearsay evidence.[26]

29 CASAC submits that the extra-curial statements of Mr Zuma and recent developments are indeed relevant and admissible to the determination of an ongoing dispute. This is particularly heightened where these developments contradict the on-oath version of a litigant. In addition to the reasons identified in the judgment of this Court, this is so for several reasons in the context of this application.

30 Firstly, our law makes provision for the lawful admission of this kind of evidence. The statements by Mr Zuma constitute publicly available information which is

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[24] 45 of 1988.

[25] Zuma Founding Affidavit p 31 para 80.

[26] Zuma Founding Affidavit p 31 para 80.

generally admissible. In *The Public Protector v Mail & Guardian Ltd*[27] the Supreme Court of Appeal stated that:

> *"Courts will generally not rely upon reported statements by persons who do not give evidence (hearsay) for the truth of their contents. . . . . But there are cases in which the relevance of the statement lies in the fact that it was made, irrespective of the truth of the statement. In those cases the statement is not hearsay and is admissible to prove the fact that it was made. In this case many such reported statements, mainly in documents, have been placed before us. What is relevant to this case is that the document exists or that the statement was made and for that purpose those documents and statements are admissible evidence."*
>
> *(own emphasis added)*

30.1 This approach was applied in *Maharaj v Mandag Centre of Investigative Journalism NPC*[28] where the Court said that the various newspaper articles annexed to the founding affidavit were relied on, not to prove the truth of their content, but to demonstrate that the information was already in the public domain.

30.2 In *President of the Republic of South Africa v Office of the Public Protector and Others*[29], Mr Zuma in his review against the Report of the Public Protector directing him to establish the Commission, stated on oath that he was of the view that establishing it would be unlawful, unconstitutional and outside of her powers. Contrary to his on-oath position, he then made various public statements in Parliament to the

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[27] 2011 (4) SA 420 (SCA)) [2011] ZASCA at para 14.

[28] [2017] ZASCA 138; 2018 (1) SA 471 (SCA); [2018] 1 All SA 369 (SCA); 2018 (1) SACR 253 (SCA).

[29] [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) at paras 169 to 185.

effect that he would establish the Commission and would announce its commencement soon. In finding that Mr Zuma had perempted himself, the Full Court admitted the evidence of his public statements and considered them as against his pleaded version.

31 Secondly, it cannot be in the interests of justice for this Court to ignore material and relevant statements and this conduct. This is particularly so in the following circumstances:

31.1 The extra-curial statements of the Jacob Zuma Foundation, ostensibly released on the applicant's behalf, are relevant and material. The judgment was focussed on curtailing the ongoing contemptuous conduct of Mr Zuma – both in and out of Court. The impugned statements related directly to the inquiry facing this Court and ought to be considered. To ignore them would be damaging, not only to the reputation of this Court but to its ability to adjudicate a matter with the benefit of all the necessary and relevant facts before it.[30]

31.2 Nowhere in his founding affidavit does Mr Zuma provide a definitive answer as to who wrote and published those statements disseminated by his eponymous foundation. Mr Zuma does not tell this Court why those statements cannot be attributed to him as the Patron of the Jacob Zuma Foundation.[31]

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[30] CASAC Founding Affidavit p 12 para 27.1.

[31] CASAC Founding Affidavit p 12 para 27.3.

31.3 He merely alleges in paragraph [80] of his founding affidavit that it was erroneous to assume that he wrote the statements or that they were intended to insult the Court. Yet it is unlikely that those statements were prepared and publicised without his consent and knowledge that they would attract judicial rebuke. This Court cannot ignore statements of such a nature because Mr Zuma is being intentionally vague as to their source.[32]

32 Lastly, this Court cannot ignore evidence that reveals a contradiction to the version placed before it on oath.

32.1 In paragraph [13] of his founding affidavit, Mr Zuma denies all allegations of wrongdoing, and explains that his conduct was *bona fide* and that he never intended to provoke judicial ire. He alleges that his decisions were based on bad legal advice received and the financial constraints he faced.[33]

32.2 Yet this version is undermined by the extra-curial statement released after the judgment and before the launch of his application. On 30 June 2021, the Jacob Zuma Foundation released a statement denouncing the judgment handed down by the erstwhile Acting Deputy Chief Justice Khampepe as being "*judicially emotional and angry and not consistent with our constitution*." The statement goes on to describe the majority judgement as being written by "*a very angry panel of judges*" and that they are "*embroiled in a running bitter controversy with [Mr Zuma] to*

[32] CASAC Founding Affidavit p 12 para 27.3.

[33] Zuma Founding Affidavit p 13 paras 25 et seq.

preside as judges in their own case."[34] This shows that, despite unprecedented judicial censure and sanction, Mr Zuma -- and those who act in his name and with his blessing -- are committed to the denigration and humiliation of the judiciary generally and the apex Court in particular.

32.3 Then, in his founding affidavit, Mr Zuma pleads in mitigation that imprisonment is inappropriate for him.[35] He contends that he is elderly (aged 79 years) and suffers from an undisclosed medical condition that requires medical attention. He also urges this Court not to commit him to jail during the COVID-19 pandemic as it would make him vulnerable to death.[36]

32.4 This description of precarious and vulnerable health is contradicted by the publicised events of Sunday, 4 July 2021, when Mr Zuma's supporters staged a protest outside his home in Nkandla, KwaZulu-Natal, which was attended by many hundreds of people arriving from all over South Africa. This occurred notwithstanding the protest being contrary to the applicable lockdown regulations and despite the obvious risk of infection to all present. During this gathering, Mr Zuma sang and danced on stage, and addressed his supporters on national television – all without wearing a mask. It was widely reported that the attendees at this unlawful gathering wore no masks.[37]

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[34] CASAC Founding Affidavit Annexure "LN6" p 2 para 5.

[35] Zuma Founding Affidavit p 9 para 18.

[36] CASAC Founding Affidavit p 15 para 28.6.

[37] CASAC Founding Affidavit p 15 para 28.7.

32.5 Later that evening, Mr Zuma held a press briefing inside the amphitheatre at his home in Nkandla, where he addressed national and international media at length, again with no mask. During this press briefing, Mr Zuma was questioned as to whether he was aware that the gathering took place unlawfully and exposed all those who attended to infection during the Covid-19 pandemic. Mr Zuma was asked if he would reprimand his supporters for their failure to adhere to the regulations and to wear masks – he declined to do so. Instead, he encouraged his supporters to "use peaceful means *to protest*" against what he termed an injustice. [38]

32.6 Finally, despite contending at paragraphs [34] of his founding affidavit to respect our constitutional democracy, the judicial arm of government and this Court, in particular, Mr Zuma and his supporters, expressly reject each of these.

32.7 Mr Zuma has been reported as stating that there will be "trouble" should he be compelled to serve the 15-month sentence. On 6 July 2021, while making submissions on behalf of Mr Zuma in his application to stay the execution of Mr Zuma's arrest, Mr Zuma's legal representative argued that there would be "another Marikana" should Mr Zuma's application be dismissed.

32.8 Briefing the media at Zuma's Nkandla homestead on 2 July 2021, the Umkhonto weSizwe Military Veterans Association (MKMVA) national spokesperson, Carl Niehaus, said the MKMVA has already warned the

[38] CASAC Founding Affidavit p 15 para 28.8; Annexure "LN7" p 50.

> ruling party national leadership that there would be "dire" consequences should Zuma be imprisoned. In sum, Mr Zuma, his legal representatives and political supporters are threatening violence, intimidation, social unrest and disobedience as a rejection of our constitutional values and the rule of law.[39]

33 By taking notice of these relevant facts when evaluating the version placed on oath before this Court in this application, the Court will be better placed to assess the reasons advanced for the relief sought in the rescission application.

CONCLUSION

34 For these reasons, CASAC submits that the order granted by this Court should preserve the principles of finality and certainty as foundational to the rule of law, and not undermine the administration of justice.

35 CASAC also argues that this Court must take account of all material and relevant evidence to make its decision.

MM LE ROUX SC

O MOTLHASEDI

A NASE[40]

Chambers, Sandton

9 July 2021

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[39] CASAC Founding Affidavit p 15 para 28.10; Annexure “LN8” p 55.

[40] Pupil member of Johannesburg Society of Advocates.

TABLE OF AUTHORITIES

Legislation and Rules

1. Constitutional Court Rules, 2003

2. Uniform Rules of Court

Case Law

3. *Bezuidenhout v Patensie Sitrus Befeerdeed Bpk* 2001 (2) SA 224 (E).

4. *Clipsal Australia (Pty) Ltd v GAP Distributors (Pty) Ltd* 2009 (3) SA 305 (W).

5. *Colverwell v Beira* 1992 (4) SA 490(W).

6. *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape* [2003] ZASCA 36; [2003] 2 All SA 113 (SCA).

7. *Freedom Stationery (Pty) Limited and Others v Hassam and Others* (921/2017) [2018] ZASCA 170; 2019 (4) SA 459 (SCA).

8. *Maharaj v Mandag Centre of Investigative Journalism NPC* (844/2016) [2017] ZASCA 138; 2018 (1) SA 471 (SCA); [2018] 1 All SA 369 (SCA); 2018 (1) SACR 253 (SCA).

9. *Mighty Solutions CC t/a Orlando Service Station v Engen Petroleum* Ltd [2015] ZACC 34; 2016 (1) SA 621 (CC); 2016 (1) BCLR 28 (CC).

10. *Molaudzi v S* [2015] ZACC 20; 2015 (8) BCLR 904 (CC); 2015 (2) SACR 341 (CC).

11. *Mutebwa v Mutebwa* 2001 (4) SA 193 (TkH).

12. *President of the Republic of South Africa v Office of the Public Protector and Others* [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP).

13. *Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz* 1996 (4) SA 411 (C).

14. *Schutte v Nedbank Limited* (73759/17) [2019] ZAGPPHC 950.

15. *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* (CCT 52/21) [2021] ZACC 18.

16. *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 354 (A).

17. *The Public Protector v Mail & Guardian Ltd* (2011 (4) SA 420 (SCA)) [2011] ZASCA.

18. *Zondi v MEC Traditional and Local Government Affairs* [2004] ZACC 19; 2006 (3) SA 1 (CC); 2005 (4) BCLR 347.

19. *Zuma v Office of the Public Protector and Others* (1447/2018) [2020] ZASCA.