IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 45997/21

In the matter between:

THE DEMOCRATIC ALLIANCE	Applicant
and	
THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES	First respondent
THE MEDICAL PAROLE ADVISORY BOARD	Second respondent
JACOB GEDLEYIHLEKISA ZUMA	Third respondent
THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION, AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	Fourth respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fifth respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2021 -09- 10
K.M MEHLAPE
REGISTRAR'S CLERK
REGISTRATEUR VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make application to this Court **at 10h00 on Tuesday, 26 October 2021** or as soon thereafter as counsel can be heard for an order —

1. granting condonation for the applicant's non-compliance with the prescribed forms, time periods, and service requirements and granting leave for the application to be heard as one of urgency in terms of Uniform Rule 6(12);

2. reviewing, declaring unlawful, and setting aside the decision of the first respondent to place the third respondent on medical parole, taken on or about 5 September 2021 ('**the parole decision**');

3. substituting the parole decision with a decision rejecting the third respondent's application for medical parole;

4. directing that the third respondent be returned to the custody of the Department of Correctional Services to serve out the remainder of his sentence of imprisonment;

5. requiring the first respondent (jointly and severally with any other respondent that opposes) to pay the costs of this application, including the costs of two counsel; and

6. granting further and/or alternative relief;

and that the accompanying affidavit of **JOHN HENRY STEENHUISEN** will be used in support thereof.

TAKE NOTICE FURTHER THAT the applicant has appointed the address of its attorneys of record set out below at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT the applicant requests and consents to service by email of all process in this matter to elzanne@mindes.co.za and ronie@kebd.co.za.

TAKE NOTICE FURTHER THAT the respondents are called upon to show cause why the medical-parole decision should not be reviewed and corrected or set aside.

TAKE NOTICE FURTHER THAT the first respondent is called upon to despatch, on or before **Friday, 17 September 2021**, to the registrar and the applicant the record of the parole decision (including all recommendations, correspondence, reports, memoranda, minutes of meetings, documents, evidence, transcripts of recorded proceedings and other information before the first respondent when the decision was made), together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so.

TAKE NOTICE FURTHER THAT the applicant may, **by Wednesday, 22 September 2021**, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of its notice of motion and supplement the supporting affidavit.

TAKE NOTICE FURTHER THAT any respondent intending to oppose this application is required to —

(a) by **Wednesday, 29 September 2021**, deliver notice to the applicant that he/she/it intends so to oppose and shall in such notice appoint an address within 15 kilometres of the office of the registrar at which he/she/it will accept notice and service of all process in such proceedings; and

(b) by **Wednesday, 6 October 2021**, deliver any affidavits he/she/it may desire in answer to the allegations made by the applicant.

TAKE NOTICE FURTHER THAT providing the above deadlines are complied with —

(a) the applicant shall file its heads of argument by **Tuesday, 12 October 2021**; and

(b) the respondents shall file their heads of argument by **Tuesday, 19 October 2021**.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY

Dated at Pretoria this Friday, 10 September 2021.

Elzanne Jonker
MINDE SCHAPIRO AND SMITH
Applicant's attorneys
elzanne@mindes.co.za
c/o: KLAGSBRUN EDELSTEIN BOSMAN DU PLESSIS INC.
220 Lange Street
Nieuw Muckleneuk
Tel: 012 452 8984
Ref: R Nyama / MD / HM001035

TO **THE REGISTRAR OF THE ABOVE COURT**

AND TO **THE NATIONAL COMMISSIONER FOR CORRECTIONAL SERVICES**
First respondent
124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)
Poyntons Building (West Block)
Pretoria
Copy to: State Attorney, Isaac Chowe

THE MEDICAL PAROLE ADVISORY BOARD
Second respondent
124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)
Poyntons Building (West Block)
Pretoria
Copy to: State Attorney, Isaac Chowe

JACOB GEDLEYIHLEKISA ZUMA

Third respondent

Kwa-Nxamalala

Nkandla

Kwa-Zulu Natal

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

Fourth respondent

Hillside House, 17 Empire Road, Parktown, Johannesburg.

Care of State Attorney, Johannesburg

Per email: JohVanSchalkwyk@justice.gov.za

10th Floor, North State Building

95 Albertina Sisulu, Cnr Kruis Street

Johannesburg

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Fifth respondent

124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)

Poyntons Building (West Block)

Pretoria

Copy to: State Attorney, Isaac Chowe

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FOUNDING AFFIDAVIT

I, **JOHN HENRY STEENHUISEN**, declare under oath:

1. I am an adult male member of Parliament and member of the applicant ('**the Democratic Alliance**'). I am the applicant's Federal Leader, and the Leader of the Opposition in Parliament. I am duly authorised to depose to this affidavit on the applicant's behalf.

2. The facts contained in this affidavit are to the best of my belief both true and correct. They fall within my personal knowledge or are apparent from

documentation under my control, except where the context indicates otherwise. Where I rely on information provided to me by others, I have obtained confirmatory affidavits, if possible.

3. This application of necessity relies on information that is in the public domain, including newspaper articles and media statements. To the extent that this constitutes hearsay evidence, I ask that it be admitted on the basis that its admission is in the interests of justice in accordance with section 3(1)*(c)* of the Law of Evidence Amendment Act 45 of 1988; the reason being that the relevant evidence pertains to information uniquely in the hands of the respondents.

4. Where I make legal submissions, I do so on the basis of legal advice received from my legal representatives, which I believe to be correct.

INTRODUCTION

5. On 29 June 2021, the Constitutional Court sentenced the third respondent (Mr Jacob Gedleyihlekisa Zuma, the former President of the Republic) to 15 months' imprisonment for contempt of court. On 7 July 2021, minutes before the expiry of the deadline imposed by the Constitutional Court, Mr Zuma was taken into custody.

6. On Sunday, 5 September 2021 (less than two months after his imprisonment began), the first respondent (the National Commissioner of Correctional Services, hereafter '**the Commissioner**') announced that it had been decided that Mr Zuma would be placed on medical parole ('**the parole decision**').

7. This is an application under Uniform Rule 53 to review and set aside that decision. The decision is patently unlawful for at least the following reasons:

7.1. it was taken against the recommendation of the second respondent (the Medical Parole Advisory Board, hereafter '**the Board**') not to grant medical parole to Mr Zuma; and

7.2. it was taken for an ulterior purpose not permitted by the Act and Regulations, and not rationally connected to the purpose of medical parole or the information before the Commissioner.

8. The parole decision may be unlawful for other reasons as well. The applicant reserves the right to amend the notice of motion and supplement its grounds of review after receiving the Rule-53 record.

9. The effect of the parole decision is to evade the Constitutional Court's decision to imprison Mr Zuma. The Court imprisoned him for egregious contempt of court – *'a marked disregard for the authority of [the Constitutional Court]'*. Mr Zuma's contempt was so serious that it constituted a near-existential threat to the authority of the judicial system. In the words of the Court:

> '[I]t is becoming increasingly evident that the damage being caused by [Mr Zuma's] ongoing assaults on the integrity of the judicial process ... must be stopped now. Indeed, if we do not intervene immediately to send a clear message to the public that this conduct stands to be rebuked in the strongest of terms, there is a real and imminent risk that a mockery will be made of this Court and the judicial process in the eyes of the public. The vigour with which Mr Zuma is peddling his disdain of this Court and the judicial process carries the further risk that he will inspire or incite others to similarly defy this Court, the judicial process and the rule of law.'

10. The parole decision harms the courts in exactly the same way that Mr Zuma's contempt of court did. It again makes a mockery of the judicial process. It sends the message to every South African that, as long as you are powerful and politically connected, you need not fear sanction for breaking the law. If you are sent to prison for your crimes, you will be let out well before the end of your sentence on *'medical parole'*.

11. I structure the remainder of this affidavit as follows:

    11.1. first, I cite the parties, explain the applicant's standing, and explain the grounds on which this Court has jurisdiction;

    11.2. secondly, I outline the law governing medical parole;

    11.3. thirdly, I set out the background facts;

    11.4. fourthly, I set out the grounds of review against the parole decision;

    11.5. fifthly, I explain why this matter is urgent

    11.6. sixthly, I list the documents the Rule-53 record must contain; and

    11.7. finally, I deal with the appropriate remedy.

THE PARTIES, STANDING, AND JURISDICTION

12. The applicant is **THE DEMOCRATIC ALLIANCE**. It is a duly registered political party with its main offices at 2nd Floor, Theba Hosken House, 16 Mill Street, Gardens, Cape Town. Under its federal constitution, the applicant is a body corporate with perpetual succession, capable of suing in its own name.

13. The applicant brings this application in its own interest, and in the public interest in terms of sections 38*(a)* and *(d)* of the Constitution. The DA is a political party committed to the value of the rule of law and the equal application of the law. The public too has an interest in ensuring government abides by the law. Whether the machinery governing medical parole is being abused to benefit Mr Zuma is manifestly a matter of public interest.

14. The first respondent is **THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES** (defined above as '**the Commissioner**'), the administrative head of the Department of Correctional Services ('**the Department**') in terms of section 3 of the Correctional Services Act 111 of 1998 ('**the Act**'). The incumbent is Mr Arthur Fraser. His offices are at Poyntons Building (West Block), 124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn streets), Pretoria.

15. Before he was appointed to his current position, Mr Fraser was appointed as the Director-General of the State Security Agency by Mr Zuma during his presidency.

16. The second respondent is **THE MEDICAL PAROLE ADVISORY BOARD** (defined above as '**the Board**'), an expert body set up in terms of section 79(3) of the Act.

17. The third respondent is Mr **JACOB GEDLEYIHLEKISA ZUMA**. Mr Zuma was the President of the Republic from 9 May 2009 to when he resigned on 14 February 2018. Prior to his release on medical parole, Mr Zuma was imprisoned at the Estcourt Correctional Centre in KwaZulu-Natal. Before this, he resided at his home in Nkandla, also in KwaZulu-Natal.

18. The fourth respondent is **THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION, AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE** (hereafter '**the Secretary**' and '**the Commission**'). The incumbent is Mr Itumeleng Mosala. The Commission's offices are at Hillside House, 17 Empire Road, Parktown, Johannesburg.

19. Mr Zuma established the Commission in the dying days of his presidency in accordance with remedial action ordered by the Public Protector. As suggested by its name, the Commission is tasked with investigating allegations of state capture, corruption, and fraud in the public sector.

20. Among the allegations which the Commission is tasked with investigating are matters which implicate Mr Zuma in his capacity as President, including offers of appointment to Cabinet made to certain individuals by the Gupta family and whether Mr Zuma and members of his Cabinet were involved in the facilitation of the awarding of tenders unlawfully by state-owned entities.

21. Given that the Commission is chaired by Deputy Chief Justice Raymond Zondo, it is often informally called '**the Zondo Commission**'.

22. The fifth respondent is **THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**, the political head of the Department (hereafter '**the Minister**'). The incumbent is Mr Ronald Ozzy Lamola. His offices are at Poyntons Building (West Block), 124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn streets), Pretoria.

23. No relief is presently sought against the Board, the Secretary, or the Minister. They are cited *ex abuntanti cautela* for any interest they may have in the matter or any assistance they wish to give to this Court.

24. No costs are sought against any respondent other than the Commissioner, unless any one of them oppose.

25. This Court has jurisdiction by virtue of: (a) the residence of all of the respondents except Mr Zuma; and (b) that the decision of the National Commissioner is deemed to have been taken in Pretoria.

THE LAW GOVERNING MEDICAL PAROLE

The relevant statutory provisions

26. Section 79 of the Correctional Services Act governs the granting of medical parole. It provides in relevant part as follows:

> **'79 Medical parole**
>
> (1) Any sentenced offender may be considered for placement on medical parole, by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, if —
>
> *(a)* such offender is suffering from a terminal disease or condition or if such offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care;
>
> *(b)* the risk of re-offending is low; and
>
> *(c)* there are appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released.

(2) *(a)* An application for medical parole shall be lodged in the prescribed manner, by —

(i) a medical practitioner; or

(ii) a sentenced offender or a person acting on his or her behalf.

(b) An application lodged, by a sentenced offender or a person acting on his or her behalf, in accordance with paragraph *(a)*(ii), shall not be considered by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, if such application is not supported by a written medical report recommending placement on medical parole.

(c) The written medical report must include, amongst others, the provision of —

(i) a complete medical diagnosis and prognosis of the terminal illness or physical incapacity from which the sentenced offender suffers;

(ii) a statement by the medical practitioner indicating whether the offender is so physically incapacitated as to limit daily activity or inmate self-care; and

(iii) reasons as to why the placement on medical parole should be considered.

(3) *(a)* The Minister must establish a medical advisory board to provide an independent medical report to the National Commissioner, Correctional Supervision and Parole Board or the Minister, as the case may be, in addition to the medical report referred to in subsection (2)*(c)*.

(b) Nothing in this section prohibits a medical practitioner or medical advisory board from obtaining a written medical report from a specialist medical practitioner.

(4) *(a)* The placement of a sentenced offender on medical parole must take place in accordance with the provisions of Chapter VI and is subject to —

(i) the provision of informed consent by such offender to allow the disclosure of his or her medical information, to the extent necessary, in order to process an application for medical parole; and

(ii) the agreement by such offender to subject himself or herself to such monitoring conditions as set by the Correctional Supervision and Parole Board in terms of section 52, with an understanding that such conditions may be amended and or supplemented depending on the improved medical condition of such offender.

(b) An offender placed on medical parole may be requested to undergo periodical medical examinations by a medical practitioner in the employ of the Department.

(5) When making a determination as contemplated in subsection (1)(b), the following factors, amongst others, may be considered:

(a) Whether, at the time of sentencing, the presiding officer was aware of the medical condition for which medical parole is sought in terms of this section;

(b) any sentencing remarks of the trial judge or magistrate;

(c) the type of offence and the length of the sentence outstanding;

(d) the previous criminal record of such offender; or

(e) any of the factors listed in section 42 (2)(d).

(6) Nothing in this section prohibits a complainant or relative from making representations in accordance with section 75(4).

(7) A decision to cancel medical parole must be dealt with in terms of section 75(2) and (3): Provided that no placement on medical parole

may be cancelled merely on account of the improved medical condition of an offender.

(8) *(a)* The Minister must make within six months after promulgation of this Act regulations regarding the processes and procedures to follow in the consideration and administration of medical parole.

...'

27. The regulations required by section 29(8)*(a)* are regulations 29A and 29B of the Correctional Services Regulations GN R914 in *GG* 26626 of 30 July 2004 ('**the Regulations**'). They provide in relevant part as follows:

'**29A Medical parole**

...

(2) An application for medical parole in terms section 79(2) of the Act, shall be initiated by the completion of the applicable form as contained in Schedule B.

(3) When a Head of a Correctional Centre receives an application for medical parole he or she must refer the application to the correctional medical practitioner who must make an evaluation of the application in accordance with the provisions of section 79 of the Act and make a recommendation in this regard.

(4) The recommendation must be submitted to the Medical Parole Advisory Board who must make a recommendation to the National Commissioner, Supervision and Parole Board or Minister as the case may be.

(5) In the assessment by the Medical Parole Advisory Board, the Board must consider whether the offender is suffering from:

(a) Infectious conditions —

(i) World Health Organisation Stage IV of Acquired Immune Deficiency Syndrome despite good compliance and optimal treatment with anti-retroviral therapy;

(ii) Severe cerebral malaria;

(iii) Methicilin resistance staph aurias despite optimal treatment;

(iv) MDR or XDR tuberculosis despite optimal treatment; or

(b) Non-infectious conditions —

(i) Malignant cancer stage IV with metastasis being inoperable or with both radiotherapy and chemotherapy failure;

(ii) Ischaemic heart disease with more than two ischaemic events in a period of one year with proven cardiac enzyme abnormalities;

(iii) Chronic obstructive airway disease grade III to IV dyspnoea;

(iv) Cor-pulmonale;

(v) Cardiac disease with multiple organ failure;

(vi) Diabetes mellitus with end organ failure;

(vii) Pancytopenia;

(viii) End stage renal failure;

(ix) Liver cirrhosis with evidence of liver failure;

(x) Space occupying lesion in the brain;

(xi) Severe head injury with altered level of consciousness;

(xii) Multisystem organ failure;

(xiii) Chronic inflammatory demyelinating Poliradiculoneuropathy;

(xiv) Neurological sequelae of infectious diseases with a Karnofky score of 30 percent and less;

(xv) Tetanus;

(xvi) Dementia, and

(xvii) Severe disabling rheumatoid arthritis, and whether such condition constitutes a terminal disease or condition or the offender is rendered physically incapacitated as result of injury, disease or illness so as to severely limit daily activity or inmate self-care.

(6) The Medical Parole Advisory Board may consider any other condition not listed in subregulation (5)*(a)* and *(b)* if it complies with the principles contained in section 79 of the Act.

(7) The Medical Parole Advisory Board must make a recommendation to the National Commissioner, the Correctional Supervision and Parole Board or the Minister as the case may be, on the appropriateness to grant medical parole in accordance with section 79(1)*(a)* of the Act. If the recommendation of the Medical Advisory Board is positive, then the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, must consider whether the conditions stipulated in section 79(1)*(b)* and *(c)* are present.

29B Appointment and composition of the Medical Parole Advisory Board

(1) The Minister must appoint a Medical Parole Advisory Board comprising of:

(a) A chairperson with permanent sitting on the Board or a secundus in his or her absence;

(b) A vice chairperson with permanent sitting on the Board or a secundus in his or her absence.

(c) At least one member per province, who will be a non-permanent member of the Board to be co-opted to the Board by direction of

the chairperson, when necessary, for the functioning of the Board.

...

(3) Members appointed to the Board must be medical practitioners registered as such under the Health Professions Act, 1974 (Act 56 of 1974).

...

(6) A decision of the majority of the members of the Board present shall be a decision of the Board and in the event of an equality of votes, the member presiding shall have both a deliberative and a casting vote.

...

(8) *(a)* A member of the Board may examine any sentenced offender applying for medical parole under section 79 of the Act.'

28. The prescribed form annexed to the Regulations as Schedule B is annexed marked '**FA1**' (hereafter '**the prescribed form**').

Analysis of the relevant statutory provisions

29. These statutory provisions grant the Commissioner, the Correctional Supervision and Parole Board, and the Minister the power, independent of one another, to grant medical parole. Given that it was the Commissioner who exercised this power in Mr Zuma's case, in what follows I refer only to the Commissioner as the ultimate decisionmaker.

30. The substantive constraint to which the Commissioner is subject is that he may only grant medical parole if all three of the requirements in section 79(1) of the Act are satisfied, namely if —

30.1. the offender is suffering from a terminal disease or condition or if such offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care (section 79(1)*(a)*);

30.2. the risk of re-offending is low (section 79(1)*(b)*); and

30.3. there are appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released (section 79(1)*(c)*).

31. If one or more of the three substantive requirements are not satisfied, the Commissioner is precluded from granting medical parole.

32. If, on the other hand, they are all satisfied (and if the procedural requirements set out below have also been satisfied), the Commissioner may grant medical parole – but does not have to. He has a residual discretion to refuse medical parole if the interests of justice so demand – even if all three substantive requirements are satisfied.

33. The three substantive requirements are objective requirements. They must be satisfied objectively, and not merely in the opinion of the Commissioner.

34. In addition to this substantive constraint, the Commissioner's power is also subject to procedural constraints. He may only grant medical parole after the following process has been completed:

34.1. First, an application for medical parole must be lodged in the prescribed form. The application can be made by the offender, a person acting on

his behalf, or a medical practitioner (section 79(2)*(a)* of the Act and regulation 29A(2) of the Regulations).

34.2. The application must contain or be accompanied by a written medical report recommending placement on medical parole (section 79(2)*(b)*, section C of the prescribed form) and justifying the recommendation (section 79(2)*(c)*). I call this report '**the offender's medical report**'. If the application is not accompanied by such a report, the application may not be considered further (section 79(2)*(b)*).

34.3. The application must be submitted to the head of the correctional centre in which the offender is incarcerated (regulation 29A(3)).

34.4. That official must then refer the application to the correctional medical practitioner assigned to that correctional centre, who must evaluate the application and make a recommendation (regulation 29A(3)). I call this recommendation '**the prison's medical recommendation**'.

34.5. The prison's medical recommendation (along with the application and the offender's medical report) must be submitted to the Board (regulation 29A(4)).

34.6. The Board must assess the application, the offender's medical report, and the prison's medical recommendation (regulation 29A(4)). In making the assessment, the Board must consider whether the offender suffers from one of the terminal diseases or conditions listed in regulation 29A(5) or any other such terminal disease or condition (regulation 29A(6)).

34.7. Pursuant to this assessment, the Board must furnish the Commissioner with its own independent medical report (section 79(3)*(a)*) and a recommendation as to whether the first substantive requirement for medical parole is satisfied (i.e., whether the offender suffers from a terminal disease or is physically incapacitated) (regulation 29A(7)).

34.8. If the Board recommends that medical parole is not medically appropriate, I am advised that the Commissioner is precluded from granting it. If, on the other hand, the Board recommends that parole is medically appropriate, the Commissioner must consider whether the second and third substantive requirements are met (i.e., whether the risk of reoffending is low and whether the offender can be appropriately supervised or cared for outside prison) (regulation 29A(7)).

34.9. If the Board recommends medical parole as being medically appropriate (and the three substantive requirements for medical parole are satisfied) the Commissioner may (but does not have to) grant medical parole.

35. These substantive and procedural requirements delineate a clear and sensible division of labour according to the relevant actors' expertise:

35.1. The job of the Board (after considering the offender's application for medical parole, his medical report and the prison's medical recommendation) is to determine whether medical parole is medically appropriate – in other words, whether the offender is ill enough to be released.

35.2. This makes sense. The Board is made up entirely of medical practitioners (regulation 29B(3)).

35.3. The job of the Commissioner is to determine thereafter whether medical parole is appropriate from a correctional-services perspective. It may be, for example, that an offender suffers from a terminal illness but (a) is at a high risk of re-offending, or (b) he cannot be cared for properly outside of prison, or (c) the granting of medical parole is not otherwise in the interests of justice. The offender's medical condition would then not be sufficient for medical parole to be granted.

35.4. Crucially, the job of the Commissioner is not to determine whether medical parole is medically appropriate. He does not have the relevant expertise.

35.5. This is certainly true for the incumbent Commissioner, Mr Fraser. His profile on the website of the Department describes his qualifications as follows:

> 'In addition to holding a BA (Hons) degree in Film and Video Production from The London Institute and a Certificate of Attendance from the Institute of Directors in South Africa, Mr Fraser completed several training courses, including an executive management course in the United Kingdom'.

35.6. A copy of Mr Fraser's profile is annexed marked '**FA2**'.

36. I am advised that a decision to grant medical parole constitutes administrative action under the Promotion of Administrative Justice Act 3 of 2000 ('**PAJA**'). As such, the Commissioner is obliged to act lawfully, rationally, reasonably, and in

a procedurally fair manner. Given that such a decision is also an exercise of public power, he is in any event obliged by the principle of legality to act in a procedurally fair, or procedurally rational, manner.

37. It would follow that if a decision to grant medical parole might affect the interests of third parties (such as a victim of the offender's crime or a complainant), the Commissioner would be obliged to invite representations from such third parties before making a decision. If he fails to do so, the decision would be unlawful for being procedurally unfair. Section 79(6) of the Act expressly permits the making of representations by third parties.

BACKGROUND FACTS

Mr Zuma's conviction and sentencing for contempt of court

38. On 28 January 2021, the Constitutional Court ordered Mr Zuma to appear before the Commission when summonsed. The judgment is reported as *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* [2021] ZACC 2; 2021 (5) SA 1 (CC). I annex a copy of the order marked '**FA3**'.

39. In response, on 1 February 2021, Mr Zuma published a statement in his own name, stating that he would not be obeying the Constitutional Court's order and casting numerous aspersions on the legitimacy and impartiality of the Commission. I annex a copy of the statement marked '**FA4**'. No mention was made of any terminal illness making imprisonment inappropriate. Indeed, he stated that he did not *'fear being arrested'*, that he did not *'fear being convicted'*, and that he did not *'fear being incarcerated'*.

40. On 15 February 2021, Mr Zuma published a further statement in his own name, again stating that he would not be obeying the Constitutional Court's order. I annex a copy of the statement marked '**FA5**'. Again, no mention was made of any terminal illness.

41. Mr Zuma failed to appear as summonsed. So, on 22 February 2021, the Secretary applied urgently to the Constitutional Court for an order declaring Mr Zuma to be in contempt of court and sentencing him to imprisonment. Mr Zuma did not file notice of intention to oppose or an answering affidavit.

42. On 29 March 2021, the Constitutional Court heard the contempt application. Mr Zuma did not participate in the hearing.

43. On 9 April 2021, the Chief Justice issued directions requiring Mr Zuma to file an affidavit of no longer than 15 pages on an appropriate sanction in the event that he was found guilty of contempt of court. A copy of the directions is annexed marked '**FA6**'.

44. Mr Zuma failed to comply with these directions. Instead, he filed a 21-page unsigned letter on 14 April 2021, in which he *inter alia* —

    44.1. refused to make submissions on sanction because he did not recognise the legitimacy of the Commission or the Constitutional Court's involvement;

    44.2. accused the Constitutional Court of *'political gimmicks'* and *'an extraordinary abuse of judicial authority to advance politically charged narratives of a politically [sic] but very powerful commercial and political interests through the Zondo Commission'*;

44.3. made no mention of any terminal illness; and

44.4. declared that he was *'ready to become a prisoner of the Constitutional Court'*.

45. A copy of the letter is annexed marked '**FA7**'.

46. On Tuesday, 29 June 2021, the Constitutional Court handed down its judgment sentencing Mr Zuma to 15 months' imprisonment for contempt of court. The judgment is reported as *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* [2021] ZACC 18; 2021 (9) BCLR 992 (CC) ('**the contempt judgment**'). For convenience, I annex a copy of the order marked '**FA8**' ('**the contempt order**'). The order provides, in relevant part, as follows:

> '3. It is declared that [Mr Zuma] is guilty of the crime of contempt of court for failure to comply with the order made by this Court in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma* [2021] ZACC 2.
>
> 4. [Mr Zuma] is sentenced to undergo 15 months' imprisonment.
>
> 5. [Mr Zuma] is ordered to submit himself to the South African Police Service, at Nkandla Police Station or Johannesburg Central Police Station, within five calendar days from the date of this order, for the Station Commander or other officer in charge of that police station to ensure that he is immediately delivered to a correctional centre to commence serving the sentence imposed in paragraph 4.
>
> 6. In the event that [Mr Zuma] does not submit himself to the South African Police Service as required by paragraph 5, the Minister of Police and the National Commissioner of the South African Police

Service must, within three calendar days of the expiry of the period stipulated in paragraph 5, take all steps that are necessary and permissible in law to ensure that [Mr Zuma] is delivered to a correctional centre in order to commence serving the sentence imposed in paragraph 4.'

47. I have already explained that the Constitutional Court sentenced Mr Zuma to imprisonment because he had brazenly refused to comply with the Constitutional Court's order and openly questioned its authority. The Court acted to protect the authority of the judicial system and the rule of law. The contempt judgment speaks for itself and will be referred to further in argument if necessary.

Mr Zuma's imprisonment

48. The five-day period for Mr Zuma to turn himself in (as per paragraph 5 of the contempt order) expired on Sunday, 4 July 2021. He failed to do so. The subsequent three-day period for him to be arrested (as per paragraph 6) was to expire on Wednesday, 7 July 2021.

49. Instead of promptly turning himself in – and after repeatedly declaring that he did not trust the judicial system and that he was ready to go to prison – Mr Zuma launched a multi-prong, last-ditch attempt in the courts to avoid going to prison.

50. On Friday, 2 July 2021, he launched an urgent application in the Constitutional Court to rescind the contempt judgment and order. I attach a copy of the notice of motion and the founding affidavit (without annexures) marked '**FA9**'. It was heard on 12 July 2021. Although not relevant to this application, I note that I am advised that the rescission application is utterly without merit. Judgment is outstanding.

51. Of relevance to this application is that the founding affidavit in the rescission application was the first time, to my knowledge, that Mr Zuma claimed that he was too ill to go to prison. He referred to his *'unstable state of health'*, to being *'a 79-year-old man who suffers from a medical condition that requires constant and intense therapy and attention'*, and to *'the deadly pandemic to which people in [his] circumstances are uniquely vulnerable'*. Mr Zuma provided no particulars as to this *'medical condition'*. He never has.

52. On the same day that Mr Zuma launched the rescission application (2 July 2021), he launched a parallel urgent application in the High Court to suspend the contempt order. This application was dismissed on 9 July 2021.

53. On Sunday, 4 July 2021 (two days after he deposed to his founding affidavit referring to his *'medical condition'* and his vulnerability to COVID-19 and the day he was due to turn himself in to the police), Mr Zuma addressed a large crowd in Nkandla (without wearing a mask covering his mouth), after which he led the crowd in singing and dancing to his signature *umShini Wami*. I annex a copy of an eNCA newspaper reporting on this marked '**FA10**'.[1]

54. Mr Zuma eventually turned himself in late at night on Wednesday, 7 July 2021, shortly before the deadline for his arrest.

55. In the early hours of Thursday, 8 July 2021, Mr Zuma was admitted to the Estcourt Correctional Centre as an inmate. Later that day, the Minister released a press statement (a copy of which is annexed marked '**FA11**') —

[1] A video of Mr Zuma addressing the crowd can be found on YouTube at https://youtu.be/YHMzWFo18mc.

55.1. confirming that Mr Zuma had been taken into custody;

55.2. stating that *'[a]s a precaution and in line with our COVID-19 measures'* that Mr Zuma would be placed in isolation in the hospital wing of the prison for 14 days; and

55.3. stating that he would be *'assessed by our Medical Team in conjunction with the South African health military service and this will determine the conditions of his incarceration'* and that this would be *done 'to determine the major risks and needs of the offender'*.

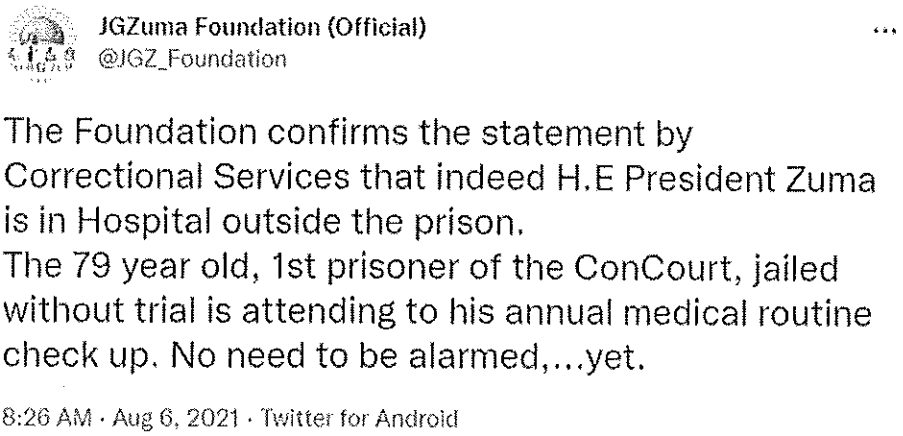
56. Mr Zuma's COVID-19 isolation period ended on 22 July 2021. On the same day, he was permitted by the Department to leave the prison to attend a funeral. I annex a copy of the press release issued by the Department marked '**FA12**'.

57. Around two weeks passed. I do not know where Mr Zuma was incarcerated during this period – whether he was in an ordinary cell in the Estcourt prison, or in its hospital wing, or somewhere else. I invite the Commissioner (or Mr Zuma) to disclose this information to the court in their answering affidavits (should they oppose).

58. Then, on 6 August 2021, it was reported that the Department had announced that Mr Zuma had been admitted to a hospital outside the Estcourt prison for medical observation. A Department spokesperson was quoted as stating that *'[a] routine observation prompted that Mr Zuma be taken for in-hospitalisation'*. This followed an earlier announcement by the spokesperson of the Jacob G Zuma Foundation, Mr Mzwanele Manyi, that Mr Zuma was not ill, that he had been taken to hospital for his *'normal annual check-up'*, and that *'[w]hether in prison*

or not, he would have been due for that check-up'. I annex a copy of a News24 article reporting this marked '**FA13**'.

59. On the same day, the Jacob G Zuma Foundation published the following (cryptic) tweet:



60. Nine days later, on 15 August 2021, the Department issued a press release (a copy of which is annexed marked '**FA14**') stating the following:

> 'The Department of Correctional Services (DCS) is able to confirm that the Former President, Mr Jacob Gedleyihlekisa Zuma, remains in hospital outside Estcourt Correctional Centre where he is serving a 15-month sentence.
>
> Mr Zuma underwent a surgical procedure on Saturday, 14 August 2021, with other procedures scheduled for the coming days. As a result, DCS is unable to predict a discharge date as our priority at this stage is for Mr Zuma to be afforded the best care possible.'

The parole decision

61. Around three weeks passed. On Sunday, 5 September 2021, the Department announced, via press release, that Mr Zuma had been placed on medical parole. I quote the press release (a copy of which is annexed marked '**FA15**') in full:

> **'MR ZUMA PLACED ON MEDICAL PAROLE**
>
> The Department of Correctional Services (DCS) is able to confirm that Mr Jacob Gedleyihlekisa Zuma has been placed on medical parole.
>
> Section 75(7)*(a)* of the Correctional Services Act 111 of 1998, affords the National Commissioner a responsibility to place under correctional supervision or day parole, or grant parole or medical parole to a sentenced offender serving a sentence of incarceration for 24 months or less. The National Commissioner is also in terms of Section 52, empowered to prescribe conditions of parole.
>
> Medical parole's eligibility for Mr Zuma is impelled by a medical report received by the Department of Correctional Services. Apart from being terminally ill and physically incapacitated, inmates suffering from an illness that severely limits their daily activity or self-care can also be considered for medical parole.
>
> The risk of re-offending of released inmates must also be low and there must be appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released to.
>
> Medical parole placement for Mr Zuma means that he will complete the remainder of the sentence in the system of community corrections, whereby he must comply with specific set of conditions and will be subjected to supervision until his sentence expires.
>
> Medical Parole can only be revoked if an offender does not comply with the placement conditions.

We want to reiterate that placement on medical parole is an option available to all sentenced offenders provided they meet all the requirements. We appeal to all South Africans to afford Mr Zuma dignity as he continues to receive medical treatment.'

62. I emphasise the following about the press release:

62.1. It does not specify who granted Mr Zuma medical parole. The Commissioner only later disclosed that he had made the decision.

62.2. The statement does not assert that Mr Zuma has satisfied the substantive requirements for medical parole contained in section 79(1). It merely recites the requirements.

62.3. All that the statement contains regarding Mr Zuma's eligibility for medical parole is that *'Medical parole's eligibility for Mr Zuma is impelled by a medical report received by the Department of Correctional Services'*. The statement provides no detail regarding the contents or source of this *'medical report'*. In particular, the statement does not specify whether it is —

62.3.1. the report submitted by Mr Zuma's medical practitioner in terms of subsections 79(2)*(b)* and *(c)* of the Act (i.e., the offender's medical report);

62.3.2. a report by the prison's doctor in terms of regulation 29A(3);

62.3.3. the independent medical report by the Board in terms of section 79(3)*(a)* (as explained below, we now know it was not

this report, because the Board recommended against medical parole); or

62.3.4. some other medical report.

62.4. The press release, again, says nothing about the nature of Mr Zuma's alleged illness.

63. The applicant then heard from a confidential source that the Board had recommended that Mr Zuma not be granted medical parole, and that the Commissioner purported to override the Board's recommendation. The possibility was also discussed in the press.

64. On Tuesday, 7 September 2021, it was reported on News24 that Dr Notende Botwekazi Mgulwa, a member of the Board, had declined to answer any questions regarding the Board's recommendation to the Commissioner and referred all queries to the Commissioner. She was quoted as saying the following:

> 'I wouldn't like to answer that question, for obvious reasons. I would like for you to get clarification from the Commissioner of Correctional Services. He is the person who has the information.'

65. At this time, the Department refused to respond to the allegations that the Commissioner overrode the Board's recommendation, but the Department's spokesperson stated that, while it would not disclose the Board's recommendation to the press, it would provide the full record of the Commissioner's decision if it were challenged in court.

66. I annex a copy of the relevant News24 article marked '**FA16**'.

The* Watchdog *interview

67. On the evening of Wednesday, 8 September 2021, the Commissioner gave an interview to Mr Vuyo Mvoko on the SABC's *Watchdog* programme in which the Commissioner admitted what the applicant and the press had suspected – that the Board had recommended against granting medical parole and that the Commissioner had purported to override this recommendation. A transcript of the portion of the interview dealing with Mr Zuma's imprisonment, health, and medical parole is annexed marked '**FA17**'.[2]

68. I quote the portion of the interview dealing with medical parole. It relates a process that can only be described as remarkable:

> 'AF (Arthur Fraser): [Y]ou'd recall Vuyo that he [Mr Zuma] was, he had gone to hospital, and that was because we were advised that the type of care needed and the type of clinical, um, er, what, procedures that needed to be done couldn't be done in our facility, so we then had to move him to a tertiary institution, medical care, healthcare institution, and it's there that we got further reports. Where we then got informed that there is a range of procedures that need to happen and all of that. There was then by, from the medical staff, there was an application made much earlier – I don't have the details with me now Vuyo – where they requested, where they applied for medical parole, um, and I think that that's at the beginning of August where they applied, uh, and we directed to the relevant structures.

[2] The full interview can be found at https://youtu.be/tKMaxcWwUgk. The relevant part of the interview begins at 47:35.

VM (Vuyo Mvoko): Which was?

AF: Uh, within our structure, we've got healthcare and then we've got the medical, er, advisory, uh, parole board so we directed it to them.

VM: And what did they say?

AF: They allocated the doctor, er, to, to go and do an observation as they do in all instances. They had done an observation and based on the engagement and assessment – the doctor's engagement and assessment – on the patient, er, recommendations were made, er, to the medical parole board – advisory board um, and that's, those recommendations were made, yes. And the recommendations were that they, the board, did not approve, er, for medical parole because they indicated that he was in a stable condition. What I need to indicate when the advice, medical advisory board provided those recommendations, I had then – the head of the centre, who has the authority to decide then, er, reviewed the information available and then indicated that the conditions – based on all the reports that we have – require us to release the former president. I then, er, rescinded those delegations because it's original delegation such with me, that I had delegated to ... I rescinded that and I took the decision then to place him on medical parole and I've given a host of reasons. The reasons is available, available, it's in, uh, documentation and it will be presented to whoever, er, need to, to see that. I'm sure Parliament will be asking to have access.'

69. If the Commissioner's account is correct, the following process was followed in granting Mr Zuma medical parole:

69.1. Mr Zuma's medical practitioners applied for medical parole on behalf of Mr Zuma *'at the beginning of August'*.

69.2. It is not clear whether the application was first submitted to the head of the Estcourt Correctional Centre or whether the application was evaluated by the medical practitioner assigned to that centre, as required by regulation 29A(3). If not, the parole decision is reviewable under section 6(2)*(b)* of PAJA because a mandatory and material procedure or condition prescribed by an empowering provision was not complied with.

69.3. In any event, Mr Zuma's application was eventually *'directed'* to the Board. The Board then appointed a doctor to examine Mr Zuma. The doctor made a recommendation to the Board.

69.4. Thereafter, the Board recommended that Mr Zuma not be placed on medical parole on the basis that *'he was in a stable condition'*.

69.5. The Board's recommendation was transmitted to the head of the Estcourt correctional centre who, at the time, had been delegated the power to decide applications for medical parole (presumably only for prisoners from the Estcourt Correctional Centre).

69.6. But instead of making a decision himself, that official *'indicated'* to the Commissioner that various unspecified *'reports'* in the possession of the Department *'require[d]'* Mr Zuma's release.

69.7. The Commissioner then rescinded the delegation and decided himself to place Mr Zuma on medical parole, against the recommendation of the Board.

70. This account raises questions of its own, and leaves important issues unexplained:

70.1. It is not clear why the head of the Estcourt Correctional Centre did not decide Mr Zuma's medical-parole application himself, if it is correct that he had the necessary delegation, but rather referred the matter to the Commissioner.

70.2. It is not clear why the Commissioner rescinded the delegation to the head of the Estcourt Correctional Centre to make the decision himself. We invite the Commissioner to explain to the Court why this occurred. Without such an explanation, it is reasonable to suspect bias on the part of the Commissioner (a review ground under section 6(2)*(a)*(iii) of PAJA and the principle of legality).

70.3. The Commissioner does not describe the reports that *'require[d]'* Mr Zuma's release, or why they trumped the recommendation of the Board that Mr Zuma was *'stable'* and did not qualify for medical parole.

70.4. In the Department's press release of 5 September 2021, only one report militating in favour of medical parole is referred to. In his interview, the Commissioner refers to numerous reports.

70.5. The Commissioner still refuses to disclose the nature of Mr Zuma's alleged illness. I repeat that, to my knowledge, this has never been disclosed to the public.

GROUNDS OF REVIEW

71. I state again that I am advised that the parole decision constitutes administrative action to which the grounds of review in PAJA are applicable. In any event, the

parole decision constitutes a public decision to which the principle of legality is applicable.

72. I also stress that the grounds of review set out below are preliminary. The applicant reserves the right to supplement its review grounds after receiving the Rule-53 record.

Overriding the Board's medical report

73. The Commissioner has himself now confirmed that he purported to grant medical parole to Mr Zuma against the recommendation of the Board.

74. This renders the parole decision unlawful for two reasons.

75. First, on a proper interpretation of the Act and the Regulations, the Commissioner is precluded from granting medical parole if the Board recommends that an inmate not be granted medical parole. As such, the parole decision is reviewable under section 6(2)(b) of PAJA because *'a mandatory and material procedure or condition prescribed by an empowering provision was not complied with'*, *alternatively* the principle of legality. Alternatively, the Commissioner's decision was materially influenced by an error of law in believing that he was entitled to grant medical parole when the Board had concluded that Mr Zuma was not ill enough to warrant it (PAJA s 6(2)*(d)* and the principle of legality).

76. Secondly, for the Commissioner (who is not a medical expert) to ignore the recommendation of the Board (which is made up exclusively of medical experts) is irrational (the review ground under section 6(2)*(f)*(ii) of PAJA, *alternatively* the principle of legality), unreasonable (the review ground under section 6(2)*(h)* of

PAJA), and constitutes the failure to take relevant circumstances into account (the review ground under section 6(2)*(e)*(iii) of PAJA, *alternatively* procedural irrationality in terms of the principle of legality).

Mr Zuma's health was not the reason for granting medical parole

77. Given that Mr Zuma and the Department have steadfastly refused to make any details of his alleged health problems public, I cannot say whether Mr Zuma is ill enough to satisfy the first substantive requirement for medical parole in section 79(1)*(a)* of the Act. Once the applicant receives the full Rule-53 record, the applicant will be in a position to do so in its supplementary founding affidavit.

78. Here, I do no more than state that there are reasons to doubt Mr Zuma's protestations that he is ill enough to qualify for medical parole:

    78.1. First, and most importantly, the Board – an independent body consisting of exclusively medical professionals – has recommended that Mr Zuma does not qualify for medical parole. Without having seen the relevant reports, the Board is to be believed over medical professionals appointed by Mr Zuma.

    78.2. Secondly, if Mr Zuma were gravely ill, he would likely have disclosed his medical condition to clear the air and to stave off legal challenges like this one. The fact that he has not leads to the inference that he might not be so ill.

    78.3. Thirdly, in all of its public statements, neither the Department nor the Commissioner have expressly stated that Mr Zuma satisfies

section 79(1)*(a)* of the Act. If he did, they doubtless would have said so. Instead, the Department has done no more than recite the requirements for medical parole and refer the public to a report (or reports) without disclosing what they say.

78.4. Fourthly, the behaviour of Mr Zuma and the public statements of those representing him in the lead-up to his imprisonment are not consistent with a man who is terminally ill:

78.4.1. Before the Constitutional Court sentenced Mr Zuma to imprisonment, he made no mention of any terminal illness in his public statements, and he stated repeatedly that he did not fear prison.

78.4.2. Only after the Court sentenced Mr Zuma to imprisonment, did he begin to claim that he had a *'health condition'* making imprisonment inappropriate – but without specifying its nature.

78.4.3. Three days before Mr Zuma turned himself in to Correctional Services, he spoke, sang, and danced (without a mask covering his mouth) before a large crowd at Nkandla.

78.4.4. In August 2021, when Mr Zuma was admitted to hospital, his Foundation stated that his admission was routine, that he was not ill, and that there was no need to be alarmed.

78.5. Fifthly, it has been reported that Mr Zuma has refused to permit the National Prosecuting Authority's doctors to examine him to determine if he is healthy enough to stand trial for corruption. I annex a copy of an

IOL article to this effect as '**FA18**'. Again, a man genuinely ill enough not to be able to stand trial would be happy to be examined by the NPA to prove his illness.

79. It cannot be ignored that we appear to have been here before. In 2005, Schabir Shaik was convicted and sentenced to 15 years' imprisonment for corruption. In his judgment on conviction, the presiding judge referred to a generally corrupt relationship between Mr Shaik and Mr Zuma.

80. In 2009, after having been in prison for less than two years, Mr Shaik was released from prison on *'medical parole'*. Since then, he has regularly been seen golfing, allegedly throttled and slapped a journalist, and was accused of punching and slapping a man at a mosque during an argument over parking. This is not the conduct of a terminally ill man. He remains alive and apparently healthy today, 12 years later.

81. It has been widely speculated that Mr Shaik was released not because he was genuinely ill, but because of his proximity to Mr Zuma. His apparently rude health in the twelve years since his release support this conclusion.

82. I annex a News24 article containing the relevant reportage marked '**FA19**'.

83. It is, of course, possible that Mr Zuma was only diagnosed with an illness justifying medical parole after his imprisonment. But it is contradicted by the known facts and there is no publicly available evidence to support that conclusion.

84. The upshot is that this Court cannot accept the *ipse dixit* of the Department or Mr Zuma as to his eligibility for medical parole. Patently, the medical-parole

procedure is vulnerable to abuse and can be used to unlawfully commute the sentences of the politically connected. This Court must subject the parole decision to searching review in order to prevent this sort of abuse.

85. If, as the Board concluded, Mr Zuma is not sufficiently ill to warrant the granting of medical parole the logical conclusion is that the Commissioner granted medical parole for a reason not authorised by the empowering provision (PAJA s 6(2)*(e)*(i)) or for an ulterior purpose or motive (PAJA s 6(2)*(e)*(ii)). Presumably that purpose was to allow Mr Zuma, the former President, to avoid imprisonment for the remainder of his sentence. Plainly that is not a reason to grant medical parole. At the very least, the decision was not rationally connected to the purpose of the empowering provision (PAJA 6(2)*(f)*(ii)(bb)), or the information before the Commissioner (PAJA s 6(2)*(f)*(ii)(cc)) because Mr Zuma was not sufficiently sick to warrant the grant of medical parole.

THE MATTER IS URGENT

86. The matter is manifestly urgent for at least the following reasons:

86.1. Mr Zuma's term of imprisonment would end in October 2022. If this application were brought in the ordinary course, it is likely that substantive relief would only be obtained after the end of Mr Zuma's term of imprisonment. Mr Zuma would, in effect, obtain medical parole even if it is later declared to be unlawful. That would defeat the purpose of this application.

86.2. I have set out above the harm that the parole decision has done to the rule of law and the public legitimacy of the judiciary. Without swift relief,

this harm will continue and will be impossible to reverse. I have been advised that rectifying ongoing unlawful conduct by the state is inherently urgent.

87. The applicant has departed from the normal timelines in the Rules no more than necessary. The respondents will receive sufficient time to mount a defence and this Court will obtain sufficient time to read the papers and the heads.

88. The applicant has launched this application as fast as possible. The parole decision was announced last Sunday, 5 September 2021. The applicant instructed counsel on Monday, 6 September. Counsel drafted on Tuesday, Wednesday, and Thursday. It was only publicly confirmed by the Commissioner on Wednesday that he had made the parole decision contrary to the recommendation of the Board. This affidavit will be deposed to on Friday, 10 September.

THE CONTENTS OF THE RULE-53 RECORD

89. I am advised that a proper Rule-53 record that demonstrated compliance with the requirements of the Act and Regulations would contain at least the following documents:

89.1. Mr Zuma's application for medical parole;

89.2. Mr Zuma's medical report (to the extent that it is a document separate to Mr Zuma's application);

89.3. the medical recommendation off the Estcourt Correctional Centre in respect of Mr Zuma (to the extent that it exists);

89.4. any written medical report obtained by the Board from a specialist medical practitioner in assessing Mr Zuma's application, as permitted by section 79(3)*(b)* of the Act and as referred to in the *Watchdog* interview;

89.5. the *'report'* that *'impelled'* Mr Zuma's release referred to in the Department's press release of 9 September 2021, and the *'reports'* referred to in the *Watchdog* interview;

89.6. any other documents that served before the Board in assessing Mr Zuma's application;

89.7. all transcripts and minutes of meetings of the Board;

89.8. the Board's independent medical report pertaining to Mr Zuma, as well as its recommendation in respect of his application;

89.9. all communications between the head of the Estcourt Correctional Centre and the Commissioner relating to Mr Zuma's application;

89.10. any other documents or representations that served before the head of the Estcourt Correctional Centre or the Commissioner;

89.11. the delegation of authority empowering the head of the Estcourt Correctional Centre to make medical-parole decisions;

89.12. any written instrument in which the Commissioner withdrew that delegation;

89.13. any written instrument that contains the Commissioner's decision other than the Department's press statement of 5 September 2021; and

89.14. the record of the invitation to the victims of Mr Zuma's crime to make representations, and any representations that were received.

90. The Commissioner should not now object to disclosing the Rule-53 record in full, given that the Department has announced that it will do so in response to court proceedings (see paragraph 65 above), and given that the Commissioner committed in the *Watchdog* interview that the relevant documentation *'will be presented to whoever … need[s] to … see that'*.

91. But, given the secrecy that has surrounded Mr Zuma's alleged illness, it is possible that the Commissioner will refuse to disclose documents that would reveal its nature on the basis that this constitutes confidential information.

92. This would be wrong. First, because the information is not confidential:

92.1. Section 79(4)*(a)*(i) of the Act provides that when an offender applies for medical parole, he must provide *'informed consent … to allow the disclosure of his … medical information, to the extent necessary, in order to process an application for medical parole'*.

92.2. Similarly, Section A of the prescribed form requires the offender to *'consent to the full disclosure of [his] medical information to the extent necessary and to the persons necessary in order to process [his] application for medical parole'*.

92.3. As such, Mr Zuma has consented to the full disclosure of his medical information to all persons necessary to process his application for medical parole. This includes parties to any subsequent review of the parole decision.

92.4. This makes sense. An inmate has committed a crime – a serious, public wrong against the South African community. His incarceration constitutes his punishment by and atonement to the community for that wrong. If he wishes to be released early for medical reasons – and to have his punishment cut short – it is not only his business, or the business of the Commissioner. It is the business of the South African community. In order to obtain medical parole, he thus cannot expect to keep the basis for obtaining medical parole – his health issues – secret.

92.5. Mr Zuma's situation is a vivid illustration of the point. The Commission is tasked with investigating corruption – the quintessential crime against the public. By refusing to participate in the Commission's proceedings when instructed to do so, Mr Zuma has undercut the public's deep and manifest interest in getting to the bottom of state capture. By then ignoring the Constitutional Court's order, Mr Zuma has displayed his contempt for the authority of that Court – and by extension for the Constitution that protects the rights of every South African.

92.6. Mr Zuma's imprisonment for contempt constitutes his atonement to the public for these public wrongs. If he wishes for this punishment to be commuted for medical reasons, he must be comfortable with those reasons being public.

93. But even if it is assumed for the sake of argument that Mr Zuma's medical information is confidential, it must still be disclosed. I am advised that it is settled law that confidentiality is no defence to the full provision of a Rule-53 record.

94. I warn the Commissioner that if he fails timeously to disclose the Rule-53 record in full, the applicant will seek a punitive costs order against him. The law is clear – the full Rule-53 record must be disclosed, even if it contains confidential information (which, to be clear, this one does not). The Commissioner has publicly committed to providing the full record. The Commissioner is doubtlessly ably legally advised. If he fails to make full disclosure, this could only be a *mala fide* attempt to avoid legal accountability.

REMEDY

95. I am advised that substitution is the appropriate remedy in this case because the correct decision is a foregone conclusion and because this Court is in as good a position as the decisionmaker to make the correct decision. Given that the Board recommended against the grant of medical parole, the Commissioner was not permitted to grant it. He was obliged to refuse it. This Court should thus set aside the parole decision and replace it with a decision rejecting his application for medical parole, with costs, including the costs of two counsel.

WHEREFORE I pray for the order sought in the notice of motion.

JOHN HENRY STEENHUISEN

Signed and sworn before me at Cape Town on Friday, 10 September 2021, the deponent having acknowledged that he knows and understands the contents of the affidavit, that he has no objection to taking the prescribed oath and that he considers it binding on his conscience.

COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
Marlene Botha CA (SA)
SAICA Membership No 08039462
Tyger Valley Office Park No 2
Cnr. Willie van Schoor Avenue &
Old Oak Road, Bellville, 7530

"FA1"

Schedule B

[Schedule B deleted by GN R687 of 3 August 2007 and by GN 595 of 29 May 2009 (wef 23 July 2007) and added by GN 143 of 27 February 2012 (wef 1 March 2012).]

MEDICAL PAROLE APPLICATION IN TERMS OF SECTION 79 OF ACT 111 OF 1998 AS AMENDED

A DETAIL OF OFFENDER

1.	Registration No		2. Surname and Initials	
3.	Date of Birth		4. Gender	
5.	Correctional Centre at which detained			

1 I, ... (Name and Surname) hereby consent to the full disclosure of my medical information to the extent necessary and to the persons necessary in order to process this application for medical parole. I also agree, that should I be granted medical parole, to undergo periodic medical examination by a medical practitioner in the event that this is required.

SIGNATURE OR RIGHT THUMB PRINT

SURNAME AND INITIALS AND SIGNATURE OF WITNESS

B DETAILS OF APPLICANT (if different from A)

1	ID No		2 Surname and Initials	
3	Date of Birth		4 Relationship to Offender	

C MEDICAL REPORT - to be completed by medical practitioner

1 Name and Surname of Medical Practitioner _____ 2 Practice number _____

3 I examined the offender on _____ at _____

4 I

did	did not	
		Refer the offender for a specialist opinion. (if referral to specialist attached [sic] separate report)

5 *(a)* Diagnosis _____

(b) Medical history _____

(c) Is the offender suffering from a terminal disease or condition as specified in the conditions listed in regulation 29A(5)? _____

(d) What is the prognosis? _____

(e) Is the offender able/unable to perform activities of daily living and self care due to the above mentioned?

Comments: _____

(f) If unable, date of unset [sic] or period he/she suffered from the condition/diseases/incapacity?

_____

(g) Is the impact of the illness or condition on activities of daily living and self care, mental, physical and intellectually capacity minor, moderate or severe? Please explain:

(h) Has the offender's condition deteriorated permanently or reached and irreversible state? If yes, explain briefly:

(i) How has the offender managed?

(j)

7 Response to treatment

8 Medical parole should be considered for the following reasons:

8.1 Functional or physical incapacity:

8.2 Mental or intellectual capacity:

8.3 Unable to provide self care:

9 In your professional opinion does the condition of health render the offender incapable of committing further criminal acts, in particular of sexual and/or violent nature?

10 If released, the offender would require the following health care:

11 The health care required in 10 above is available in the area in which the offender will reside? (Specify health capacity, hospice, home care etc)

Name: Date:
(BLOCK CAPITALS)

Signature:

D DETAILS OF OFFENCE, SENTENCES AND REHABILITATION - to be completed by CMC

1 Was the sentencing court aware of the current condition of the offender?

Attach SAP 62, SAP 69 and sentencing remarks where available

2 Type of offence

3 Date of sentence _____

4 Length of sentence _____

5 Previous Convictions _____

7 Name of Court | | Case number | |

8 What programmes has the offender attended?

9 What is your assessment of the risk of the offender re-offending given his present medical condition?

10 Attach latest social work report

11 Has the offender been found guilty of any disciplinary offences whilst in detention? (specify)

E ARRANGEMENTS FOR offender's SUPERVISION, CARE AND TREATMENT - to be completed by Community Corrections

(a) Where will the offender be accommodated after release on medical parole

(i) Hospice	
(ii) Hospital	
(iii) Friends or Family	
(iv) Other (Specify)	

Address

(b) Is the address monitorable? _____

(c) Who will care for the offender and what is their relationship?

(d) To what extent are the relatives and friends aware of the offender's medical conditions?

_____

_____

_____

(e) Are relatives and friends able to take care of the offender in his/her present condition?

_____

(f) If the offender is to be accommodated in a hospital, hospice or other institution what arrangement has been made with such institution?

_____

_____

_____

Name: _____ Date: _____
(BLOCK CAPITALS)

Signature: _____

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"FA2"

correctional services
Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

Search Search

National Commissioner of Correctional Services

Mr Fraser was actively involved in student politics and joined the ANC underground structures early in his life.

Upon his return to South Africa, Mr Fraser joined the newly-formed National Intelligence Agency (NIA). During his tenure at NIA he was seconded to the Truth and Reconciliation Commission (TRC) as an investigator, which accorded him keen insight into the operations of the apartheid security apparatus.

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Following his secondment Mr Fraser served the intelligence community in various operational capacities, culminating in his appointment as Head of National Intelligence in the Western Cape. He was later transferred to the Department of Home Affairs where he served as Deputy Director-General for the National Immigration Branch. After one-and-a-half years Mr Fraser was re-appointed to NIA as Deputy Director-General in charge of offensive and counter-intelligence operations; a position he held for five years.

In addition to holding a BA (Hons) degree in Film and Video Production from The London Institute and a Certificate of Attendance from the Institute of Directors in South Africa, Mr Fraser completed several training courses, including an executive management course in the United Kingdom, and has led many delegations on liaison exchange visits. During his time spent in the private sector, Mr Fraser co-founded Resurgent Risk Managers.

relationship for the manufacturing and supply of furniture (/?page_id=6810)

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"FA3"

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 295/20

In the matter between:

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

and

JACOB GEDLEYIHLEKISA ZUMA Respondent

and

COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION First Amicus Curiae

VUYANI NGALWANA SC Second Amicus Curiae

THE HELEN SUZMAN FOUNDATION Third Amicus Curiae

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

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

Judgments: Jafta J (unanimous)

Heard on: 29 December 2020

Decided on: 28 January 2021

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

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ORDER

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

1. The application for direct access is granted.
2. Advocate Vuyani Ngalwana SC is not admitted as amicus curiae.
3. The Council for the Advancement of the South African Constitution and the Helen Suzman Foundation are admitted as amici curiae.
4. Mr Jacob Gedleyihlekisa Zuma is ordered to obey all summonses and directives lawfully issued by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Commission).
5. Mr Jacob Gedleyihlekisa Zuma is directed to appear and give evidence before the Commission on dates determined by it.
6. It is declared that Mr Jacob Gedleyihlekisa Zuma does not have a right to remain silent in proceedings before the Commission.
7. It is declared that Mr Jacob Gedleyihlekisa Zuma is entitled to all privileges under section 3(4) of the Commissions Act, including the privilege against self-incrimination.
8. Mr Jacob Gedleyihlekisa Zuma must pay the Commission's costs in this Court, including costs of two counsel.

"FA4"

JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

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

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

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

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

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

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

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

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

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

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

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

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

I do not fear being arrested, I do not fear being convicted nor do I fear being incarcerated. I joined the struggle against the racist apartheid government and the unjust oppression of black people by whites in the country at a very young age. As a result, I was sentenced in December 1963 to serve 10 years on Robben Island at the age of 21. Thereafter, I continued to be at the forefront of the liberation struggle within the ranks of the African National Congress and Umkhonto weSizwe in exile until my return to South Africa in the early 90's. In all the years of struggle, I had never imagined that there would come a time when a democratic government in South Africa built on Constitutional values would behave exactly like the apartheid government in creating legal processes designed to target specific individuals in society. Witnessing this carries a much more amplified pain when realizing that it is now a black liberated government behaving in this way against one of their own. The notion of divide and conquer against the ANC has never been a more apposite truism than in the current politics of South Africa. This brings to mind what the great Pan Africanist philosopher Frantz Fanon wrote of post-colonial nations in his work titled The Wretched of the Earth saying:
"*If this suppressed fury fails to find an outlet, it turns into a vacuum and devastates the oppressed creatures themselves. In order to free themselves they even massacre each other. The different tribes fight between themselves since they cannot face the real enemy- and you can count on the colonial policy to keep up their rivalries*"

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

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

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

JG ZUMA
1 FEBRUARY 2021

"FA 5"

JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

15 FEBRUARY 2021

FINAL STATEMENT ON CONSTITUTIONAL COURT DECISION COMPELLING ME TO APPEAR BEFORE THE COMMISSION OF INQUIRY INTO STATE ALLEGATIONS OF STATE CAPTURE AND MY REFUSAL TO APPEAR BEFORE THE ZONDO COMMISSION

1. On 1 February 2021 I issued a statement in which I set out my position and attitude towards what I referred to as an unprecedented decision of the Constitutional Court, which effectively stripped me off my constitutional right as a citizen and created, as some of our courts have been doing to me, jurisprudence that only applies to Jacob Gedleyihlekisa Zuma.

2. I took this extra-ordinary step not to undermine the Constitution but to vindicate it, in the face of what I view as a few in the judiciary that have long left their constitutional station to join political battles. I took it after my observation that there are some concerning tendencies slowly manifesting in the judicial system that we should all fear. It is my political stance and mine alone.

3. Today, unprovoked, Deputy Chief Justice Zondo decided to propagate some political propaganda against me. In my absence he and Pretorius SC decided

on what they have always sought to do, turn all the narratives against me into evidence. In his long-prepared speech, Pretorius SC presented what Deputy Chief Justice Zondo literally called evidence against me. Realizing that they had forfeited the opportunity to present the evidence to me, they did what has become their hallmark at the Commission in making submissions to each other and playing politics to influence public opinion.

4. That Deputy Chief Justice Zondo could mislead to the nation is something that should concern us all. In justifying his position earlier, he stated that it was my legal team that said I would come and exercise my right to silence. Those who know the truth will know that when my legal team made this reference, it was in the context of an example and suggestion of how a more responsible way forward could be found.

5. His conduct today fortifies my resolve and belief that he has always sought to prejudice me. In what seemed like Pretorius SC's closing argument, it appeared that the script thereof was already written for the report of the Commission. In his typical approach, he smuggled new allegations about me that were obviously intended to ambush me. He has prejudiced my children, my family as he presented his version that he always sought to place in Commission's report.

6. The Deputy Chief Justice concluded by saying my contempt constitute grounds for him to approach to the Constitutional Court to seek a sentence. Ofcourse he will get it. I am not certain that ordinarily that is how contempt

proceedings would commence, but I have accepted that Deputy Chief Justice Zondo and due process and the law are estranged.

7. Now that it seems that my role in the Commission has come to an end, I wait to face the sentence to be issued by the Constitutional Court. Accordingly, I stand by my statement of 1 February 2021 and no amount of intimidation or blackmail will change my position as I firmly believe that we should never allow for the establishment of a judiciary in which justice, fairness and due process are discretionary and are exclusively preserved for certain litigants and not others.

8. Many in our society have watched this form of judicial abuse but choose to look the other way merely because of their antipathy towards me. They choose to lay the blame at my doorstep and fail to confront head-on the judicial crisis that is unfolding in our country.

9. The Zondo Commission has today again showed how it is short of the attributes necessary to conduct an independent, fair and impartial investigation or hearings that involve me or that contradict their script on state capture. Judge Zondo has today again displayed questionable judicial integrity, independence and open-mindedness required in an investigation of this magnitude. Upon being advised by my legal team in open proceedings that it would have been more prudent to have more than one person preside over a commission of this nature, Judge Zondo answered that he could not do this since he risked a dissenting voice when the report is written. What judge says this as a reason and justification not to be assisted in such a mammoth

task? What type of society accepts such an explanation from a Deputy Chief Justice who sits in the apex court with ten other judges in order to enrich, sometimes by dissent, the quality of judgments?

10. What society looks the other way when a judge adjudicates a matter involving his own disputed facts? What judicial system tolerates a judge admitting that he concealed a fact in his statement relating to whether he had ever met with me during my tenure as President? I invite all of those who care to look closely at my replying affidavit in the recusal application as well as the Deputy Chief Justice's delayed admission that his statement had not been accurate. Indeed, as this admission stared us in the face, all looked the other way in their consistent attempts to conceal or downplay the obvious errors of the Chairperson of the Commission.

11. Although my statement was a response to the judgment of the Constitutional Court, my reservations about the Commission and its lawfulness are well recorded. I stand by my reservations and that the Commission was conceptualized as part of the campaign and sponsored multi-sectoral collaboration to remove me from office. Faced with this obvious unlawful appointment of the Commission, the Chief Justice endorsed it. Later, and indeed unsurprisingly, Judge President Mlambo also endorsed this unprecedented breach of the principle of separation of powers between the executive and the judiciary. No matter how long we deny it or ignore it, the illegality of that decision to allocate to the judiciary a constitutional function of the President will stubbornly stare us in the face.

12. The Commission approached the Constitutional Court in total disregard of the fact that I was taking its ruling on the recusal application on review. This calculated stratagem was to frustrate my chances of even challenging their subpoenas in our courts. The Commission obviously ran to seek a licence to act with impunity. I still persist that there was no basis or dispute necessitating the Commission to approach the Constitutional Court and that there was no factual basis for presumption that I would defy the subpoena. I have already presented myself to the Commission on two occasions when called upon to do so.

13. Fed with absolute lies, the Constitutional Court assumed that I or my legal team had threatened that I would defy or refuse to answer. You only have to peruse the records of the date of the recusal application to know that my legal team was at pains to suggest a responsible way forward. The submission by the Commission that a threat was made that I would defy or refuse to answer is a blatant falsehood fabricated on behalf of the Commission and entertained by the judges of the Constitutional Court.

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

15. It was submitted on behalf of the Commission, something it seem to have been accepted by the Constitutional Court that; I am "accused No 1" at the Commission. Labelling me in this fashion is deeply offensive to me but is also clear evidence that the Commission treats me as an accused, not a witness.

16. The Constitutional Court went further, accepting as a fact, the Commission's submissions that I had a constitutional duty to account to it (for the wrongdoing). I have followed the evidence of many witnesses at the Commission, including those alleged to have implicated me and elected that none of them had any case of substance against me. However, the Commission sought to deliver me at all costs and in this endeavour is prepared to break every rule of justice and fairness.

17. It is that type of judicial conduct that I protest against, not our law or our Constitution. It is not the authority of the Constitutional Court that I reject, but its abuse by a few judges. It is not our law that I defy, but a few lawless judges who have left their constitutional post for political expediency. I respect the law and have subjected myself even to its abuse for the past 20 years. I have presented myself to the Zondo Commission twice and therefore the was no factual justification for the order given by the Constitutional Court. None whatsoever.

18. I protest against those in the judiciary that have become an extension of political forces that seek to destroy and control our country. I seek no special treatment from the judiciary. I ask them to remain true only to their oath of office and their duty to treat everyone as equal before the law. I do not ask them or any of them or you to develop any affection for me. I only seek to

vindicate what we fought for so that even when society is in turmoil, as it will from time to time, we will have a judiciary that refuses to join the lynching mobs.

19. As it has become common place in our country in cases that relate to me, my statement has been met with the bigotry that has become the hallmark of our sponsored opinion makers. Instead of pausing to consider whether the so-called constitutional crisis may be emerging from the conduct of some of our courts themselves, the debate has been conducted in the usual binary, simplistic and biased terms, seeking to shield what I regard as a few in the judiciary that have forsaken their oath of office to **"...uphold and protect the Constitution and the human rights entrenched in it, and will administers justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law."**

20. I do so not to undermine the Constitution or the law, but to express my own protest about those in the judiciary that have turned their back on their fundamental task in society. I take this stance because I believe that judges should never become agents of ruling classes in society.

21. So, I take this stance not because I refuse to accept that my Presidency like any other was not perfect, but because we continue to allow some in the judiciary to create jurisprudence and legal inconsistencies that only apply to me. To date, nothing has been said about Judge President Mlambo's contradictory rulings on the powers and remedies of the Office of the Public

Protector, not because none can see the contradictions, but because they care less about the Constitution than they do about seeing me lynched and punished.

None can claim not to see that the recent judgment of the Constitutional Court is a travesty of justice. That we accept a judgment based on mere conjecture and speculation about my future conduct is a betrayal of the Constitution that many refuse to confront as they scapegoat me for every malady in society.

22. The debate has tended to focus on me, with many suggesting that I regard myself as above the law or that I do not recognize our Constitution and our law. They know as well as I do, that is not the case. Some have argued that if I do not appear before the Zondo Commission I must be jailed or stripped of presidential benefits or pension. Well, for the record, I am the one that suggested that I do not mind defending myself against the sanction that accompanies my principled stance. Secondly, it should naturally please them that, should I fail to defend myself before the relevant contempt forum, I will face jail term.

23. The suggestion that I would be enticed with pension and benefits to abandon my principled stance against what I see as bias by a few in the judiciary, can only come from people who believe that money can buy everything. When I joined the ANC and fought for democracy, I did not do so for money and benefits. This, to me, is a foreign tendency to some of us who have been freedom fighters.

24. I am grateful however, to many comrades, who have sought to hear my side of the story and have understood my frustration. I am grateful for their support and their courage to stand with me rather than to appease, at my expense, those who seek to control our economy, judiciary and our country.

25. Some in our so called intelligentsia have become blinded by their prejudice towards me, they agree that the court my take away my right to remain silent, yet they fail to recognize that the Zondo Commission has already extended this right to at least three witnesses that appeared before it. Where is the consistency in this approach?

26. I demand no more than justice, fairness and impartiality, all of which are attributes we should not have to remind some of our judges to possess. They promised the country they possessed these attributes the day they applied for judicial office and took their oath of office. We should not have to remind some of them of this.

27. If we paused, in any case that involves me, and asked whether many of the decisions taken, and attitudes adopted are not merely driven by the antipathy towards me. What legacy are some of our judges leaving for future generations?

28. When Judge President Mlambo can flip flop on the same principle simply to punish me, what kind of judges do we have? What justice are we serving and what law will be followed when I am long gone. I know that instead of

confronting these questions I am raising, many will resort to sarcasm, and seek a response that blames me. In any event, that is what has led us to this point. The failure to see our law beyond one individual we seek to punish.

29. We sit with some judges who have assisted the incumbent President to hide from society what on the face of it seem to be bribes obtained in order to win an internal ANC election. We sit with some judges who sealed those records simply because such records may reveal that some of them, while presiding in our courts, have had their hands filled with the proverbial 30 pieces of silver.

30. I repeat, it is not the law against which I protest, as I refuse to subject myself to Zondo Commission. I protest against our black, red and green robes, dressing up some individuals that have long betrayed the Constitution and their oath of office. It is those who allow it and look the other way that must do some reflection. You do not have to like me to do this reflection. It is a choice we must make because this country and our law will and must outlive Jacob Zuma.

31. Finally, I restate that my statement is no breach of the law. It is a protest against some in the judiciary that have sold their souls and departed from their oath of office. It is my respect for the law that obliges me to reject the abuse of law and judicial office for political purposes. The law I respect, its abuse I will not.

32. I restate that my review of the recusal ruling remains undetermined and this is part of my reservation about presenting myself to the very presiding officer whose decision I am taking on review. I have no doubt that I will lose it like many other cases. Be that as it may, I am entitled to have it determined or at least recognized.

33. Ordinarily I should have the faith to approach the Chairperson of the Commission or our courts to seek whatever remedy would stay the proceedings until my review is determined. However, the antipathy of some of the courts and the Commission towards me has made it futile for me to exercise my constitutionally guaranteed access to courts. Not only will I be dismissed, but I will also be punished with punitive costs for approaching the courts.

34. I am in the process of revising all matters I have before our courts, except the criminal matter, as it has become clear to me that I will never get justice before some of the current crop of our judges in their quest to raise their hands to seek political acceptance at my expense. I have observed in hearings how some of our judges have directed their antipathy towards my counsel in hearings and am grateful that my legal team, under testing circumstances have kept their professional composure.

35. I am aware that that our judiciary and magistracy have a number of men and women of integrity, many of whom are shunned when matters are allocated. I respect them and must not be understood not to recognize them or that I am

tainting all of them with the same brush. Unfortunately, many of them, for their refusal to be part of the syndicate or to forsake their oath of office, they will never be allocated matters wherein pre-determined outcomes are demanded.

36. I respect our citizens and our law. History will soon reveal that it is only some in our courts that have been captured to serve political ends and to undermine the Constitution, which is the supreme law of the land. I will not join those who seek to do this.

37. As you sharpen your pens to condemn me, I reiterate that I stand by my earlier statement and will not appear before a process that is not impartial. I stand by the decision not to forsake the law and our Constitution. I choose to protest in order to restore our constitutionally enshrined principle of an independent judiciary.

ISSUED BY:

JACOB GEDLEYIHLEKISA ZUMA

"FA6"

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 52/21

In the matter between:

SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE	Applicant
and	
JACOB GEDLEYIHLEKISA ZUMA	First Respondent
MINISTER OF POLICE	Second Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Third Respondent
HELEN SUZMAN FOUNDATION	Amicus Curiae

DIRECTIONS DATED 9 APRIL 2021

The Chief Justice has issued the following directions:

1. The first respondent is directed to file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021 on the following issues:

   a) In the event that the first respondent is found to be guilty of the alleged contempt of court, what constitutes the appropriate sanction; and

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

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

3. Further directions may be issued.

MR DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT

REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA
Private Bag X1, Constitution Hill, Braamfontein 2017
2021 -04- 09
CC-001
REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

TO: STATE ATTORNEY, JOHANNESBURG
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Ref: J Van Schalkwyk/1544/18/P45

AND TO: MR JACOB GEDLEYIHLEKISA ZUMA
First Respondent
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King Cetshwayo District
KwaZulu-Natal
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Ref: Mr E T Mabuza

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

"FA 7"

JACOB GEDLEYIHLEKISA ZUMA

KwaDakwadunuse Homestead
KwaNxamalala, Nkandla
King Cetshwayo District
KwaZulu Natal

14 April 2021

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

Dear Chief Justice

1. I received your directions dated 9 April 2021 in which you direct me to "file an affidavit of no longer than 15 pages on or before Wednesday, 14 April 2021" to address two theoretical questions relating to sanction.

2. The questions are framed on the presumption that the Court that heard the application of the Chairperson of the Commission of Inquiry into State Capture, Fraud and Corruption in Public Entities ("Zondo Commission") has not determined the merits of whether I am guilty of contempt of court.

3. I have thought long and hard about the request in your directives. I have also been advised that addressing a letter of this nature to the court is unprecedented as a response to a directive to file an affidavit. However, given the unprecedented nature of my impending imprisonment by the Constitutional Court, we are indeed in unprecedented terrain.

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

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

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

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

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

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

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

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

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

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

13. This means that both the Zondo Commission (acting as the executive arm of government) and the Constitutional Court are bound by the "democratic values of human dignity, equality and freedom.

14. The Constitutional Court was to be the enduring monument of our constitutional order, representing our victory over the apartheid system. It is the only innovation by the founders of our constitutional order in the structure of our judiciary that was established to champion a judicial system that would be the bulwark against injustice and oppression.

15. It was established to represent an irrevocable covenant between the people and their government of human dignity, the achievement of equality and the advancement of human rights and freedoms.

16. In order to ensure that our new system of constitutional democracy would have an enduring constitutional legacy, we decided that we would only appoint worthy arbitrators, whose historical experience and sense of humanity would connect with the spirit and ethos of our constitutional system. This is because our Constitutional Court would not have to be prompted to perform its central constitutional mission.

17. The Constitutional Court would represent freedom for everyone, and with it, I believed that we would be safe from the unjust and oppressive political narratives that had routinely found credibility in the courts of oppression. It is no secret that dominant narratives come from the dominant and moneyed classes in our society.

18. Ideally, such narratives should not sway our apex court on how to deal with a particular litigant.

19. The men and women who were to serve on it would not conduct the affairs of the Court with arrogance and oppressive tendencies. In the words of our national hero Nelson Mandela on 14 February 1995 at the inauguration of the Constitutional Court, on behalf of the people of South Africa he said to the then Chief Justice Arthur Chaskalson:

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

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

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

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

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

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

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

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

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

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

25.1. The condemnatory political comments by Acting Justice Pillay in her judgment about me are but one example.

26. My decision not to participate in the contempt of court proceedings was based on my belief that my participation would not change the atmosphere of judicial hostility and humiliation reflected in its judgment against me. It is my view or my feeling that the judges of the Constitutional Court do not intend to ensure that they address disputes involving me in a manner that accords with the independence, impartiality, dignity, accessibility, and effectiveness of the Court.

27. One of the astonishing facts is indeed the presence of Acting Justice D Pillay as a member of the panel of the Constitutional Court considering my dispute, a judicial officer whose judicial antipathy towards me is well recorded in a court judgment and an order for my arrest while I was in hospital, sitting comfortably as a panelist pretending to exercise impartial judicial authority in a case that would determine whether I should be arrested and imprisoned for not complying with a court order. I found the participation of Acting Justice Pillay particularly disturbing and a clear indication of her unmitigated lack of discretion and a deeply irresponsible exercise of judicial power. Her gratuitous comments in a judgment against me in a dispute involving my comments on Derek Hanekom and her

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

28. Your directive, Chief Justice provides that I must answer the questions in a 15-page affidavit within 3 days. Regrettably, if I accede to your request, I purge my conscientious objection for having not participated in the proceedings of the Constitutional Court. So, please accept this letter as the only manner in terms of which I am able to convey my conscientious objection to the manner in which your Constitutional Court Justices have abused their power to take away rights accorded to me by the Constitution. I invite you to share this letter with them as it is relevant to the directions that you have issued. I make this request having been advised that this letter is not a pleading.

29. After agonising over how to respond to your direction, Chief Justice, I came to the conclusion that the directions are an attempt to get me to make submissions that would assist those judging me on the question of sanction.

30. Chief Justice, while giving me a right to a hearing is something I could commend, there are intractable problems with the nature and scope of the right that you have afforded me. The right to hearing in respect of sanction reduced to 15 pages which must be provided to the Court within 3 days does not appear to be made as a good faith attempt to give me a right to hearing but to sanitise the procedural infirmities of the procedures of the Constitutional Court. More importantly, the conditions for my right to a hearing do not appear to fully engage

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

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

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

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

34. I have no doubt that the Zondo Commission has become a complex project controlled by my political foes. Even though I established the Commission, I was aware that it had been proposed as part of the campaigns to force me out of government.

35. The Zondo Commission has an insurmountable problem which the Court failed to even reflect on: whether it was competent for the judges of the Constitutional Court to adjudicate a matter involving their own colleague and a Deputy Chief Justice for that matter? The Constitutional Court failed to reflect its reasons for adjudicating a dispute involving their colleague.

36. The contempt proceedings were not brought to vindicate the integrity of the Zondo Commission rulings or directives – for as I listened to the arguments made before the Court by the Commission – it expressly does not seek to enforce my further participation in the Commission. In fact, it was stated vociferously on behalf of the Commission that all it wants is my incarceration and not my appearance before it.

37. What the Zondo Commission did was to avoid utilising the statutorily prescribed procedures for enforcing its directives, it created conditions for holding me in contempt of court rather than in contempt of the Zondo Commission. Had the Zondo Commission utilised the procedure prescribed in the Commissions Act to enforce its rulings, I would have been entitled to raise many defences. Approaching the Constitutional Court as a court of first and final instance violated my constitutional rights.

38. As I understand it, the Zondo Commission publicly declared its decision to file a charge of contempt with the NPA in compliance with the Commissions Act. That statutorily prescribed approach was abandoned for the inexplicable convenience of the Zondo Commission and with no regard to the effects that such a position would have on my constitutional rights. This clearly demonstrated that the Court had abandoned its constitutional mission for the sake of promoting the entrenchment of political narratives of alleged acts of state capture, fraud and corruption by me.

39. I therefore believed that the Constitutional Court would not succumb to the temptation of promoting political narratives. The Court simply ignored that the Chairperson of the Zondo Commission had publicly announced that he would have me prosecuted on a criminal charge of contempt. To date I have not received summons to appear in a criminal court to answer any question in terms of the Commissions Act alleging that I should be found guilty of defying the Zondo Commission.

40. The fact that the Constitutional Court failed to detect the abuse of the procedure adopted by the Zondo Commission demonstrates that they too have adopted the political view that there is something that I did for which it is justified to strip me of my constitutional rights.

41. I was further advised that the Constitutional Court, as the supreme custodian of guaranteed constitutional rights would not countenance a situation in which an executive arm of government would request it to strip me of my constitutional

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

42. I was convinced that the Constitutional Court, acting as the ultimate custodian of our constitutional rights, would not deprive me of my right to appear before a tribunal or Commission of Inquiry that is fair and impartial This to me was akin to forcing me to appear before someone who had tortured me to give a statement about my alleged criminal conduct involving my political activism. It is for that reason that the Commission has been trying very hard to pretend that my review application does not exist. I have reviewed the decision of Deputy Chief Justice Zondo refusing to recuse himself.

43. In that review I also demonstrate that not only has he told falsehoods on oath, but became a judge in his own matter.

44. I believed that Constitutional Court would respect the authority and obligation of the High Court to determine the merits of my review application and therefore, do nothing that would undermine the fair and impartial adjudication of that matter.

45. The intervention of the Constitutional Court based on political conveniences in the work of the Zondo Commission to me was not only bizarre and premature but demonstrated further that I could not place my trust in the independence, impartiality, dignity, accessibility, and effectiveness of the Court. It was clear to me that the decision to approach the Constitutional Court was an abuse of our judiciary.

46. As a starting point, I do not believe that the Zondo Commission was established in a manner that is consistent with the Constitution. Deputy Justice Zondo's own appointment was unconstitutional as it was done by the Chief Justice – who too was complying with an illegal directive of the Public Protector and an unlawful order of the Gauteng High Court.

47. Chief Justice, you know that you do not have the power, either in terms of the Constitution or by any known convention in political or constitutional governance to participate in the appointment of a Commission of Inquiry established in terms of section 84(2)(f) of the Constitution.

48. You essentially appointed the Deputy Chief Justice Zondo to be Chairperson of the Commission and you did so in the face of a glaring breach of the separation of powers doctrine. The appointment of the Commission failed to uphold the Constitution by accepting the re-allocation of constitutional powers exclusively assigned to the President in terms of the Constitution for the political convenience of the time. In fact, you will recall that you first gave me the name of Justice Desai and thereafter the name of Deputy Chief Justice Zondo. What

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

49. DCJ Zondo is simply disqualified to preside over my evidence by virtue of his prejudice towards me for reasons set out in my review application. Approaching this Court was a clear stratagem to sidestep the review. That the Commission even published that I had to demonstrate my seriousness about the review for it to file the necessary record and answer is simply disingenuous, to say the least.

50. The Zondo Commission, as the Court, knows or should know that there is no case of criminal contempt against me.

51. What the Constitutional Court judgment did was to take away my right to have my review application heard and determined. I could not continue to subject myself to a hearing before the very Commissioner who was biased. This was brought to the attention of the Court in a submission in which my review application was described by the Commission's Counsel as "hopeless".

52. It is not a criminal offence to have a dispute with an administrative agency over its eligibility to adjudicate my dispute. I have a legitimate dispute with the Chairperson, Mr Zondo and I am taking steps to have that ventilated in the courts through a judicial review, which has been ignored by the Commission and the Constitutional Court in its determination of this matter in its previous order.

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

CONCLUSION

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

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

56. I also have a duty to protect my constitutional rights even at the risk of being imprisoned. I have just turned 79 years as I write this letter. I have not known the peace and the freedom that I committed the most active years of my life to. However, I watch the Constitutional Court which is charged with ensuring the safety of my constitutional rights, violate them with judicial impunity. What the Zondo Commission has done is inexcusable and I will live to see my vindication when – after squandering billions of much needed public revenue, an independent court reviews and set aside the findings of the Commission on the basis that it was not established in accordance with our Constitution.

57. A lawfully established Commission would be an asset in making recommendations to the executive that could be accepted, considered, and possibly implemented. How an unlawfully established Commission of Inquiry is capable of assisting the executive to govern correctly eludes me.

58. Just so you do not believe that I have avoided answering your direction, here is my answer. There is no precedence for what the Constitutional Court has allowed to take place in its sacred forum. As stated above, I am ready to become a prisoner of the Constitutional Court and since I cannot appeal or review what I see as a gross irregularity, my imprisonment would become the soil on which future struggles for a judiciary that sees itself as a servant of the Constitution and the people rather than an instrument for advancing dominant political narratives. My impending imprisonment by the Constitutional Court will be a constitutional experiment because it does not appear that it was created as a court of first and final instance to hold the powers of imprisonment and incarceration.

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

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

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

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

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

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

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

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

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

ISSUED BY:

JACOB GEDLEYIHLEKISA ZUMA

"FA8"

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 52/21

In the matter between:

SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE	Applicant
and	
JACOB GEDLEYIHLEKISA ZUMA	First Respondent
MINISTER OF POLICE	Second Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Third Respondent
and	
HELEN SUZMAN FOUNDATION	Amicus Curiae

Neutral citation:	*Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18
Coram:	Khampepe ADCJ, Jafta J, Madlanga J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ and Tshiqi J
Judgments:	Khampepe ADCJ (majority): [1] to [142] Theron J (minority): [143] to [268]
Heard on:	25 March 2021

Decided on: 29 June 2021

Summary: Rule of law — judicial integrity — vindicating the honour of courts

Contempt of court — urgent application — direct access — duty to comply with court orders — first respondent is in contempt of court

Appropriate sanction for crime of civil contempt — punitive sanction — unsuspended committal — punitive costs

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ORDER

On application for direct access to this Court:

1. The application for direct access is granted.
2. The Helen Suzman Foundation is admitted as amicus curiae.
3. It is declared that Mr Jacob Gedleyihlekisa Zuma is guilty of the crime of contempt of court for failure to comply with the order made by this Court in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma* [2021] ZACC 2.
4. Mr Jacob Gedleyihlekisa Zuma is sentenced to undergo 15 months' imprisonment.
5. Mr Jacob Gedleyihlekisa Zuma is ordered to submit himself to the South African Police Service, at Nkandla Police Station or Johannesburg Central Police Station, within five calendar days from the date of this order, for the Station Commander or other officer in charge of that police station to ensure that he is immediately delivered to a correctional centre to commence serving the sentence imposed in paragraph 4.

6. In the event that Mr Jacob Gedleyihlekisa Zuma does not submit himself to the South African Police Service as required by paragraph 5, the Minister of Police and the National Commissioner of the South African Police Service must, within three calendar days of the expiry of the period stipulated in paragraph 5, take all steps that are necessary and permissible in law to ensure that Mr Jacob Gedleyihlekisa Zuma is delivered to a correctional centre in order to commence serving the sentence imposed in paragraph 4.

7. Mr Jacob Gedleyihlekisa Zuma is ordered to pay the costs of the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, including the costs of two counsel, on an attorney and client scale.

JUDGMENT

KHAMPEPE ADCJ (Madlanga J, Majiedt J, Mhlantla J, Pillay AJ, Tlaletsi AJ and Tshiqi J concurring):

> "We expect you to stand on guard not only against direct assault on the principles of the Constitution, but against insidious corrosion."[1] (Nelson Mandela, 1995)

Introduction

[1] It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs. The corollary duty borne by all members of South African society – lawyers, laypeople and politicians alike – is to respect and abide by the law,

[1] Nelson Mandela (address by former President Nelson Mandela at the inauguration of the Constitutional Court, 14 February 1995).

"FA9"

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT52/21

In the matter between:

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

NOTICE OF APPLICATION IN TERMS OF RULE 29 OF THE CONSTITUTIONAL COURT RULES

TAKE NOTICE THAT THE abovementioned applicant intends applying, in terms of section 167(3)(b) and/or section 167(6)(a) of the Constitution on a date and time to be determined by the Registrar of the Honourable Court or as directed by the Acting Chief Justice in terms of the Rules of the Constitutional Court, for an order in the following terms:

1. That paragraph 3 of the order of this Honourable Court delivered on 29 June 2021, in terms of which the applicant was found guilty of the crime of contempt of court for not complying with its orders in ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa***

Zuma [2021] ZACC2, is hereby rescinded in terms of Rule 42 of the Uniform Rules of Court, read with Rule 29 of the Rules of the Constitutional Court.

2. That paragraph 4 of the order of the judgment of this Honourable Court is hereby rescinded; and/or

3. That paragraphs 3, 4, 5 and 6 of the order of this Honourable Court are set aside.

4. Further and/or alternative relief

TAKE FURTHER NOTICE that the Acting Chief Justice is requested to issue directions for the further conduct and disposal of the matter, in accordance with Rule 11 of the Constitutional Court.

TAKE FURTHER THAT absent such directions, you are required to indicate by no later than 9 July 2021 any intention to oppose this application and to deliver, by no later than 30 July 2021, any answering affidavit(s).

TAKE FURTHER THAT the applicant has appointed **Ntanga Nkuhlu Incorporated** as his attorney of record and his address, as set below, as the address where it will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that the affidavit of **JACOB GEDLEYIHLEKISA ZUMA** will be used in support of this application.

DATED AT JOHANNESBURG ON THIS 2nd DAY OF JULY 2021

NTANGA NKUHLU INCORPORATED

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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

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RAYMOND MNYAMEZELI ZONDO NO.	Second Respondent
THE MINISTER OF POLICE	Third Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

GEDLEYIHLEKISA JACOB ZUMA

do make oath and state:

1. I am the former President of the Republic of South Africa, residing in the village of Kwa-Nxamalala at Nkandla. I am the first respondent in the judgment handed down by this Honourable Court on Tuesday, 29 June 2021 attached hereto as annexure "X" and in which I was found guilty of the crime of contempt for which I have been summarily, and without undergoing any trial, sentenced to fifteen (15) months of direct imprisonment. I bring this application in my aforementioned capacity.

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2. The facts contained in this affidavit are, unless the contrary appears from the context or is so stated, within my own knowledge and are true and correct. The facts of which I do not have personal knowledge are to the best of my knowledge and belief both true and correct. Where I make submissions of a legal nature, I do so on the strength of legal advice which my legal advisers have provided to me.

THE PARTIES

3. I am the applicant in this application and the first respondent under case number CCT 52/21 referred to above and marked "X". The relevance of the fact that I am the former President and Head of State of the Republic of South Africa and served as such between the period of 9 May 2009 to 14 February 2018 will become clear later in this affidavit. Prior to being President of the Republic of South Africa, I also served in different executive capacities in government since 1994.

4. The first respondent is the **COMMISSION OF INQUIRY INTO STATE CAPTURE, CORRUPTION AND FRAUD IN PUBLIC ENTITIES AND OTHER ORGANS OF STATE,** appointed in January 2018 by me as the then President and nominated by the Chief Justice on the dictation and direction of the remedial action of the Public Protector which was endorsed by order of the High Court in the case President of the Republic of South Africa v Public Protector.

5. The second respondent is the Chairperson of the Commission of Inquiry, **DEPUTY CHIEF JUSTICE ZONDO,** who was selected by the Chief Justice for appointment to chair the Commission of Inquiry ("the Chairperson").

S.T.N.

6. The third respondent is the **MINISTER OF POLICE**, a member of the executive appointed as such by the President of the Republic of South Africa. No relief is sought against the Third respondent who has been cited for the role that he has been directed to play in the execution of the incarceration orders of the aforementioned judgment.

7 The fourth respondent is the **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**, who is member of the executive appointed by the President of the Republic of South Africa responsible for the administration of justice. No relief is sought against the Minister who has been cited for the role that he has been directed to play in the execution of the incarceration orders of the aforementioned judgment.

8. Service upon all the respondents will, by arrangement, be electronically effected upon The State Attorney, Johannesburg, per JohVanSchalkwyk@justice.gov.za.

9. The respondents are cited only insofar as they may have a direct or indirect interest in the outcome of the application and no costs order will be sought except in the event of opposition.

THE PURPOSE OF THIS APPLICATION

10. This is an urgent application as contemplated in Rule 42 of the Uniform Rules of Court, read with Rule 29 of the Rules of this Honourable Court, for relief that paragraphs 3 and 4 of the judgment of the Honourable Court referred to above be reconsidered and rescinded. In this application I further seek orders that paragraphs 3, 4, 5 and 6 of the said order be consequentially set aside.

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11. Alternatively, and in the event that the Court rejects my application to reconsider and rescind or vary paragraph 3 of the order, that it directs that I am given the proper opportunity to present evidence in relation to the question of whether direct imprisonment is an appropriate remedy for the crime of contempt of court under the circumstances of my dispute with the Commission of Inquiry.

12. I approach the Honourable Constitutional Court fully cognisant of the passionate, charged and strong expression of judicial disdain for my apparent defiance of its orders in **Secretary of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector including the Organs of State v Zuma (Council for the Advancement of the South African Constitution, Ngalwana SC, the Helen Suzman Foundation Amicus Curiae) [2021] ZACC; 2021 JDR 0079 (CC)**. Given my impending incarceration, I have not had sufficient time to put this application together. However, I believe I meet the jurisdiction and/or direct access requirements in terms of the rules of the Court, more particularly because no other court would have the jurisdiction to rescind an order of the Constitutional Court, and this application is connected to an application in which direct access and jurisdiction have already been determined and exercised.

13. The tone in which the Court conveyed its judicial exasperation and displeasure at my non-compliance with its orders in relation to my appearance at the Commission of Inquiry would ordinarily discourage any litigant from seeking the same court to reconsider, vary and rescind its orders. I approach the Honourable Court dreading the prospect that in dealing with this application against the background of its seminal and unprecedented judgment on summary imprisonment without trial for contempt of Court, I do trust that it will be able to dig from the depth of its judicial being, to extract the requisite calmness and restraint, and to adjudicate my

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application solely based on its legal merits. I also trust that my application will not be regarded as another affront to the Court or what it regarded as "*direct assaults as well as calculated and insidious efforts ... to corrode its legitimacy and authority*", as was the case with my genuine pleas that the issue of the recusal of Zondo DCJ, which I have brought before the courts, be first decided before I could be forced to appear before him, when assuming the neutral pose of the Chairperson of a fair judicial enquiry. In the final analysis, taking that stance, whether ill-advised or not, is my only sin. It was certainly never intended to attract or provoke such acerbic judicial ire. To the extent that it has clearly had that unintended consequence, it is very regrettable indeed. I hope my *bona fides* will be accepted at face value in this important regard. Either way, this aspect of the matter will be more fully ventilated at the open hearing of this matter, if so directed.

14. I am advised that, before I walk through the prison doors to serve my sentence as the first direct prisoner of the Constitutional Court under our constitutional democracy, it will not be futile to make one last attempt to invite the Constitutional Court to relook its decision and to merely reassess whether it has acted within the Constitution or, erroneously, beyond the powers vested in the court by the Constitution. The peculiarity and uniqueness of these unprecedented circumstances, the implications thereof on my personal freedom and the health challenges facing the country should all combine to militate in favour of the serious entertainment of this matter.

15. In so doing and although I am in obvious agreement with the relevant sentiments expressed in the lucid minority judgment of Theron J and Jafta J, it is worth emphasising that I go far beyond the minority judgment in my support for the relief sought herein. I would not embark on what would be the futile exercise of simply regurgitating the minority judgment.

S.T.N.

J.C.

16. Given my own unstable state of health. and. that it is my physical life that the incarceration order threatens, I believe that I am entitled to a court that will examine – with dispassionate interest but a keen sense of judicial duty and independence – whether this judgment represents the law on contempt of court orders in a constitutional democracy that is undergirded by the Constitution whose foundational values are human dignity, equality, ubuntu and the advancement of human rights or whether, as I seek to assert, it is underlied by rescindable errors and omissions. In the present circumstances, it is the right to life itself which may be at stake. It is the therefore no exaggeration to label mine as cruel and degrading punishment.

17. I therefore seek this Honourable Court, based on its supreme duty to entrench a constitutional culture in which inherent dignity, ubuntu, the protection and advancement of rights and freedoms and rule of law, to examine its direct imprisonment order and re-evaluate whether such an order does not violate the constitutional rights it is enjoined to protect, promote and give effect to and thereby make itself susceptible to the rescission regime envisaged in Rule 42 and/or the common law.

18. Let me be upfront with the Court. I do not seek any sympathy from this Honourable Court but its sense of fairness and impartiality in adjudicating this rescission application. I am a 79 year-old man who suffers from a medical condition that requires constant and intense therapy and attention. I disclose this not to avoid imprisonment, which I have gladly faced before in my life for conscientious reasons, but to indicate the gravity of the threat that an unconstitutional order of summary direct imprisonment creates. In the event that the court is persuaded that I should be given a proper opportunity to deal with the issue of direct imprisonment, my state of health would also form part of the many other reasons why I should not be imprisoned, more particularly in the

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current context of a deadly pandemic to which people in my circumstances are particularly vulnerable and at the highest risk of death.

19. Imprisonment will not serve any constitutional value but may be a political statement of exemplary punishment which does nothing to affirm the court as the supreme custodian of our constitutional rights. As already indicated by the premature celebrations of newfound upholders of "the rule of law", it may also satisfy the vengeful appetites of my political foes but ours is a society not built on the basic instincts of revenge, as was famously held in *S v Makwanyane*, to which reference will be extensively made on my behalf. I only mention my health conditions merely to demonstrate, as an example, that this Honourable Court has summarily sentenced me to direct imprisonment without even affording me a proper opportunity to advance mitigation after conviction, like all the other millions of human beings who have ever served sentences in South Africa and anywhere else in the world where there is any semblance of law. It is not with a sense of pride that I am on the verge of being the first person to face direct and unavoidable detention, without the benefit of a trial or a proper opportunity to present mitigating circumstances, in post-apartheid South Africa.

BRIEF BACKGROUND

20. The judgments of the Constitutional Court arise from a dispute with the Chairperson of the **Judicial Commission of Inquiry into Allegations into State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma** ("Commission of Inquiry") regarding what he alleged was my refusal to give evidence before the Commission. The true and simple fact is that I never refused to appear before the Commission of Inquiry. That much has been repeatedly articulated by me, even in the statements which the court has so

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J.G.Z.

much relied on as aggravation in respect of the exact opposite sentiment, namely that I have somehow vowed not to attend the Commission.

21. The objective evidence will show that I indeed appeared twice and gave my evidence after which I was questioned by the Commission Evidence Leader. It was during my appearance that an agreement that was ultimately sanctioned by the Chairperson was reached that I would submit an affidavit covering a number of issues that the Commission Evidence Leaders had identified for my attention. As a consequence of ill-health, I was unable to consult with my lawyers to instruct them on the issues identified by the Commission. I had to travel outside the country for medical reasons. The Chairperson of the Commission crucially accepted my bona fides in relation to my medical leave and directed that he would meet with the leader of my medical team to understand my medical condition. It was during the period of my ill-ness that I got to know that the Commission Evidence Leaders had applied to the Chairperson to have me summonsed in terms of the provisions of the Commissions Act to appear before it on the basis that I had failed to give an affidavit as agreed. I became concerned at the motivation advanced by the Commission Evidence Leaders for the issuance of the summons. I instructed my lawyers to oppose the summons application and to that effect provided an affidavit. In that affidavit, amongst others, I indicated that I was ill and unable to give my attention to the issues involving the drafting of the affidavit. My lawyers appeared at the Commission and indicated, to the apparent satisfaction of the Chairperson, that I was unwell to attend to the issues that the Commission wished to have me answer. I say to the apparent satisfaction of the Chairperson of the Commission because when he read his ruling into the record, he specifically indicated that dates for my appearance would be scheduled when I returned from my medical leave and as discussed with my medical team. I attach a copy of the transcript of that Chairperson' ruling as "JZ1".

S.T.N.

22. Of particular importance are the following aspect of the orders of the Chairperson: (i) that the Chairperson, although reluctant, would meet with the leader of my medical team to be fully advised of my medical condition (ii) that on my return from my medical leave, that appropriate arrangements would be made for my appearance depending on the state of my medical situation. In fact it was during my medical leave that Acting Justice Pillay, who incidentally formed part of this Court's panel on the issue of contempt, issued a warrant for my arrest for failing to appear in the criminal court in Pietermaritzburg. It was also Acting Justice Pillay who, in the Hanekom defamation matter, gave judgment in which he directed that I should appear to give evidence before the Commission truthfully. I do believe that she was, for these and other reasons, conflicted to be part of this panel's court dealing with my matters. I revisit this issue further below.

23. The Chairperson, despite his ruling that he would meet with the leader of my medical team and despite being given the details of the leader of my medical team, never contacted him or at least sought my assistance to meet him. In fact, in later communications with my lawyers, he specifically indicated that he would only meet with my medical team in the presence of another (supposed neutral) doctor of his choosing to help him understand the report of my medical team. That approach to me was firstly inconsistent with his ruling but secondly appeared to be a unilateral variation of his ruling on the issue. I believe that the Chairperson's condition for meeting my medical team was an indication of new distrust in me and my medical team. Over and above that, I felt that the Chairperson was undermining my right to privacy in relation to my medical condition which as he would know, was treated as a state secret of a fairly high-level classification. I attach a copy of the letters of the Commission indicating the Chairperson's attitude to meeting my medical team as "JZ2".

S-T.N

24. I received a letter from the Commission that, despite the ruling of the Chairperson that he would schedule my appearances after speaking to the leader of my medical team, he directed that I appear on dates that I was unavailable. I was unavailable purely and solely for medical reasons. When confronted with this, the Commission dung its heels on my explanation, clearly accusing me of refusing to appear before the Commission and setting down the hearing of the summons application of the Commission's Evidence Leaders. I was concerned by this conduct of the Chairperson which I considered highly prejudicial and unfair given my long record of co-operation with the Commission and our courts. On examining the implications of the accusations that I was undermining the work of the Commission and resisting to appear before it, I formed the reasonable view that the Chairperson was biased. There are other prejudicial comments made about by the Chairperson that began to make me doubt his impartiality and independence.

25. I sought legal advice and was informed that my *bona fide* apprehensions were reasonable and justified an application for the Chairperson's recusal. At that point I had indicated two issues that I considered fairly serious and they related to the lawfulness of the Commission. That was not the basis that I did not appear before the Commission. The simple reason is that I was not well. My doctors could attest to that fact but the Chairperson, contrary to his own ruling decided to ignore critical information that would have assisted him to understand my state of mind in relation to participating in the Commission.

26. After anxious consideration, and receiving advice on whether a recusal application should be pursued, I instructed that such an application should be made to the Commission. My lawyers prepared the application and served it on the Commission. The Commission filed its answering affidavits and the matter was set down for hearing before the Chairperson. It was argued and

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judgment was handed down a day after the arguments. My counsel made it abundantly clear that I wanted to participate in the Commission but that the Chairperson had made it intolerable for me to do so by making prejudicial statements regarding my attitude towards the Commission. However, he also indicated my willingness, based on my circumstances, to explore other methods through which my evidence could be given.

27. Let me state what my attitude towards the Commission is. I do not believe that it was established in terms of the Constitution and at the right time, that issue will be the albatross around the neck of its legitimacy. For now, I was happy to present my evidence if the circumstances were fair and in accordance with the law. When the recusal application was argued before the Chairperson, prior to hearing my application, he submitted a media statement of his own – not under oath but purporting to be a response to factual allegations made in my affidavit. When the Chairperson did that, I believe that it entitled me to reply, which opportunity the Chairperson gave me. I replied. That on its own, amplified the nature of the conflict in terms of which the Chairperson would be involving in the adjudication of a dispute in which he was a witness on the factual issues.

28. Following his ruling, I was advised that I could approach a court to review his decision, which advice I accepted and gave instructions on. My counsel indicated two things after the judgment of the Chairperson, (i) that I would be seeking to review his ruling on recusal and (ii) that a complaint of judicial misconduct would be filed against him for his conduct. A review application was prepared and served on the Commission. But before I deal with this issue, let me complete the sequence of how things evolved after the ruling of the Chairperson for I have been falsely accused of walking out of the Commission – without the permission of the Chairperson.

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29. After the Chairperson had read his ruling, my counsel conveyed my intention to seek to review the decision of the Chairperson. He indicated that, for that reason, we would be excused from further attendance in the proceedings. The Evidence Leader stood up to seek to argue that I was not entitled to leave unless I had the permission of the Chairperson. The Chairperson immediately ordered an adjournment of proceedings. We understood that we had the permission of the Chairperson to leave after that adjournment. When we reached my holding room, my lawyers were not sure if the Chairperson had in fact granted me permission to leave, so one of my lawyers left to inform the Chairperson that I would not be returning to the proceedings. I am advised that there was a discussion with my lawyers about us coming back to the Commission for the Chairperson to adjourn the proceedings for hearing on the next day which would be a Friday. While this was taking place, I was scheduled to take my medication and had left the Commission premises to do that. My lawyer was asked to convey to the Chairperson that I had left the premises on the understanding that I was entitled to leave.

30. I watched the televised broadcast of the proceedings and heard the Chairperson say that I had left "without his permission", and that he had decided not to schedule any hearings on Friday but would be taking "stern actions" against me in terms of the Commissions Act. At that point my lawyers had advised that if called upon to appear on Friday, I should do so, but that was no longer possible because the Chairperson had abandoned the Friday hearing without asking me to appear.

31. This is one of the charges that he publicly declared that he would report to the SAPS in terms of the Commissions Act. I have waited for the process under the Commissions Act to be initiated so that I have the opportunity to explain my absence in the court by leading evidence. None of that was forthcoming, even though the Chairperson has specifically directed the Secretariat of

the Commission to initiate the process under the Commissions Act. Instead, civil contempt proceedings were deliberately initiated in motion court and the threatened Commissions Act process was consciously abandoned. This election was significant.

32. Instead, I was served with an urgent application to the Constitutional Court, in which the Chairperson sought to enforce his directives under the Commissions Act through the order of the highest court in South Africa. He was no longer pursuing the matter via the prescribed statutory route of the Commissions Act. In essence, the Constitutional Court was approached to impose a final order on me to enforce the Chairperson's directives. Before I deal with the Chairperson's urgent approach to the Constitutional Court, let me deal with what I did to contest the ruling of the Chairperson in relation to the recusal application.

33. I must emphasise that I raise this background simply to put into context this rescission application and not to revisit the merits of the previous applications.

34. I close this section by reminding this Honourable Court of a fact in respect of which it may take judicial notice. There is no other human being in this country who has attended to and respected our courts with such frequency and consistency as I have done in the past 20 years or so. I have never and will never treat our courts with contempt. My only simple call is for fairness to prevail.

REVIEW APPLICATION

35. My review application was prepared and duly served on the Commission. I attach a copy of the Notice of Motion in that review application as "JZ3". As can be seen, it was framed as a rule 53 review application requiring the production of the record.

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36. The Commission has simply ignored the legal significance and procedural importance of my review application in dealing with the dispute with the Chairperson of the Commission of Inquiry. The attitude of the Commission is set out in a letter which is attached as "**JZ4**". As will be seen from that letter of the Commission, while acknowledging receipt of the application, it took the view that it would simply not respond to it. The conduct of the Commission in relation to my review application is clearly untenable. For reasons that are not necessary to deal with in this application, my erstwhile attorneys, Mabuza Inc, subsequently decided to withdraw from all my cases with the consequence that I had to find new attorneys. This has been difficult as I do not have adequate resources to fund all the cases that in my view are important to vindicate my rights. Understandably, not many attorneys and advocates were prepared to take my cases on a verbal promise that I would raise funds for the litigation. When I finally got new attorneys, I had to focus on my criminal trial which had begun. I took the view that any other applications which demanded financial resources that I do not have would not receive my priority. For obvious reasons, my criminal trial is a priority. My reasons for not engaging the applications of the Commission to the Constitutional Court was based in large part on the lack of finances to engage lawyers to focus – on the urgency basis and in terms demanded by the Commission and accepted by the Constitutional Court. I must also say that I put my trust in the clearly mistaken view that I could not be forced to appear before Judge whose recusal was the subject matter of an ongoing court process. I was clearly wrong in this belief, which I held in good faith.

37. I now fully accept that the most legally appropriate route which I could and should have taken would have been to apply for interim relief to interdict my appearance before the Commission. I did not do so partly because of the legal advice I had received but also motivated by the issue of financial hardship, to which I now turn. My failure or lack of wisdom to take that route, however annoying it might be, is certainly not sufficient justification to send me to prison without a trial.

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FINANCIAL HARDSHIP

38. From the time I left the office of the President, I have faced a tremendous amount of financial pressure. The Nkandla judgment of the Constitutional Court to all other court cases demanded extreme financial resources from me. State funding for my criminal trial which the State had agreed to pay was stopped and the relevant agreements set aside in court judgments that the courts described my litigation as one on a "luxurious scale". Other than the cost orders in this judgment, I face punitive cost orders in approximately twelve judgments amounting to more than R20 million.

39. As a consequence of the financial hardships that I was facing, I decided that I would only litigate matters where it was absolutely necessary for me to do so. I did not have the extravagant funds to engage lawyers to commit fully to the urgent applications of the Commission, especially those which I honestly, but clearly mistakenly, believed to be wholly unmeritorious.

40. The second reason was that I was advised that I had the option not to participate in the proceedings and to trust the Court to engage with the Commissions' application on its own merits. This was because I was advised that the test for urgency was high and, in all probability, the Court would reject the application for lack of urgency given the inexplicable delays on the part of the Commission. Over and above the urgency issue, I was told that the established test for direct access to the Constitutional Court was also too high to be met on the facts of that particular application. Given my decision to reduce the financial resources deployed for such unplanned cases, I elected not to participate in the urgent proceedings, trusting entirely in the usually rigorous process of the Court and its ability to separate the wheat from the chaff.

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41. The Constitutional Court unfortunately accepted the view that my non-participation in the urgent application was a demonstration of some calculated disdain for the court as incorrectly submitted on behalf of the Commission. It was not. I simply did not have the financial resources to fund these particular cases and given the demands of my criminal prosecution, I elected to leave matters to the court and the Commission. I also put my faith in the Court's duty to deal with legal and procedural issues that were engaged on which I was advised could result in the Commission's application being dismissed. I was assured that even if the application was unopposed, the court would most likely discharge its duty to scrutinise and reject the application on the grounds of urgency and direct access.

42. I was taken aback by the remarks made by the Court on my alleged attitude towards it. I was surprised that the Court, in the absence of any affidavits from me on which to adjudicate on my attitude towards it, found that my conduct was unacceptable. I tried to understand the basis of the Court's belief on my conduct and it appears two-fold. First, my non-appearance at the Commission of Inquiry was regarded as unconstitutional conduct for which far-reaching orders implicating my constitutional rights were made. The second issue was my non-appearance to contest the Commission of Inquiry's application was similarly condemned as a show of disdain for the Courts. In fact, the decision not to appear was very innocent at best and merely strategic at worst. It was strategic because given the large number of punitive cost orders against me I had to avoid placing myself in a situation of further adverse cost orders by the Courts or unnecessarily incurring legal costs even on my side.

43. I issued a statement expressing my views on the judgment. I attach a copy of my public statement in which – relying on my rights to hold and express my views, I criticised the judgment

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of the Court. I have re-examined the statement that I issued and do not do not agree that I made scandalous allegations even if found to be wrong. Those were my views and I should not be imprisoned because I held a wrong opinion or view or belief. I am unable to appreciate the Court's finding that based on public utterances that I made about its judgment I disrespected the authority of the Court and undermined the judiciary. I reiterate that – I am prepared to die defending my right to hold and express my views about the work of the judiciary and will not desist from doing so in the future, only within the bounds justified in law. I served ten years on Robben Island because I was not going to surrender my right to hold and express views, opinions and belief on judges and their judgments. I held very strong views about the oppressive apartheid judiciary. I expressed those views publicly and privately. I was ultimately involved in a real struggle for liberation to ensure that the oppressed South African black people were not imprisoned for holding and expressing views. My views about how the judiciary has engaged with my cases leaves me with a reasonable belief that there is unexplained judicial antipathy and that they have not been dealt with in accordance with the finest judicial traditions. Even if I am wrong on that, why is it consistent with the duties of the Court to order summary imprisonment for holding and expressing them? The remarks are purely based on my own personal and lived experience of the judiciary. I will happily go to jail if the law once again prohibits my right to hold and express views, beliefs and opinions about the judges and the judiciary – even if those view, opinions and beliefs were factually wrong but genuinely held. However, the only point I wish to make in this application is that it is erroneous to send me to jail for holding genuine but unpalatable views.

44. Soon after the Court had granted its orders, the Chairperson armed with that court order – and rather than utilising the powers given to him by legislation - unilaterally demanded that I appear before him by scheduling dates for my appearance. The demand for my appearance was no

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longer based on the Commissions Act – but on the orders of the Constitutional Court. I was treated differently and unfairly, in violation of my rights in section 9 of the Constitution. In all history in South Africa and elsewhere, persons who refuse or do not obey summons from a Commission of Inquiry are dealt with in terms of the Commissions Act. I was treated differently on the basis of my political position – which is prohibited under our Constitution. What aggravates the violation is that the Chairperson of the Commission of Inquiry, Deputy Chief Justice Zondo, deliberately set out to undermine the provisions of the Commissions Act in an attempt to regulate my attendance in the Commission of Inquiry in terms of a court order as opposed to the Commissions Act. This is not fair for a number of reasons I deal with further below but suffice to say that once Deputy Chief Justice Zondo had publicly announced that he was invoking the Commissions Act to deal with my alleged commission transgressions, he was not entitled to approach the Constitutional Court to enforce the directives of the Commissions Act. I should not be subjected to a different set of legal rules simply because I was a former President of the Republic. It is common cause that even PW Botha was apparently dealt with under the Commissions Act when he refused to appear before the Truth and Reconciliation Commission to account for apartheid atrocities.

45. This is what bothers me about the judgments and orders of the Constitutional Court – that they may have inadvertently sanctioned an unconstitutional and unlawful attempt to subvert a legal process prescribed in legislation by the Chairperson of the Commission of Inquiry. This approach was also in breach of the well-established principle of subsidiarity which the Honorable Court has on numerous occasions utilised to refuse to deal with complaints of violations that are brought to it in a manner that is inconsistent with the law. The Chairperson was not entitled to inform the public and myself that he was invoking the provisions of the Commissions Act and then do something different to that. His approach to the Constitutional Court is not prescribed in the

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Commissions Act and the justification for doing so is flimsy and plainly irrational. I had a legitimate expectation to be treated as every person who had been in my position in relation to a judicial commission of enquiry as I will set out further below. Treating me as the Chairperson of the Commission of Inquiry did violated my constitutional right to be treated equally before the law in terms of section 9 of the Constitution. I was entitled to the equal benefit and protection of the law as set out in the Commissions Act.

46. The Constitutional Court should not sanction or endorse potentially unlawful conduct by a Commission of Inquiry on the basis that I was the former President of the country. It should not permit the violation of constitutional rights by a Commission of Inquiry simply because a Deputy Chief Justice presides over it. It is well known that a Commission of Inquiry is not a court of law but it is not entitled to apply the law in a manner that is inconsistent with the prescribed law on its powers. It is not entitled to operate on the basis of a court order and will only seek the intervention of the court in circumstances prescribed by the law. In essence my participation in the Commission of Inquiry was no longer subject to the Commissions Act but controlled and regulated by a court order, an unprecedented manoeuvre which reclothed the Chairperson of a Commission of Inquiry in judicial robes.

47. The Commission of Inquiry most certainly did not approach the Constitutional Court on an urgent basis to vindicate any constitutional right or duty but to violate mine. The procedure for enforcing commission directives is fully catered for under the Commissions Act and to date I know of no reason why the Constitutional Court decided not to defer to the established institutions for the enforcement of commissions summons. There has been no constitutional challenge by the Chairperson of the Commission of Inquiry of the process established in the Commissions Act, which may have justified bypassing that legislation. The stated intention of the Commission in

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approaching this Honourable Court was unashamedly and with the single purpose of extracting imprisonment for me. Theirs was nothing but a thinly disguised private prosecution, only without the inconvenience of a fair trial.

48. The only basis for describing me in such unkind and uncharitable terms is because I dared assert my constitutional right to a hearing before an impartial Chairperson of the Commission. I do not believe it is within the constitutional terms of the Court to seek its vindication by imposing orders that coerce a person to appear before a tribunal whose independence and fairness is serious questionable and on which there is a justiciable dispute before a court.

49. In my view, the Constitutional Court must reconsider its orders that completely strip me of so many of my guaranteed constitutional rights. It is unconstitutional to issue orders that violate the law and undermine constitutional rights. My view, belief and opinion that the orders of the Constitutional Court in both of its judgments are unconstitutional and do not justify the excessive judicial condemnation that has been heaped on me, even if I were held to be wrong in holding these views. Imprisoning me for holding and expressing opinions, views and beliefs is not only oppressive, it is out of kilter with the very ethos of our constitutional system. Sections 15 and 16 of the Constitution guarantees my right to hold opinions, belief and views and to express them freely without fearing unjustified judicial reprisal. Summarily sentencing me to jail for exercising my constitutional rights to hold and express beliefs, views and opinions about judges and the Courts is not only unlawful, but it is oppressive and unjustified in terms of section 36 of the Constitution. I am entitled to hold and express the view that Courts are wrong, have acted unconstitutionally and should revisit this grave injustice and unconstitutional conduct. Only the Constitutional Court may rectify these unconstitutional orders and give our democratic system its true value restoring the rule of law and the public's confidence in its power to reflect on its

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conduct. Our constitutional culture is a break with the past and our Constitutional Court must act with circumspect when it handles the demands of entrenching a constitutional culture in which the rule of law reigns high within an environment of dignity, ubuntu, freedom and the protection of constitutional rights and a society in which retribution should be a shield and not a sword.

50. The Court correctly states that no one is above the law and that includes myself. However, it too must bow to the supremacy of our constitution and not use its very powerful position to denigrate and demean litigants simply because they dared to hold genuine views about a judgment of the court or a judge or did not act as model litigants ought to.

51. We are no longer under a system of law that punished people for their views, belief and opinions but have moved into a society undergirded by the values of human rights, the recognition of inherent dignity and worth and freedom. To rule that I cannot advance legitimate objectives based on my constitutional rights in a Commission of Inquiry is simply unconstitutional and cannot be consonant with the powers given to the Courts by our Constitution.

THE ISSUE OF CONTEMPT OF COURT: PARAGRAPH 3 OF THE ORDER

52. I advised the Court that I would not comply with this directive. It appears that the Court took offense to my election not to file an affidavit even though I was advised that this position was permissible in terms of its notice. What I did instead was to address a letter to the Chief Justice which I was happy could be shared with the justices on the panel. I set out my reasons in that letter for electing not to file an affidavit only on the question of sanction and only in the event that I am convicted of the crime of contempt of court.

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53. In that letter I address basically many issues including why I had elected not to file or participate in the proceedings of the Court. The letter is self-explanatory. In it, I raised several concerns, including the participation of Honourable Pillay AJ in the adjudicating panel when she was clearly conflicted and the issue of being required to give evidence in mitigation before a conviction was made, to mention but a few. I continue to hold the view that to be expected to plead in mitigation in the air and without knowing the actual degree of the conviction is an unfair implementation of the right.

54. My response was difficult and robust and even though I said things that regrettably and seemingly appear insulting, I am entitled to express strong views against an oppressive system. So, I did not comply with the orders of the Constitutional Court because I believed that they were unlawful. To issue an order that I should appear before a biased Commission of Inquiry and to obey its instructions was fundamentally flawed because of two reasons that I set out in my review application. First, I am entitled to a fair and impartial tribunal and I did not have that in the Chairperson of the Inquiry. I was entitled to have a judicial pronouncement on whether I am correct that the Chairperson of the Commission had acted in a manner that was inconsistent with the law. Second, I am entitled to challenge the very constitutionality of the Commission and that opportunity was taken away from by judicial fiat in terms of which I would appear only on the strength of the orders of the Court and not on the strength of the Commission's powers. In essence lending its constitutional weight to the Commission of Inquiry in a manner that violated the Commissions Act was itself unlawful.

55. It is against the above background that I bring this rescission application, a procedure to which I am entitled in law and in terms of our Constitution.

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THE APPLICABLE LEGAL FRAMEWORK

56. I now deal with some of the relevant legal provisions. The emphasis is added.

57. Rule 29 of the Rules of the Constitutional Court provides that:

> *"The following rules of the Uniform Rules shall, with such modifications as may be necessary, apply to proceeding in this Court ... Rule 42: variation and rescission of orders."*

58. Rule 42 of the Uniform Rules of Court provides that:

> *"(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:*
>
> *(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*
>
> *(b) An order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;*
>
> *(c) An order or judgment granted as the result of a mistake common to the parties.*
>
> *(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.*
>
> *(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed."*

59. Section 9(1), which provides that:

> *"Everyone is equal before the law and has the right to equal protection and benefit of the law."*

60. Section 10, which provides that:

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"Everyone has inherent dignity and the right to have their dignity respected and protected."

61. Section 11, which provides that:

"Everyone has the right to life."

62. Section 12(1), which provides that:

"Everyone has the right to freedom and security of the person, which includes the right:

(a) not to be deprived of freedom arbitrarily or without just cause;

(b) not to be detained without trial."

63. Section 34, which provides that:

"Everyone has the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

64. Section 35(3)(o), which provides that:

"Every accused person has a right to a fair trial, which includes the right of appeal to, or review by, a higher court."

65. Section 36(1), which provides that:

"(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purposed."

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66. It is these and other relevant legal prescripts which will be invoked in written and oral submissions to be made in connection with this application.

SYNOPSIS OF THE LEGAL BASES FOR THE APPLICATION

67. This application is based on the following simplified propositions:

67.1. Rule 29 of the Constitutional Court rules incorporates Rule 42 of the Uniform Rules of Court. The common-law requirements for rescission also still apply;

67.2. The granting of the impugned order, *inter alia*, for the applicant's detention without trial is in breach of several of his fundamental rights, notably in the Bill of Rights, especially sections 12, 34 and 35 thereof, and amounts to a number of rescindable errors and/or omissions in terms of the provisions of the said Rule 42;

67.3. The relevant orders identified in the notice of motion ought properly and accordingly to be rescinded and set aside.

68. The first proposition is unlikely to be disputed. Neither is the third proposition disputable if the second one is established. I therefore turn to the necessary discussion of the second proposition.

The jurisdictional requirements for a rescission order

69. In this application, reliance will be placed on the following cumulative and/or alternative requirements set out in Rule 42 and/or the common law:

69.1. an application by an affected party;

69.2. to rescind an order or judgment erroneously sought or erroneously granted;

69.3. in the absence of any party affected thereby;

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69.4. or in which there is a patent error;

69.5. or omission; and/or

69.6. upon sufficient or good cause shown.

70. Once again, the requirements of the rule set out in sub-paragraphs 68.1 and 68.3 above are unlikely to be contested. I will therefore concentrate on the issues raised in sub-paragraphs 68.2 and 68.4 to 68.6.

71. Before so doing, I wish to assert that this matter will be argued on the basis that to the extent necessary, the relevant provisions of the common law and/or the provisions of Rule 42 must be constitutionally interpreted so as to give an interpretation of the word "error", which includes notions such as granting an unconstitutional order and/or reviewable material errors of fact and/or law. These are notions which are well-known in our law. The rule must be applied with the necessary constitutional flavour as intended by the words "*with such modifications as may be necessary*", which are found in Rule 29.

72. Furthermore, and as canvassed hereinabove, I proceed from the departure point that the finding of guilt for contempt of court is in itself erroneously made, as dealt with in the preceding sections. However and due to the relative urgency of the issue of my personal freedom and liberty, the rest of this application is primarily focused on the orders pertaining to the sanction and my imminent detention without trial.

Was the relief erroneously sought and/or granted and accompanied by patent errors or omissions?

73. I am advised that based on the factual background given above, it will be argued, firstly, that the conduct of the Commission in seeking an order solely aimed at my detention or imprisonment by

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means of motion proceedings was erroneous within the meaning of that word, as alluded to above.

74. It was legally incumbent upon the Commission when, once it had abandoned the desire for my appearance at the Commission, for whatever reasons, to seek my imprisonment in such a way that my constitutional rights to a fair trial were not deliberately limited or infringed. The Commission acted in the exact opposite manner.

75. The order was also sought on the basis, which turned out to be erroneous, that the expiry date of the Commission was 30 June 2021. This must have influenced the tactical decision to abandon a coercive order.

76. It is the height of irony and apparent contradiction to base the urgency of the matter on the allegedly looming end-date of the Commission, but to seek (and grant) relief which is specifically not intended to secure my attendance at the same Commission.

77. It is also significant that the alleged end-date must have also informed the incorrect view that there was "no hope" that I would ever attend the Commission, even if my concerns of conflict of interest and bias on the part of its Chairperson had been adequately addressed.

78. By the same token, this Honourable Court granted the relevant orders erroneously in a number of respects, with which I now proceed to deal.

79. Firstly, it is abundantly clear, on any reading of the majority judgment that the nature and severity of the sentence was greatly, if not totally, influenced by the material contained in the hearsay evidence of the statements which were issued by the Jacob Zuma Foundation in the aftermath of the first judgment of the Constitutional Court.

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80. That outcome was in turn a direct result of the erroneous assumption or conclusion that these statements were issued by me and/or were intended to insult the court. As correctly remarked in paragraphs [232] and [233] of the minority judgment:

> *"Despite accepting that 'the mischief [it] is called upon to address is ... [Mr Zuma's failure] to comply with the order of this Court', the main judgment seems to justify the punitive approach it has taken by decrying Mr Zuma's statements, which it describes as 'scurrilous and defamatory' and 'scandalous'. ... The main judgment's appraisal of the gravity and seriousness of Mr Zuma's contempt, and its threat to the rule of law, thus flows in part from the derisive nature of his public statements. This may explain the heavy handed sentence it has meted out and why it is so comfortable overlooking serious inroads into Mr Zuma's fundamental rights."*

81. Having erroneously admitted the hearsay evidence based on the incorrect assumptions not sustainable on the objective facts, the majority erroneously decided that the very same statements were "irrelevant", to the extent that they may have been exculpatory and the statements *"are of no relevance to the question whether he is guilty of contempt"*. It was respectfully held that the very statements upon which my imprisonment was premised were *"of no moment"*. The patent error in adopting these mutually exclusive approaches on the issue of the hearsay statements is self-evident.

82. Secondly, the majority committed a further error in not heeding the statement that *"Judicial authority should not be protected at the expense of fundamental rights"*. The devastating impact of this particular aspect of the case cannot be over-exaggerated. It is this aspect which led the minority, with respect correctly, to hold that the majority judgment was unconstitutional. I shall develop this point by making initial reference to a related issue which was not dealt with in the minority judgment. That issue is the patent breach of the fundamental rights contained in section 34 of the Constitution.

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83. Having, with respect correctly, characterised the proceedings as a "hybrid" and an "amalgam" of both civil and criminal proceedings, the court went on only to examine the fundamental rights at play solely from a criminal proceedings point of view, ie in terms of section 35. The court thus omitted to also investigate the civil proceedings side of the hybrid, ie the fair trial rights enshrined in section 34.

84. This amounted not only to an error but also an omission, within the meaning of those words as employed in Rule 42.

85. The violation of my right of appeal ought properly to have been examined also from a section 34 point of view. The majority, with respect erroneously, held that "*the right of appeal does not* arise". Similarly, with the right to advance mitigating circumstances after conviction, which is equally applicable in civil proceedings in the workplace or in voluntary associations. The majority actually held that a serious issue, such as my ill health and exposure to death, does not do "anything" to counterbalance the *"profound and significant impact of the aggravating factors"*.

86. Thirdly and similarly, the obvious limitation of my fundamental rights to be protected from detention without trial in direct breach of section 12(1)(b) of the Constitution constitutes a rescindable constitutional error.

87. The most important error and/or omission which flows directly from the errors mentioned above is the fact that, in spite of the undeniable limitation of any one or more or all of the fundamental rights mentioned above, the majority refused to perform the obligatory and compulsory task of a section 36 justification analysis.

88. This must rank as the most serious and egregious error and/or omission of all time, sufficient to grant an order of rescission.

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89. It was also a patent error to assume that my failure to bring an interim order in respect of the review application could only have been motivated by bad faith. It was in fact done in good faith.

90. The above matters constitute not mere errors but gross irregularities which preceded the erroneous granting of the relevant orders.

91. In short, it was incompetent for the court to grant such orders in the face of such errors.

92. Finally in this regard, it was also erroneous for this Honourable Court to overlook totally the significant fact that one of the Judges who sat on the adjudicating panel, namely Honourable Pillay AJ, was conflicted for various reasons, including having adversely adjudicated upon the relevant issue of my inability to attend to a trial and the Commission due to ill health. The court can also take judicial notice that it was subsequently revealed that Pillay AJ was the subject of an improper intervention by her friend, Minister Gordhan, for judicial office. It is also an open secret that Minister Gordhan is my political enemy and was responsible, a few years ago, for the so-called "Zuma Must Go" movement.

93. It may well be that Pillay AJ was still suitable to sit, but it is the failure to even scrutinise her suitability that constitutes a clear error and/or omission in a country which is ruled by the law, including the maxim *nemo iudex in re sua*.

94. The errors and omissions referred to above are of such a fundamental constitutional character that Rule 42, properly adapted, must be read to accommodate them, *mutatis mutandis*.

95. The issues raised above are by no means exhaustive. To the extent necessary, further reliance will be made on the key sting of the minority judgment, namely the unprecedented pronouncement that the Constitutional Court had acted unconstitutionally and therefore irrationally or has exceeded its judicial authority and mandate.

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96. Fortunately, the majority itself at least acknowledged that there was no precedent for an order of detention without trial in these circumstances, in our law and possibly in the law of any democratic country on earth.

97 Although incorrectly hailed as evidence that we are all equal before the law, the majority judgment has actually and erroneously demonstrated the exact opposite, in that the harsh treatment unprecedentedly meted out to me was largely premised on my unique position as a former President. It is therefore impossible that any other South African, rich or poor, will ever be treated the same before the law. It is also a patent error to fashion certain punishments for a specific individual. It is the antithesis of equality before the law and the rule of law. The rule of law is necessarily defined by laws of general application not laws of individual and targeted application. There cannot be one law for what the majority called "*an influential contemnor*", such as me, and another law for "*non-influential contemnors*" if all are indeed equal before the law.

98. This unprecedented and cruel regime has therefore been custom-made and specifically designed for me because it is statistically impossible that in the future, another former Head of State who is almost 80 years old will be forced to appear before a Chairperson of a Commission who is accused of bias and conflict of interests. Only Jacob Zuma will fit that bill. Any other future case will be easily and conveniently distinguished, for good reasons.

99. I am advised that full legal argument will be advanced at the hearing in respect of the elements discussed above in respect of the specified errors and/or omissions.

100. For the sake of completion and transparency and although of no direct or immediate relevance to this application, I wish to disclose that I have given instructions to my legal representatives to launch parallel proceedings in the High Court, aimed at, *inter alia*, challenging the constitutionality of the Criminal Procedure insofar as it fails or omits to cater for affording the normal fair trial rights to persons facing imprisonment in proceedings which are solely aimed at

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such imprisonment. To the extent necessary, this Honourable Court will be appraised of any progress in that regard.

Good cause

101. In the alternative and in the unlikely event that it may be found that the requirements of Rule 42 have not been met, I am advised that it will be argued that in the very peculiar circumstances of this case, and upon the grounds pleaded above, sufficient and/or good cause for justifying the rescission of the relevant orders has been shown. Accordingly, the relief sought may also be granted on the basis of the common law.

102. So many identifiable threats to the rule of law, the dictates of fairness and the rights to a fair trial ought properly to constitute just case.

103. Above all, the unprecedented judicial sanctioning of detention without trial, as decried by the minority judgment, in conditions of freedom, and given our bitter past with that phenomenon, ought properly and singularly to be sufficient and good cause for granting the relief sought in this particular case.

Discretion of the Court

104. I am advised that the better articulation of the legal position is that, once the requirements set out in Rule 42 and/or the common law have been satisfied, the court should grant an application of this nature.

105. However and if I am wrong in that regard, the court nevertheless ought to exercise its discretion in favour of granting the relief, *inter alia*, for the purpose of giving itself the opportunity to hear mitigation in particular in relation to my developing health situation.

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106. At that point, I will be in a better position to adduce the expert evidence of my medical team. That is the least humane gesture this Honourable Court may wish to undertake before possibly sentencing me to death at my age, state of health and in the middle of a deadly pandemic.

107. I insist that the granting of an opportunity for mitigation before even knowing whether and on what basis I could speculatively be found guilty constituted a severe limitation of my rights to a fair trial, whether in terms of section 34 or section 35.

108. Most importantly, it must be borne in mind that what we are dealing with here are not grounds of appeal or review but allegations of conduct which is *ultra vires* and unconstitutional and therefore invalid. This matter is unprecedented also in that important respect.

CONCLUSION

109. In all the circumstances, I am advised that this Honourable Court will grant the relief sought, with costs if opposed, including the costs attendant upon the employment of two counsel.

WHEREFORE I pray that it may please this Honourable Court to grant the relief sought in the notice of motion to which this affidavit is attached.

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at DURBAN on this the 2ND day of **JULY** 2021, the regulations contained in

Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

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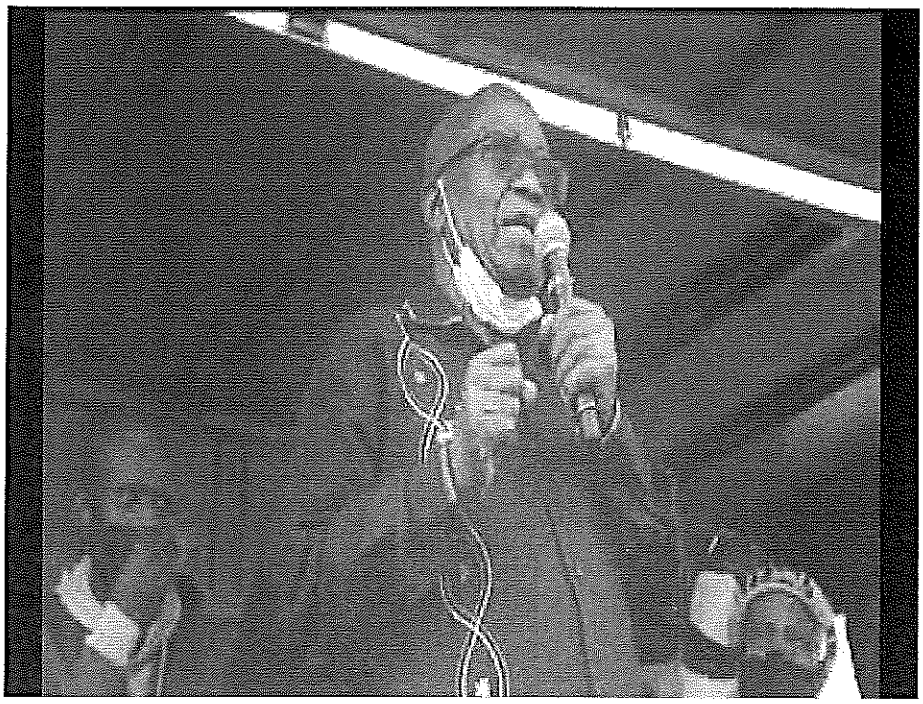
COMMISSIONER OF OATHS

"FA10"

Zuma addresses supporters at Nkandla

enca.com/news/zuma-addresses-crowds-supporters-nkandla



Watch Video At: https://youtu.be/YHMzWFo18mc

Former president Jacob Zuma addressed crowds at his homestead in Nkandla, KwaZulu Natal. Courtesy of #DStv403

NKANDLA - Former President Jacob Zuma is standing by his assertion that Justice Raymond Zondo should have recused himself from the state capture inquiry.

He spoke to crowds at his Nkandla homestead on Sunday.

On Saturday, the Constitutional Court agreed to hear Zuma's application to rescind the order that he be jailed for 15 months.

This followed the court punishing him on Tuesday, for contempt of court, because he refused to testify at the State Capture Inquiry.

Zuma said, "they sat and decided that I must appear before the judge that I said I will appear."

"The second decision was that I must pay the costs when I was not present."

"Thirdly, they said since we know that a person has a right not to answer questions as per the Constitution but we want Zuma to answer. When I heard that, I said they are provoking me."

"The judges who are supposed to protect me took my rights away, that means they are conspiring with this certain judge. I then decided I'm not going back to the State Capture Commission or even present myself to the judges."

Source

eNCA

Paid Content

"FA11"

MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES

REPUBLIC OF SOUTH AFRICA

Statement by Minister of Justice and Correctional Services, Ronald Lamola
Outlining Correctional Services Processes

As you are well aware , we can confirm that Former President Jacob Zuma was admitted into this facility in the early hours of this morning in compliance with the constitutional court order.

This is not a moment of celebration or triumphalism, it is a moment of restraint and to be human.

In line with our mandate as correctional services to treat all inmates in terms of the Nelson Mandela rules which are universal rules for the treatment of inmates.

Rule 1 is emphatic, all inmates shall be treated with the respect due to their inherent dignity and value as human beings.

This is a Medium B Facility which houses both youth and adult inmates, it was opened by Former Minister Masutha recently in 2019. He said the following on the occasion of its opening;

"Correctional Services has a mandate to create a humane system, where the weakest inmates feel safe where all are treated with respect"

It is a new generational correctional centre with an approved bed capacity of 512 inmates.

It also has a hospital section.

As a precaution and in line with our COVID-19 measures, the Former President will be placed in isolation for a period of 14 days.

Furthermore, he will be assessed by our Medical Team in conjunction with the South African health military service and this will determine the conditions of his incarceration.

This assessment is done to determine the major risks and needs of the offender.

A complete profile report will then be submitted with recommendations to the Case Management Committee.

This process will assist to determine the appropriate classification of the former president.

All of these systems are in place to ensure that incarceration is done in a manner which is not retributive, but humane.

It should be noted that in terms of Section 73 (6 A) of the Correctional Services Act, an offender serving a determinate or cumulative sentences of not more than 24 months, may not be placed on parole or day parole until such offender has served either the stipulated non- parole period, or if no non-parole period was stipulated, a quarter of the sentence.

In this case, there is no stipulation for the non-parole period, this effectively means that the former president will be eligible for parole once a quarter of his sentence has been served.

We want to assure all South Africans that Former President Zuma will be afforded dignity throughout his term of incarceration.

I thank you!

Media Enquiries :

Chrispin Phiri: Spokesperson for the Ministry of Justice and Correctional Services
Cell: 081 781 2261
Issued by the Ministry of Justice and Correctional Services

"FA12"

correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

22 July 2021

MR ZUMA GRANTED COMPASSIONATE LEAVE

In line with Section 44 (1)(a) of the Correctional Services Act, Former President Jacob Zuma, has been granted compassionate leave in order to attend to a family bereavement.

A sentenced offender who is granted permission to leave a correctional centre, remains a sentenced offender even while temporarily outside. The permission granted to Mr Zuma is for 22 July 2021.

When outside a correctional facility, inmates need not to wear offender uniform.

As a short-term, low risk classified inmate, Mr Zuma's application for compassionate leave was processed and approved following the Correctional Services prescripts.

Ends.

Enquiries, Singabakho Nxumalo on 079 523 5794.

Issued by the Department of Correctional Services.

"FA13"

How Zuma went from not being ill, hospitalised for a routine check-up, to medical parole

news24.com/news24/southafrica/news/how-zuma-went-from-being-not-ill-hospitalised-for-a-routine-check-up-to-medical-parole-20210906

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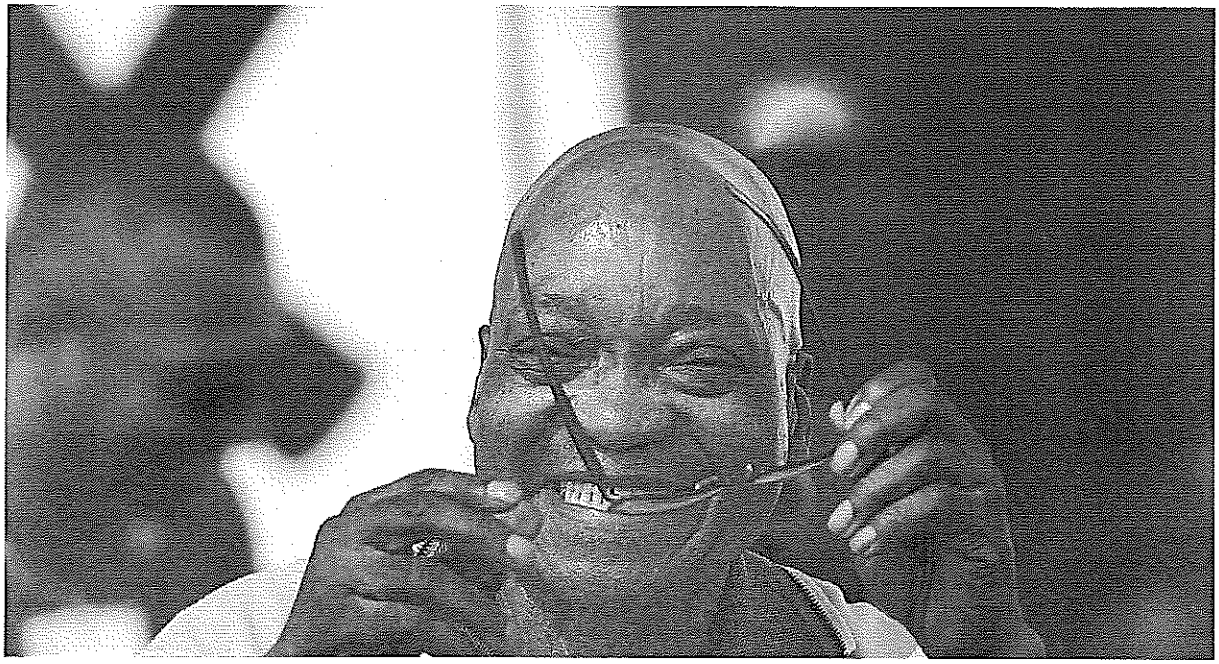

Former president Jacob Zuma.

Gallo Images

- **On Sunday, former president Jacob Zuma was placed on medical parole.**
- **Less than a month earlier, he was hospitalised for a routine check-up.**
- **At the time, the Zuma Foundation said he was not ill, but had been due for a check-up.**

Within a month, imprisoned former president Jacob Zuma went from not being ill, then hospitalised for a routine check-up, to being placed on medical parole.

On Sunday, 4 September, the Department of Correctional Services (DCS) announced that Zuma had been placed on medical parole following a report it had received.

Zuma was, in August, admitted to a hospital outside the Estcourt Correctional Centre, where he was serving a 15-month sentence.

According to a statement by the department, apart from being terminally ill and physically incapacitated, inmates suffering from an illness that severely limits their daily activity or self-care can also be considered for medical parole.

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The statement, which did not specify whether Zuma was terminally ill, physically incapacitated or suffering an illness that severely limits his daily activity or self-care, said the former president would complete the remainder of the sentence in the system of community corrections.

It means that Zuma will have to comply with a specific set of conditions and be under supervision until his sentence expires.

The Constitutional Court sentenced Zuma to 15 months imprisonment for contempt of court after he refused to testify before the State Capture Inquiry.

READ | Zuma not ill, looking forward to court appearance next week - Zuma Foundation

He had been imprisoned at the Estcourt Correctional Centre in KwaZulu-Natal and had only served two months of his sentence before being granted medical parole.

Routine check-up and not ill

Zuma's placement on medical parole stands in stark contradiction to what his foundation said less than a month earlier.

On 6 August, DCS said Zuma had been admitted to an outside hospital for medical observation.

DCS spokesperson Singabakho Nxumalo said:

A routine observation prompted that Mr Zuma be taken for in-hospitalisation.

This aligned with what the Jacob Zuma Foundation had said about the former president being hospitalised.

News24 previously reported that foundation spokesperson Mzwanele Manyi said Zuma was taken to hospital for his "normal annual medical check-up".

"Whether in prison or not, he would have been due for that check-up," Manyi said.

Manyi added that Zuma was not ill and that the foundation would issue a statement once the check-up was completed and a medical report was received.

At the time, the foundation said Zuma was looking forward to his court appearance in the KwaZulu-Natal High Court in Pietermaritzburg for his plea hearing in the fraud and corruption case related to the arms deal.

According to Manyi, the hospital admission was not a ploy aimed at missing the court appearance. He added that Zuma could not afford to be sick because he had a lot to share in court.

Zuma still hospitalised

However, Zuma would subsequently not attend the court appearance - and the matter was postponed because the former president was still in hospital.

Judge Piet Koen ordered that the doctors treating Zuma provide a medical report to detail his fitness to attend court or stand trial by 20 August.

The court further directed that the State could appoint a doctor of its choice to examine the former president.

In the meantime, the DCS confirmed on 14 August that Zuma underwent a surgical procedure, and there were other procedures scheduled for the coming days.

On 23 August, News24 reported that Zuma's military doctors had failed to meet a 20 August court deadline to hand over their medical report on his fitness to stand trial.

Instead, Zuma's doctors asked to file the report by 27 August.

The National Prosecuting Authority (NPA) reportedly did not agree to this and rejected their reasons for the extension.

On 27 August, the NPA confirmed that the medical report had been filed, but would make no further comment on the matter.

On 31 August, News24 reported that Zuma had refused to be examined by NPA-appointed doctors, according to his foundation.

It was alleged that Zuma refused because he was tired of claims of his ill-health being treated with distrust.

The NPA declined to comment.

Because Zuma's medical report is confidential, it is not known whether Zuma had fallen ill during his routine check-up or if the check-up had discovered health issues.

The corruption case is expected back in court on 9 September.

After a protracted legal battle, Zuma was charged with 16 counts of corruption, fraud, racketeering and money laundering related to the 783 payments he allegedly received from his former financial advisor, Schabir Shaik, and a R500 000-a-year bribe that the State claims Shaik facilitated for him from French arms company, Thales.

Thales is also on trial as Zuma's co-accused.

We want to hear your views on the news. ***Subscribe to News24*** *to be part of the conversation in the comments section of this article.*

"FA 14"

correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

15 August 2021

UPDATE ON THE IN-HOSPITALISATION OF FORMER PRESIDENT ZUMA

The Department of Correctional Services (DCS) is able to confirm that the Former President, Mr Jacob Gedleyihlekisa Zuma, remains in hospital outside Estcourt Correctional Centre where he is serving a 15-month sentence.

Mr Zuma underwent a surgical procedure on Saturday, 14 August 2021, with other procedures scheduled for the coming days. As a result, DCS is unable to predict a discharge date as our priority at this stage is for Mr Zuma to be afforded the best care possible.

As inmates are placed in correctional centres involuntarily, the state has a total and inescapable responsibility and duty to care for them in a manner that does not violate or compromise their constitutional rights, which include access to health care.

We appeal to all people to refrain from speculating on the health of Mr Zuma and allow medical practitioners space to continue providing quality healthcare to him.

Ends.

Enquiries, Singabakho Nxumalo on 079 523 5794.

Issued by the Department of Correctional Services.

"FA 15"

correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

05 September 2021

MR ZUMA PLACED ON MEDICAL PAROLE

The Department of Correctional Services (DCS) is able to confirm that Mr Jacob Gedleyihlekisa Zuma has been placed on medical parole.

Section 75(7)(a) of the Correctional Services Act 111 of 1998, affords the National Commissioner a responsibility to place under correctional supervision or day parole, or grant parole or medical parole to a sentenced offender serving a sentence of incarceration for 24 months or less. The National Commissioner is also in terms of Section 52, empowered to prescribe conditions of parole.

Medical parole's eligibility for Mr Zuma is impelled by a medical report received by the Department of Correctional Services. Apart from being terminally ill and physically incapacitated, inmates suffering from an illness that severely limits their daily activity or self-care can also be considered for medical parole.

The risk of re-offending of released inmates must also be low and there must be appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released to.

Medical parole placement for Mr Zuma means that he will complete the remainder of the sentence in the system of community corrections, whereby he must comply with specific set of conditions and will be subjected to supervision until his sentence expires.

Medical Parole can only be revoked if an offender does not comply with the placement conditions.

We want to reiterate that placement on medical parole is an option available to all sentenced offenders provided they meet all the requirements. We appeal to all South Africans to afford Mr Zuma dignity as he continues to receive medical treatment.

Ends.

"FA 16"

Override: Questions over ex-spy boss Fraser's role in Zuma parole

news24.com/news24/southafrica/news/zuma-out-of-jail-but-did-fraser-override-medical-parole-advisory-board-to-make-that-happen-20210907

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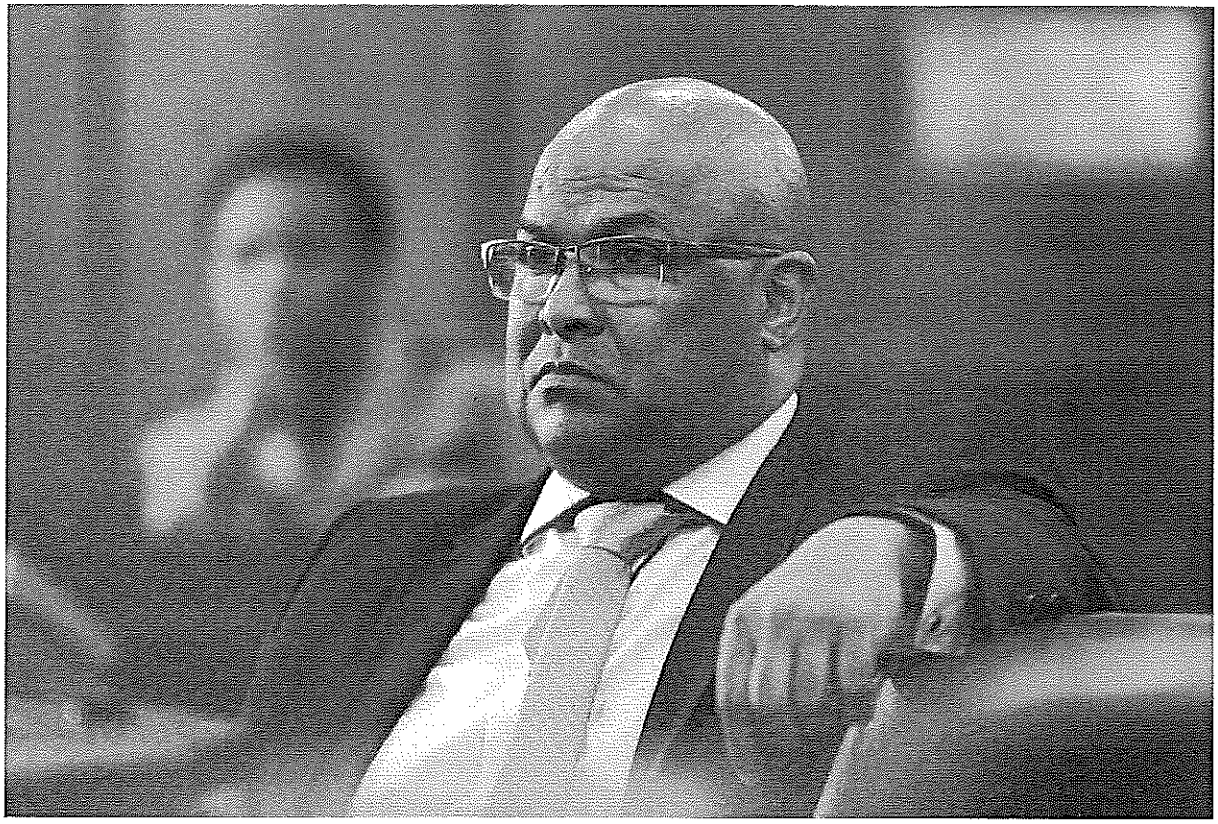


National Commissioner of Correctional Services Arthur Fraser.

Jaco Marais/Netwerk24

- **DA leader John Steenhuisen claims that National Commissioner of Correctional Services Arthur Fraser "overrode" a recommendation by the independent medical parole advisory board that former president Jacob Zuma not be released on medical parole.**
- **While the department of correctional services insists that Zuma's parole was above board, it has refused to reveal whether the former president's release on medical parole was supported by the board.**
- **Zuma is due back in court on Thursday, when his lawyers are expected to confirm whether they will seek to postpone the arms deal-related corruption case against him on the basis that he is medically unfit to stand trial.**

National Commissioner of Correctional Services Arthur Fraser has refused to respond to allegations that he overrode the recommendations of the medical parole advisory board when he authorised the release of former president Jacob Zuma.

Dr Notende Botwekazi Mgulwa, who serves on the board, on Monday declined to answer any questions with regards to its recommendation on the Zuma matter and referred all queries from News24 to Fraser.

"I wouldn't like to answer that question, for obvious reasons. I would like for you to get clarification from the Commissioner of Correctional Services. He is the person who has the information," she said.

Nicknamed the "spy who saved Zuma" by the Mail & Guardian for his alleged role in securing the so-called "Spy Tape" recordings that saw the National Prosecuting Authority unlawfully drop its corruption case against the newly elected ANC President, Fraser's allegedly criminal conduct as head of the State Security Agency dominated several State Capture Inquiry hearings.

He has strongly denied that he did anything wrong and maintains that both he and the Zuma administration have been unfairly demonised.

Democratic Alliance leader John Steenhuisen on Monday told News24 that he had received, "disturbing" information from an impeccably placed source that the board had rejected the medical parole application lodged by Zuma's doctors, based on alleged lack of relevant medical information – but had then been overridden by Fraser.

He said:

I have it on very good authority that the procedure was not properly followed and this was a unilateral decision made by Mr Fraser.

"In a case like this, there needs to be maximum transparency... that's why we are proceeding to court, for a review of this decision and we will use the legal process of discovery to then gain access to all of the records that formed the basis of that decision."

While correctional services spokesperson Singabakho Nxumalo says the department is ready for any potential legal challenge to Zuma's release on medical parole, he has refused to confirm whether or not the medical parole advisory board endorsed the granting of such parole for the former head of state.

"The board makes a recommendation and a decision has to be taken by the National Commissioner and we never disclose such recommendations from any of the board structures operating in our space," he said.

But this is not true.

In 2012, the then newly formed medical parole advisory board publicly defended its decision to endorse medical parole for former National Police Commissioner Jackie Selebi – and even participated in a correctional services press conference to explain the basis of

its decision.

Tellingly, the department's first press statement on Zuma's medical parole also initially made no mention of Fraser considering input from the medical parole advisory panel and stated that his eligibility for medical parole was, "... impelled by a medical report received by the Department of Correctional Services".

It was only after the DA raised the alarm about the apparent absence of the medical parole advisory board in this process that Nxumalo stated that Fraser made his decision to release Zuma after, "... considering a number of medical reports", including one provided by the medical parole advisory board.

"We sourced all the necessary reports that we needed. We are mindful of the fact that Mr Zuma carries an elevated public profile," Nxumalo said on Monday.

He had earlier confirmed Zuma's military doctors had applied for him to be placed on medical parole, which he said was granted to inmates who are, "... terminally ill, physically incapacitated or severely limited in terms of mobility or the ability to provide self-care". Nxumalo stressed that a determination on whether medical parole should be granted had to be based on assessments, "... conducted by a number of healthcare professionals".

He added that the department was ready to provide a full record of Fraser's decision to grant medical parole to the former President, if and when it was challenged in court.

ALSO READ | How Zuma went from not being ill, hospitalised for a routine check-up, to medical parole

He said:

Whenever we are called to account, we will avail ourselves.

In the meanwhile, however, Justice and Correctional Services Minister Ronald Lamola's office has failed to respond to questions about the Zuma medical parole saga – and whether he was satisfied that Fraser had conducted himself in a lawful manner.

It is also unclear if and how Fraser's decision to grant medical parole to Zuma will impact on his corruption trial, which is due to resume on Thursday.

Zuma's military doctors have previously suggested that he may require as much as six months of treatment for an undisclosed medical condition that they have suggested could place his life at risk.

The National Prosecuting Authority have, by agreement with Zuma's lawyers, been granted a court order that allows the State to have its own doctors examine the former President and establish whether he is fit to stand trial – but Zuma's Foundation now insist that this would be a potential violation of his constitutional rights.

Given that Zuma currently remains in hospital, it appears likely that his next appearance in court may be postponed.

The NPA says it can only comment on the case once it is back in court, while the Zuma Foundation says his lawyers have not made any decision about the future progress of the trial.

INTERVIEW ON THE SABC'S *WATCHDOG* ON 8 SEP 2021

Vuyo Mvoko (VM): Also, the theory is that you're coming through for him now in a time of need and that's why you … he is now on, on parole.

Arthur Fraser (AF): No with regard to – let's, let's take Jacob Zuma aside. With regard to any person that has to take parole – there's procedures, there's law …

VM: So what process was followed this time around?

AF: Um, he was, he was placed on medical parole. He came into our facility. We have a responsibility to provide security and care, um, and as in all instances when we admit a person into our facility we make sure that we do a full assessment, including a health assessment.

VM: Okay, so who did the assessment?

AF: Um, our medical staff, and our, er, administrative staff in the centre.

VM: And who was part of the process that then on the back of that assessment took the decisions that eventually led to him being paroled?

AF: No, um, maybe I must talk about the process, Vuyo. You see when you do, do, do the assessments, you'll then know what type of care must be given, so when we deal with care, we deal with even your dietary requirements, so every offender that is incarcerated at this department will have to be able to give a

history of themselves – both health and otherwise – and then we assess how do we categorise them and where we are able to place them. This was in the same process, the same process applied. I think, [clears throat] what I know happened after that, that at the onset he declared his co-morbidities, but additional to that because he was still under the care of the South African military health services they had also provided us an assessment on his first day of admission, so that is when we realised that we've got a, a person in our custody who actually is frail, so I think that's, that's maybe the first point. We had then received further reports – medical reports – that indicated that he requires specialised treatment, and it was only around the third report that we received where his, his medical team – the medical team in conjunction with our term – indicated that he can no longer be kept in our facility because the type of care – medical care – required, we are not able to provide. And this assessment is made with every other offender that we have in our facilities. Our doctors, our nurses will write referrals to, er, the head of centre and say we've got a situation, please transfer.

VM: But whatever was this condition, it's allowable, in terms of your rules?

AF: It has to be done. When, when we are directed by health professionals we are obligated. It has to be done.

VM: Who takes, who has the final say? Is it you? Just you? You, together with the parole board?

AF: No I'm, we're talking now about parole. I'm still talking about, maybe I'm, I'm talking about him going to hospital.

VM: Okay?

AF: Because you'd recall Vuyo that he was, he had gone to hospital, and that was because we were advised that the type of care needed and the type of clinical, um, er, what, procedures that needed to be done couldn't be done in our facility, so we then had to move him to a tertiary institution, medical care, healthcare institution, and it's there that we got further reports. Where we then got informed that there is a range of procedures that need to happen and all of that. There was then by, from the medical staff, there was an application made much earlier – I don't have the details with me now Vuyo – where they requested, where they applied for medical parole, um, and I think that that's at the beginning of August where they applied, uh, and we directed to the relevant structures.

VM: Which was?

AF: Uh, within our structure, we've got healthcare and then we've got the medical, er, advisory, uh, parole board so we directed it to them.

VM: And what did they say?

AF: They allocated the doctor, er, to, to go and do an observation as they do in all instances. They had done an observation and based on the engagement and assessment – the doctor's engagement and assessment – on the patient, er, recommendations were made, er, to the medical parole board – advisory board um, and that's, those recommendations were made, yes. And the recommendations were that they, the board, did not approve, er, for medical parole because they indicated that he was in a stable condition. What I need to indicate when the advice, medical advisory board provided those recommendations, I had then – the head of the centre, who has the authority to decide then, er, reviewed the information available and then indicated that the

conditions – based on all the reports that we have – require us to release the former president. I then, er, rescinded those delegations because it's original delegation such with me, that I had delegated to … I rescinded that and I took the decision then to place him on medical parole and I've given a host of reasons. The reasons is available, available, it's in, uh, documentation and it will be presented to whoever, er, need to, to see that. I'm sure Parliament will be asking to have access.

VM: And you are confident it will stand whatever scrutiny?

AF: It's legal and procedural.

[Interview ends]

"FA 18"

Jacob Zuma refuses examination by NPA medical team

iol.co.za/news/politics/jacob-zuma-refuses-examination-by-npa-medical-team-f4e424af-e809-4ea0-bf76-20a5a76326e3

August 31, 2021

Former president Jacob Zuma has reportedly has refused to be medically examined by National Prosecuting Authority (NPA) appointed doctors. EPA/NIC BOTHMA

By Tarryn-Leigh Solomons Aug 31, 2021

Former president Jacob Zuma has reportedly has refused to be medically examined by National Prosecuting Authority (NPA) appointed doctors.

This, according to the Jacob Zuma Foundation, comes as the former president is apparently tired of his ill health being doubted.

Zuma, who is serving a 15-month sentence for contempt of court, was hospitalised days after his arrest.

A media report reads that foundation spokesperson Mzwanele Manyi accused the State of "second guessing" the medical report produced by the military doctors responsible for Zuma's wellbeing by seeking to have him examined by their own doctors.

“All President Zuma says in all this is that because his name is involved, now all of a sudden, somebody must think that now there’s some shenanigans,” said Manyi.

"They are saying (to the military doctors): we don’t believe you. Your professional integrity means nothing," Manyi said. "What nonsense is this?"

NPA spokesperson Mthunzi Mhaga declined to respond to Mr Manyi's statement. "We will deal with this matter in court," Mhaga told Independent Media.

KwaZulu-Natal High Court Judge Piet Koen ordered that the NPA "may grant a medical practitioner of its choice to examine Mr Zuma to assess his ability to stand trial for corruption and for that doctor to be a witness, if necessary".

About two weeks ago, the Department of Correctional Services confirmed that Zuma underwent a surgical procedure on 14 August.

The department said Zuma was scheduled for further surgery.

Spokesperson for the Jacob Zuma Foundation, Mzwanele Manyi, said a medical report was submitted to the court and the NPA on Friday.

"The NPA is still dealing and examining the report to be able to form a view in terms of the way forward. Reports that president Zuma has refused are ahead of us," Manyi said.

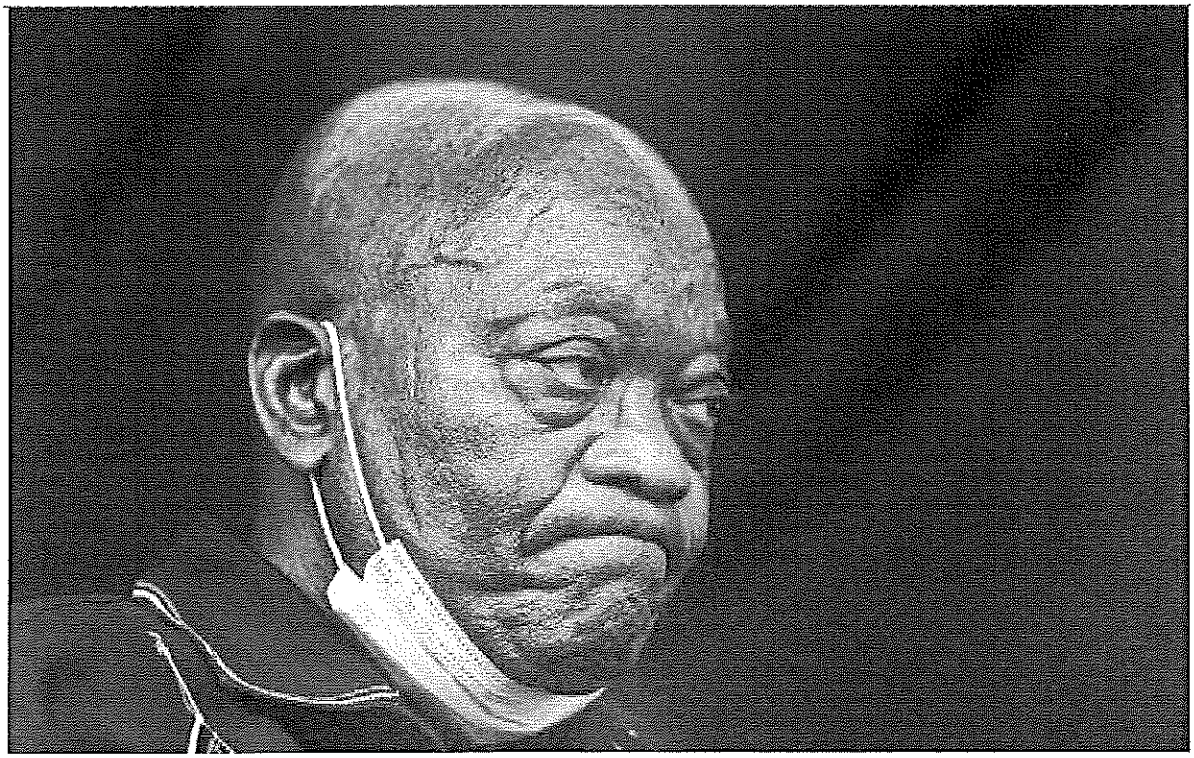
On the consent issue, Manyi's view is that if Zuma refused to give consent then it is his constitutional right to do so and if he doesn't give it then that's the way the story ends.

*This is a developing story.

POLITICAL BUREAU

Mandy Wiener | All Shaiked out: Impressions of abuse of the medical parole system count

news24.com/news24/columnists/mandy_wiener/mandy-wiener-all-shaiked-out-impressions-of-abuse-of-the-medical-parole-system-count-20210907



Former President Jacob Zuma was granted medical parole on the weekend. Photo: Lulama Zenzile

The concept of medical parole is a blight on the integrity of the country's criminal justice system, and the damage done by the Schabir Shaik case should never be underestimated, writes ***Mandy Wiener.***

Regardless of how legitimate or credible a decision to release a high profile convict on medical parole may be it will always be seen as a get out of jail free card.

This is because the concept of medical parole has been so severely abused and violated South Africans will view decisions through the lens of what has happened historically.

We can never underestimate the damage done by the decision to release Schabir Shaik on medical parole and, to a lesser degree, the Jackie Selebi case.

How often in the last 36 hours have you heard comments flippantly thrown around such as "He has a case of the Shaiks" or "He can play a round of golf with Shaik".

The front page headline of the Cape Times on Monday morning was "Zuma Parole Shaiks Opposition".

Of course, there are questions around whether or not former president Jacob Zuma was eligible for medical parole, the role played by his former spy boss and now prisons chief, Arthur Fraser, and the exact nature of his health condition. Even if the process was followed to the T, many are still inevitably going to query it because the seed of doubt has been sown.

Hardly unexpected

The announcement was hardly unexpected. The script was written when Zuma first began to serve his sentence at the Estcourt facility. This was always how it would end. Because we have been conditioned as the South African public to expect it. It has happened before.

From the outset, the authenticity of Shaik's medical parole was questioned. When he was released on medical parole in 2009 and taken home in an ambulance, there was already severe scepticism around whether he was indeed eligible or if he was receiving preferential treatment because of his proximity to the then-president.

His behaviour compounded this cynicism in the years following his release. He was regularly seen golfing, he allegedly throttled and slapped a journalist; then he was accused of punching and slapping a man at a mosque during an argument over parking. It was laughable really. Hardly the behaviour of a terminally ill patient.

He even asked for his medical parole to be converted to standard parole, making a mockery of the entire process. On the contrary, we couldn't exactly will Shaik to die. The only way he would have been able to justify his medical parole was if he were to shuffle off this mortal coil, and that is not a reasonable expectation.

The Shaik scandal undermined every potential medical parole application made in the future, as was the case for former police commissioner Jackie Selebi. He was convicted of corruption in 2010 for receiving money from Glenn Agliotti and was sentenced to 15 years in prison. He was released on medical parole in July 2012 after suffering kidney failure and being placed on dialysis. He died in January 2015.

An 11-member medical parole advisory board stood by its decision to release Selebi because if he had not received dialysis, he would have died while in prison.

As anticipated, there was a deep cynicism about his medical condition, and as a reporter at the time, I spent a great deal of time on radio and television explaining that he was genuinely ill.

Some have also sought to point to the example of Clive Derby-Lewis as a comparison to the Zuma case.

Derby-Lewis, who was sentenced to life imprisonment for the murder of the former general-secretary of the SACP, Chris Hani, died at the age of 80 in November 2016. He died after a long battle with lung cancer.

After several failed attempts at applying for medical parole, the North Gauteng High Court in Pretoria granted him parole in May 2015. He went home, reportedly with terminal lung cancer. He was denied medical parole in 2011, 2013 and again in January 2015.

Shrouded in secrecy

After the Shaik furore, there was an amendment to the law around medical parole.

Parliament's Portfolio Committee on Correctional Services unanimously supported the amendment of Section 79 of the act, which was done to ensure the legislation couldn't be abused to grant inmates medical parole if they were not deserving.

They had to meet certain criteria, and the minister was compelled to establish a medical advisory board to provide an independent medical report.

Keep in mind Zuma currently won't even allow the National Prosecuting Authority's medical team to examine him. That is why there is such an outcry this time around Zuma's release.

While he may meet the criteria, the entire decision has been shrouded in secrecy. We don't know what is wrong with Zuma or the extent of his medical condition, and we don't know if Fraser acted outside his power in making the decision.

Because it is all so opaque, South Africans are well within their rights to be suspicious. It is also a fine balance between respecting Zuma's right to privacy and dignity by not publicly revealing his condition and asking the right questions to ensure the system's integrity is upheld.

A blight on the country's integrity

Fraser, the former spy boss who has been mired in controversy and subject to serious allegations at the Zondo Commission, is effectively asking us to trust him on a matter which has already seen a fundamental breach of trust of the public's confidence in the past.

The concept of medical parole is such a blight on the integrity of the country's criminal justice system.

The damage done by the Shaik case cannot be underestimated - it casts such doubt and undermines any legitimate and credible medical parole decision that may be made.

South Africans will just never believe it.

- Mandy Wiener is a journalist, author and host of the Midday Report on 702.

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

In the matter between: 45997/21

THE DEMOCRATIC ALLIANCE	Applicant
and	
THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES	First respondent
THE MEDICAL PAROLE ADVISORY BOARD	Second respondent
JACOB GEDLEYIHLEKISA ZUMA	Third respondent
THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION, AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	Fourth respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fifth respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2021 -09- 10
K.M MEHLAPE
REGISTRAR'S CLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID-AFRIKA GAUTENG AFDELING, PRETORIA

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE THAT the applicant raises the following constitutional issues in this application:

1. Whether the decision of the first respondent to place the third respondent on medical parole, taken on or about 5 September 2021, is unlawful and should be set aside and substituted with a decision rejecting the third respondent's application for medical parole.

MINDE SCHAPIRO AND SMITH INC
Elzanne Jonker
021 918 9000; elzanne@mindes.co.za

TAKE NOTICE FURTHER THAT any interested party in a constitutional issue raised in this application may, with the written consent of all the parties to the proceedings (given less than **five court days** after the date of this notice) be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER THAT the written consent referred to above shall be lodged with the Registrar of this Court within five days of it being obtained and that the *amicus* shall, in addition to any other provision, comply with the times agreed upon for the filing of pleadings and written argument.

TAKE NOTICE FURTHER THAT that times agreed upon may be amended by this Court.

TAKE NOTICE FURTHER THAT if the interested party is unable to obtain the written consent as contemplated herein, he, she or it may, within **five days** of the expiry of the five-day period prescribed above, apply to the Court to be admitted as an *amicus curiae* in the proceedings. Such application shall —

(a) briefly describe the interest of the interested party in the proceedings;

(b) clearly and succinctly set out the submissions which would be advanced by the interested party, the relevance thereof to the proceedings and his, her or its reason for believing that the submissions will assist the Court and are different from those of the parties; and

(c) be served upon the parties.

TAKE FURTHER NOTICE THAT any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae* shall file an answering affidavit within **five days** of service of the application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

Dated at Pretoria on Friday, 10 September 2021.

Elzanne Jonker
MINDE SCHAPIRO AND SMITH
Applicant's attorneys
elzanne@mindes.co.za
c/o: KLAGSBRUN EDELSTEIN BOSMAN DU PLESSIS INC.
220 Lange Street
Nieuw Muckleneuk
Tel: 012 452 8984
Ref: Ronie Nyama / MD / HM001035

TO **THE REGISTRAR OF THE ABOVE COURT**

AND TO **THE NATIONAL COMMISSIONER FOR CORRECTIONAL SERVICES**
First respondent
124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)
Poyntons Building (West Block)
Pretoria
Copy to: State Attorney, Isaac Chowe

THE MEDICAL PAROLE ADVISORY BOARD

Second respondent

124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)

Poyntons Building (West Block)

Pretoria

Copy to: State Attorney, Isaac Chowe

JACOB GEDLEYIHLEKISA ZUMA

Third respondent

Kwa-Nxamalala

Nkandla

Kwa-Zulu Natal

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

Fourth respondent

Hillside House, 17 Empire Road, Parktown, Johannesburg.

Care of State Attorney, Johannesburg

Per email: JohVanSchalkwyk@justice.gov.za

10th Floor, North State Building

95 Albertina Sisulu, Cnr Kruis Street

Johannesburg

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Fifth respondent

124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)

Poyntons Building (West Block)

Pretoria

Copy to: State Attorney, Isaac Chowe

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

45997/21

In the matter between:

THE DEMOCRATIC ALLIANCE	Applicant
and	
THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES	First respondent
THE MEDICAL PAROLE ADVISORY BOARD	Second respondent
JACOB GEDLEYIHLEKISA ZUMA	Third respondent
THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION, AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	Fourth respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fifth respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2021 -09- 10
K.M MEHLAPE
REGISTRAR'S CLERK
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

NOTICE OF OPPOSITION TO MEDIATION

TAKE NOTICE THAT the applicant opposes the referral of this matter to mediation, for the following reasons:

1. The matter is urgent and mediation would take too long.

2. The matter is not capable of being effectively resolved by mediation. The first respondent is *functus* and a court order is required to reverse the parole decision.

Dated at Cape Town this Friday, 10 September 2021.

MINDE SCHAPIRO AND SMITH INC
Elzanne Jonker
021 918 9000; elzanne@mindes.co.za; ronie@kebd.co.za

Elzanne Jonker
MINDE SCHAPIRO AND SMITH
Applicant's attorneys
elzanne@mindes.co.za
c/o: KLAGSBRUN EDELSTEIN BOSMAN DU PLESSIS INC.
220 Lange Street
Nieuw Muckleneuk
Tel: 012 452 8984
Ref: Ronie Nyama / MD / HM001035

TO **THE REGISTRAR OF THE ABOVE COURT**

AND TO **THE NATIONAL COMMISSIONER FOR CORRECTIONAL SERVICES**
First respondent
124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)
Poyntons Building (West Block)
Pretoria
Copy to: State Attorney, Isaac Chowe

THE MEDICAL PAROLE ADVISORY BOARD
Second respondent
124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)
Poyntons Building (West Block)
Pretoria
Copy to: State Attorney, Isaac Chowe

JACOB GEDLEYIHLEKISA ZUMA

Third respondent

Kwa-Nxamalala

Nkandla

Kwa-Zulu Natal

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

Fourth respondent

Hillside House, 17 Empire Road, Parktown, Johannesburg.

Care of State Attorney, Johannesburg

Per email: JohVanSchalkwyk@justice.gov.za

10th Floor, North State Building

95 Albertina Sisulu, Cnr Kruis Street

Johannesburg

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Fifth respondent

124 WF Nkomo Street (Corner WF Nkomo & Sophie De Bruyn Streets)

Poyntons Building (West Block)

Pretoria

Copy to: State Attorney, Isaac Chowe