

Zuma claim of imprisonment without trial baseless, ConCourt hears

The commission of inquiry into state capture says former president Jacob Zuma has no basis for claiming that he was sent to prison without trial, and is using his rescission application as a means to revisit a litigation process that he initially shunned and attacked when he had a chance.

 By Valencia Talane 13 Jul 2021



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Advocate Tembeka Ngcukaitobi argued these points as a basis for the commission's opposition of the application for the Constitutional Court to rescind its contempt judgment against Zuma last month, which sentenced him to 15 months in prison.

He told the court that the legal definition of trial has many interpretations that cover a spectrum in which a trial manifests, and these include proceedings in motion court.

"I'm afraid you will have to substantially revisit your authorities if you are to find that motion court proceedings are inappropriate contempt proceedings," Ngcukaitobi said.

Defiance

Zuma had every opportunity to participate in the proceedings of the court after the commission applied for an order to compel him to appear before it, he said, but chose instead to ignore invitations to do so, and went on to defy the order when it was issued by Justice Chris Jafta in January.



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“Justice Jafta, you wrote the judgment of the court on 28 January 2021. You said that all Mr Zuma had to do was to account for his period in office. That is all he was required to do. All of this could have been avoided if only he had heeded your own judgment which did not impose obligations,” Ngcukaitobi said.

Zuma’s counsel Advocate Dali Mpofu, however, said the very participation of the commission in the application process was unnecessary as its involvement should have ended at the point when its chairperson, Deputy Chief Justice Raymond Zondo, lodged a police complaint against Zuma for walking out of the commission that he accused of bias.

Question of court

What should have followed thereafter is a process of investigation by the police and possibly prosecution by the National Prosecuting Authority in the high court, and not the direct access request made by the commission, and accepted by the Constitutional Court. The latter erred in taking on the matter, knowing that the prospect of appeal was closed to Zuma.

“For legal purposes, it [Constitutional Court] then relegates itself to be treated as any other court of first instance in criminal proceedings, whether that is the high court, the regional court or what have you.

“Of course we know this is the highest court in the land, of course we know it is the apex court, but in this instance it dressed itself as a court of first instance, and to that extent then it must extend the rights in Section 35 [of the Constitution],” Mpofu said.

What is left for the court to do, he added, was to consider the most basic right of a criminally accused person. For one, it needn’t dwell on Zuma’s misdemeanours in regard to its hearing of contempt charges against him, and should only consider whether the former president’s human rights were violated by the commission sending him to jail.

The basis for the request, said Mpofu, is that the court erred in sentencing Zuma, and for that purpose should reconsider its decision.

“We are not here to say this court went out of its way to twist the law and so on, that’s not what we’re about. We’re about errors that may have been committed, and we’re about the right of every accused person to have their case reconsidered, reassessed and that no accused person in this country must only have one court – if it’s a criminal case – that considers their case,” he added.

Unlike his prison cell mate, said Mpofu, Zuma did not receive the fair trial that is promised in South Africa’s Constitution, and should thus be released on an order of the court, declaring itself incompetent to hear the matter and thus sending it to the high court for the opportunity of a trial to hear it. Zuma got to this point not because he refused to appear before the commission, but because he exercised his right to ask for the recusal of Zondo on the basis of bias.



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Uphold the Constitution

Ngcukaitobi described this as absurd, arguing that Zuma's actions both before and after the two orders of the Constitutional Court show that he isn't remorseful for attacking the court for its decisions. The court should uphold its judgment on Zuma, as this is important for the basic principle of equality before the law and in the interest of justice.

"The interest of justice firstly requires that you should uphold the Constitution, more than anything else, you should uphold the Constitution. You should uphold your standing as a court of final instance, you should uphold your standing as the highest court in the republic.

"It is not an issue that you elected to hear this case directly without the right of appeal. You knew this, you were aware of this. It was a motivation that we raised. Mr Zuma knew it as well. His attorney knew that if the court accepted the case as the court of first instance, it would also be a court of final instance."

But Mpfu responded by saying the Constitutional Court should take heed of its minority judgment and take the lead of the judiciary during apartheid, where even those accused of terrorism went through trial. "This instant justice of not even a pretence of a trial is exactly what the apartheid court would not even consider."

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ABOUT VALENCIA TALANE

Valencia Talane is a senior journalist and editor with Corruption Watch in Johannesburg. Talane has followed the hearings of the state capture commission since their commencement in August 2018 with a view to documenting evidence shared therein.
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