



Response

29th June 2021

A Republic of Laws

Today's Constitutional Court judgement against former President Jacob Zuma will surely go down as one of its most important. It was a ringing assertion of the role of the judiciary and its "lofty and lonely work... to uphold, protect and apply the Constitution and the law at any and all costs," in the words of Acting Deputy Chief Justice Sisi Khampepe.

It was also a powerful affirmation of the key constitutional principles of equality before the law, and of the application of the law to all its subjects, without fear or favour. If anyone doubted the resolve of the courts – and quite a few cynical voices were raised in recent months, claiming that the Court would not dare to send Mr Zuma to prison – hopefully this judgement will give them pause. Even in some more sympathetic eyes the reputation of the Constitutional Court had taken something of a knock recently, mostly due to a number of ill-advised utterances by the Chief Justice; this judgment, legally rigorous and delivered in firm, uncompromising terms, with high dignity and gravitas, fully restores it.

It should also, but probably won't, make certain other politicians rethink their strategy of respecting the law only when it suits them. The recent calls by the EFF leader, Julius Malema, for his followers to defy the COVID-19 lockdown regulations, and his intimidatory threat to stage a sit-in at the home of a senior health official, for example, fall into this category.

Over the years there has been a tendency, perhaps a growing one, for various government departments and officials to ignore court orders, especially in matters of social justice to do with refugees and migrants, social welfare, and the provision of basic services and socio-economic benefits. This judgement should send a shiver down their spines. It will not take long for activists to recognise it as just the precedent they need in order to seek contempt of court convictions against defiant ministers and unco-operative officials.

In her judgement Justice Khampepe observed that, "having no constituency, no purse and no sword, the Judiciary must rely on moral authority." That authority the Court certainly vindicated and enhanced today. But it should also, in our constitutional order, be able to rely on something more than its own authority – the co-operation of the other arms of State, especially those charged with enforcing justice. In this regard a grave duty now lies with the Ministers of Police and of Correctional Services. They will be required to see to it that, if Mr Zuma does not hand himself over within five days to begin his sentence, he is arrested and taken into custody. Given the militant rhetoric that some of Mr Zuma's supporters have already produced, it is to be hoped that the Ministers have a plan in hand.

Lastly, a thought should be spared for the man at the centre of all this. It is a sadness that someone who, in his youth, served ten years on Robben Island as a political prisoner, and who then spent decades in exile, should at the end of his career suffer this ignominy. Mr Zuma is three times a victim: of the horrors of apartheid; of the self-seeking and avaricious crowd that has surrounded him since his return to South Africa 30 years ago; and, of course, of his own venality, which led him to foster a culture of corruption at the cost of those whose rights he took an oath to uphold.

It will probably be of little consolation to him, but it is to the rest of us, to contemplate the words spoken by Justice Chris Jafta when the Constitutional Court ordered Mr Zuma to appear before the Zondo Commission, the very order which Mr Zuma went on to defy, leading to today's judgement: "We must remember that this is a republic of laws where the Constitution is supreme."

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