



Response

11th March 2022

Choosing the New Chief Justice, Part III

It is probably fair to say that most people would have expected President Cyril Ramaphosa to appoint Judge Mandisa Maya as the next Chief Justice of South Africa. Not only was she a very strong candidate, there was also widespread support for having a woman at the head of the judicial arm of government for the first time. In addition, of course, the Judicial Service Commission had done its best to paint the President into a corner on this issue, by going beyond its brief – which was simply to interview the four candidates – and recommending the appointment of Judge Maya.

But Mr Ramaphosa still has the ability to spring a surprise; and the decision to appoint Justice Raymond Zondo, the current Deputy (and Acting) Chief Justice, and at the same time to indicate his intention to appoint Judge Maya as Deputy Chief Justice, filling the vacancy left by Zondo, is a very neat one indeed.

Justice Zondo's elevation crowns a distinguished judicial career that began on the bench of the Labour Court in 1997, and which has seen him steadily rising through the ranks of the High Court, the Labour Appeal Court, and the Constitutional Court, on which he has served since 2012. Along the way, Justice Zondo has built a reputation as a solid and dependable jurist, and as a person of profound integrity. He is also, as anyone who has watched sessions of the 'Zondo' Commission of Enquiry into State Capture will have observed, someone of virtually infinite patience and fortitude.

He will need all these qualities in his new position. The judiciary is under great pressure from populists and others who realise that the rule of law is what ultimately stands between them and their political ambitions. Lindiwe Sisulu's recent attack on "mentally colonised Africans" in the "high echelons of our judicial system" was squarely aimed at Justice Zondo and his ilk, who have repeatedly thwarted the schemes and plans of avaricious politicians and their private sector partners.

In his public reply to this attack – itself unusual for a judge – Justice Zondo left no doubt about his awareness of the problem: "[A]s we move on, there will be more attacks on the judiciary, and the judiciary should be ready for these attacks. And we must be ready." It is hard to think of anyone else in whose hands the judiciary could be made more ready to survive and repel such attacks.

But Mr Ramaphosa's decision has a deeper political significance too. It is a rebuttal of the attempts by Julius Malema, Dali Mpofu, and others on the JSC to effectively hijack the process for the selection of the new Chief Justice and, in a wider sense, to undermine judicial independence. At a time when the President is coming for much criticism over his seemingly pusillanimous stance on the

Russian invasion of Ukraine, this move restores faith in his firmness of purpose and his disinclination to be bullied.

The President also understands how weak the JSC is at the moment, and how a few powerful members are trying to use it to remodel the judiciary into something more pliant and less inclined to apply the law without fear. In his new role Justice Zondo will chair the JSC and will certainly do so more effectively than one or two of the recent incumbents. The embarrassment of some of the recent hearings ought to be a thing of the past.

The crooked and the corrupt will complain, but those who value the rule of law will welcome this appointment. They will also hope, with some confidence, that in the two-and-a-half years that remain before his retirement, Chief Justice Zondo and Deputy Chief Justice-designate Maya will form a strong judicial partnership leading, in due course, to a seamless handover to our first woman Chief Justice.

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