

Unpacking ConCourt's ruling and sentencing of Zuma



By [Valencia Talane](#)

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Former president Jacob Zuma is to present himself to either the Nkandla or the Johannesburg central police stations by this weekend in order to be delivered to a correctional centre where he will start serving a 15-month jail sentence, the Constitutional Court ruled on Tuesday.



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This after the court found him guilty of contempt of its 28 January 2021 order compelling him to appear before the commission of inquiry into state capture, following his walk-out in November last year. Should Zuma fail to do as ordered, police minister Bheki Cele and national commissioner Khehla Sitole must ensure that he is apprehended and taken to an appropriate correctional service centre.

Justice Sisi Khampepe had harsh words for Zuma, calling his conduct scandalous and a threat to the public confidence on which the judiciary relies in doing its work.

Zuma's response to the January court ruling was to pen a public statement in which he attacked both the commission and the court, therefore undermining the work done by the two processes, said the commission in its application, according to Khampepe. He justified his defiance of both a summons by the commission, and later the court ruling itself, by saying that the pending review application to the North Gauteng High Court for Deputy Chief Justice Raymond Zondo to recuse himself prevented him from further taking part in the commission's proceedings. Khampepe said not only was this not a valid reason, but it was done to confuse the public.

The matter, she added, was of extraordinary circumstances, and therefore deserved to be heard urgently and by the Constitutional Court. "Never before has the authority and legitimacy of the Constitutional Court been subjected to the kinds of attacks that Mr Zuma has elected to launch against it and its members."

If Zuma's actions were to go unpunished, it would only serve to inspire others to act in contempt of processes meant to uphold the principle of justice, said Khampepe.

"Of course society hold an interest in Mr Zuma testifying before the commission, given that it was under his presidency that the alleged corruption and maleficence under investigation by the commission took place."

Khampepe delivered a majority judgment in support of imprisonment as an appropriate sanction for Zuma, which contained scathing criticism of the former president and his conduct in relation to the defiance of both the commission's summonses and the Constitutional Court ruling. It was penned by herself and five other justices, while the minority had the backing of two justices.

"I penned and deliver and now hand down this judgment in response to the precarious position in which the Constitutional Court finds itself on account of a series of direct assaults as well as calculated and insidious efforts launched by Mr Zuma to corrode its legitimacy.

"This matter also concerns the protection of the authority of the judiciary to carry out its constitutional functions vested in it by Section 165 of the Constitution which functions are threatened by contempts of court.

"The majority judgment concludes thus the right and privilege of access to an effective judicial process is foundational to the stability of society. Indeed courts are the pillars of democracy, and the keepers of its constitution," Khampepe said.

"No person is above the law, and every person, whatever be her or his rank or condition, is subject to the ordinary realm of the law, and amenable of the jurisdiction of its tribunals. An act of defiance in respect of a direct judicial order has the potential to precipitate a constitutional crisis."

The minority judgment, although also finding Zuma in contempt, sought an alternative sanction of giving the National Prosecuting Authority the responsibility of deciding if it should prosecute Zuma for his conduct.

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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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