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Guptas: It's a no from Zondo

Ajay and Rajesh Gupta will have to return to South Africa if they wish to cross-examine witnesses or give evidence to the inquiry into state capture. This was the ruling of the chairperson of the commission, Deputy Chief Justice Raymond Zondo, on Thursday. Zondo said the reasons for the Guptas' request to be cross-examined outside of the country were invalid and unlawful.

The brothers, who are currently in Dubai, had applied to the commission for permission to cross-examine witnesses who have implicated them in state capture, as required by the commission's regulations. The catch, however, was that the brothers were not prepared to come into the country to participate in the proceedings. This, they said in their submission, is for fear of being ambushed by an incompetent Hawks and National Prosecuting Authority (NPA), as according to them these institutions abuse their powers and fail at their responsibility to act fairly.

Corruption Watch executive director David Lewis reacted to the ruling by saying: "Kudos to Justice Zondo. The commission cannot be seen to be giving the Guptas special treatment above all other witnesses.

"If anything, their refusal to return to South Africa is more a suggestion of their guilt than it is of fear of unfair treatment from our law enforcement agencies. As Justice Zondo himself said, the judiciary is there to supervise the actions of the Hawks and NPA, so they not fear the alleged bias of the law enforcement and prosecutorial agencies. It is because we are a country governed by law that the Guptas fled in the first place, a country which they now fear returning to."

Facing the music – or not

Former deputy minister of finance Mcebisi Jonas, former ANC MP Vytjie Mentor, and former head of government communications Themba Maseko have all named one or both of the brothers in their testimonies to the commission. Duduzane Zuma, the son of former president Jacob Zuma, has also been implicated by Jonas.

However, the brothers have stated that they are not prepared to return to the country for fear of being arrested by the Hawks. They cited the incompetence of the investigative body and the NPA as reasons for this.

To bolster their case, the Guptas had provided the commission with options to consider for them to participate from outside the country. The first was to present evidence in person to the commission's evidence leaders in a location to be agreed on, as long as it was not local. In this regard Zondo rejected

the proposal on the basis of jurisdictional limitations not favouring the commission as well as the fact that travelling costs for commission staff would have to be for the commission's account.

"I should see no reason why we would have to incur the costs ... if this commission were to travel overseas in order to hear their evidence," he said.

Another suggestion had been for evidence to be provided by the brothers via video link conference, and this too was rejected.

"While it is true that it would be desirable for this commission to hear the evidence of Mr Ajay Gupta and Mr Rajesh Gupta ... if their side of the story is not heard by this commission, it will primarily be because they have elected not to return to this country to put their side of the story before this commission."

Meddling in state affairs

In the case of Jonas's testimony, Ajay Gupta is named as the one who offered him a bribe of R600-million in return for the post of finance minister. This proposition, claims Jonas, happened at the family's Saxonwold home and in the presence of the son of former president Jacob Zuma, Duduzane, as well as controversial businessman Fana Hlongwane.

Similarly, Mentor claims Ajay offered her the position of minister of public enterprises – with a condition that she discontinue a South African Airways route between Johannesburg and Mumbai, India – which she refused. Rajesh was supposedly one of the people present in the car that transported Cape Town-based Mentor from OR Tambo International Airport to first the offices of Sahara Computers in Midrand, and then later to Saxonwold, to meet with Ajay.

Maseko, on the other hand, was allegedly instructed by Ajay to re-channel government's media buying budget towards the Gupta-owned *New Age* newspaper.

At the time of making submissions in support of one of the applications on 6 September, Gupta counsel Guptas Mike Hellens said although the brothers appreciate the public interest principle by which the commission upholds its duties, the process would be incomplete without the opportunity for the witnesses' evidence to be tested. Hellens represents the Guptas and Duduzane in relation only to the evidence provided by Jonas. In terms of the matter of the testimony of Mentor and Maseko, the three are represented by Dawie Joubert.

Willing to give evidence, but on their terms

"All counsel, including Mr Hellens and Mr Joubert, readily accepted that no implicated person or witness has a right to cross-examine in this commission," said Zondo. "They accepted that as chairperson of the commission, I have a discretion to grant or refuse leave to cross-examine."

Hellens said his clients were willing to give evidence, provided their conditions were met.

In a supplementary affidavit submitted by their lawyers, the Guptas say they have respect for the South African legal system and the judiciary, said Zondo. "It seems that, in effect, that they have no complaint about the South African legal system as such, nor have they any complaint about the judiciary."

Their complaint seems to be confined to how the Hawks exercise their power, and how the NPA exercise their power, Zondo added.

“Mr [Vincent] Maleka, who presented argument on behalf of the commission’s legal team, submitted that Ajay and Rajesh Gupta are fugitives from justice, and as such their application for leave to cross-examine should be dismissed because they are not prepared to physically appear before this commission within the borders of this country.”

Zondo said that Hellens had disputed this at the time.

He added that his decision to dismiss their application was on the basis of them being fugitives, and that in fact he was not making the decision that they are or not.

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