



16 November 2020

Zondo commission – Zuma vs Zondo: application for judge’s recusal heard

Former president Jacob Zuma will return before the commission of inquiry into state capture on Tuesday to hear the way forward on his application for chairperson Deputy Chief Justice Raymond Zondo to recuse himself. Zondo spent the day on Monday listening to arguments from both his legal team and that of Zuma, who brought the application forward for a number of reasons.

Zuma’s lawyer Muzi Sikhakhane argued that part of the reason why the former president seeks a recusal was not the commission itself, but those who established it with a political objective in mind to “sink Zuma”. The narrative outside the commission suggests that Zuma is trying to avoid appearing before the commission, which is untrue.

“Contrary to public speculation, we advised and brought Mr Zuma here to demonstrate to you that he was never going to defy you because he understands the nature of your job and respects the summons that you issued. He was never going to defy that even if we told him to defy it,” said Sikhakhane.

His political rivals have, however, partly achieved the objective, and this is clear in the choice of witnesses who helped launch the public hearings in 2018. The likes of former deputy finance minister Mcebisi Jonas, former public enterprises minister Barbara Hogan, and public enterprises minister Pravin Gordhan, who were among the first to appear, helped set the direction of the anti-Zuma narrative. This has developed into a public discourse where a group of individuals who make public comments about Zuma’s reluctance to face Zondo. “There is a misconception about this, by people who think they are defending you from a Zuma attack, which it is not,” said Sikhakhane to Zondo.

The day’s proceedings started with Zondo reading out a statement he prepared to outline his professional and personal association with Zuma, which he says dates back to the mid-1990s when he was a practicing attorney. He declared that the two were never friends, but have had encounters both professional and social.

“As far as I recall, I never had one-on-one meetings with Mr Zuma in the nine years that he was president,” said Zondo. He added that there were a number of meetings on a professional level, but none in the last 13 years or so, since Zondo became a judge.

Sikhakhane told Zondo of the difficulty he has in making a submission asking him to remove himself from his important task. “Recusals are difficult, and they are difficult because in order to approach judges as I do today, you first must approach someone you respect, which I do, and you must tell them that you think they made errors.

“Unlike many recusal applications which go to the integrity of the judge, both my team and Mr Zuma would never come here to say the reason we’re asking for your recusal or a way to deal with this matter in a particular way ... is because our application is about your integrity. That is unquestioned, by me or Mr Zuma.”

The test for this process, he added, is not whether or not to assess Zondo's bias – as has been widely reported and speculated – but to assess whether a reasonable person can apprehend that Zuma would not receive a fair appearance. This is based on comments that Zondo has made in respect of Zuma, during the testimony of other witnesses.

But commission legal team head Paul Pretorius disagreed. Since Zuma has had access to the record of the commission since 2018, and developed a view about how Zondo may have perceived him, he could have submitted his version in that time to persuade him otherwise.

“We have searched in vain for any display of hostility as alleged by Mr Zuma in any public comment that you are likely to have made. In any event, it would have to be shown that those comments rendered you incapable of maintaining an impartial mind,” Pretorius said, addressing Zondo.

“It's difficult not to conclude that the real reason the applicant is before you in this application is that he has an apprehension that there might be findings against him.”

Out of 257 witnesses who have so far testified before Zondo, Pretorius said, Zuma selectively addressed the evidence of those who presented a political detriment to him.

“This commission doesn't give a judgment which will be a final judgment, for or against any person, including the former president,” he said.

“Judges sitting in commissions are instruments of the executive branch of government. They must establish a factual matrix on a particular topic, and they must make recommendations on the basis of facts so found.”

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