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Zondo Commission – Zuma reverses direction on withdrawal from state capture commission

Former president Jacob Zuma will continue to participate in the process of the commission of inquiry into state capture, despite having withdrawn earlier on the basis of unfair conduct. Zuma's lawyer, Advocate Muzi Sikhakhane, had earlier on Friday declared that his client may even consider challenging the commission's conduct against him in court.

An intervention by commission chairperson, Deputy Chief Justice Raymond Zondo, who instructed both legal teams to meet with him to discuss their differences, resulted in Zuma's change of heart.

The dramatic events of Friday started off with Sikhakhane informing Zondo of Zuma's decision. "We came here today to inform you that we will take no further part in these proceedings." This invoked applause from the full public gallery filled with supporters of the former president.

"You will recall that on Monday I expressed my reservations that a commission, which is a creature of statute which has set out ground rules, writes a letter on the 7th of June to say that we are calling your client in terms of no rules," Sikhakhane continued.

"We expressed our reservations because this commission, at all times, has to comply with its own ground rules in order to protect its own integrity."

At the centre of the argument by Zuma's legal team was the manner in which his testimony – which started on Monday – was being led by the commission's legal head Paul Pretorius. Sikhakhane, and at times his colleagues, advocates Thabani Masuku and Dan Mantsha, intermittently objected during proceedings this week to what they called a cross-examination of their client. Their discomfort, they argued, arose from the fact that the commission's invitation to Zuma to appear had been done on the basis of a clarity-seeking exercise, but had instead taken the tone of cross-examination, for which he had not been prepared.

Sikhakhane even went as far as to say on Wednesday that the commission had called Zuma before it under false pretences. "I have a view that my client was brought in under false pretence," he said on Wednesday. "My client is clearly being cross-examined." He then declared to Zondo that Zuma would no longer proceed with his testimony, prompting Zondo to instruct both legal teams to meet on Thursday to find middle ground.

Zuma, said Sikhakhane, was to consider during this break in proceedings whether he wanted to be cross-examined or not. "I have advised my client to respect this process, come here, co-operate, I want him to consider that position because I think I advised him on bona fides and I do not think I was right." The clear decision he returned with on Friday was to withdraw altogether from the process, as the commission was not forthcoming on how it would re-establish its expectations of his testimony, if at all.

Zuma thanked Zondo for his intervention on Friday, which resulted in the two legal teams agreeing to engage each other on the exact points on which Zuma is to be questioned later. These emanate from the statements of nine witnesses who have appeared before the commission, naming Zuma in one respect or another. The statements to be perused include that of former ministers Barbara Hogan, Nhlanhla Nene and Ngoako Ramatlhodi, among others.

The meeting between the two sides would happen within the next two weeks, and at the end of it would decide on, and communicate to Zondo, set timeframes for Zuma's return.

The witnesses in question, Sikhakhane had argued earlier, had received different treatment from the commission to his client.

"Our client from the beginning was treated as someone who must come and answer as someone who is accused," said Sikhakhane. "I think it's a public secret now that everyone who came from government had a grievance against him."

Zuma, he added, sat and waited to be treated like all of the other witnesses, but was not afforded the same respect from the beginning.

Pretorius's argument against Sikhakhane's point, however, was that the commission operates strictly within the limitations of its mandate and had not set out to deviate from its own rules. "The topics on which the invitation to give evidence was based were detailed in those letters, there was no lack of clarity as to the purpose of the invitation and the implications for the topics which would form the basis of questioning."

He added that Zondo was not using the powers in the rules to compel Zuma. "Once a person agrees to appear before the commission...certain obligations arise."

The commission cannot enter into special arrangements with any witnesses. "Mr Zuma and his legal team are in effect asking to be excused from the application of the rules," said Pretorius, adding that the questions he had so far asked have not gone beyond the boundaries of the rules of the commission.

Zondo took full responsibility for the decision to call Zuma, explaining that it was in the context of seeking clarity.

"The decision to ask the former president to appear before the commission this week was my decision and my decision alone, he said. "I therefore do not want Mr Pretorius or the commission's legal team to be criticised for a decision that they did not make. I made that decision.

"I believed it was the correct decision, I still believe it the correct decision.

"In this entire room, I am the only person who ultimately must make decisions with regard to the evidence that I'm hearing. I'm the only one who must make findings about witnesses who come here and make statements about other people and about state capture and about corruption."

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