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### **Zondo commission – Zuma to learn fate on Friday**

Neither former president Jacob Zuma, nor the police, have a right to interfere with the functioning of the courts, and in that regard the warrant of arrest ordered by the Constitutional Court against him last Friday should never have been ignored by either, as it still stands. This was argued by Advocate Tembeka Ngcukaitobi on Tuesday before the Pietermaritzburg High Court.

Judge Jerome Mnguni heard Zuma's application for a stay of his arrest, with Advocate Dali Mpofu representing him, while his opposition, Ngcukaitobi, acted on behalf of the commission of inquiry into state capture. Ngcukaitobi told the court that it should allow the Constitutional Court to preside over Zuma's matter, and that is where he should have sought reprieve in the first place.

"Mr Zuma has not handed himself over to police, as he was ordered to do by the Constitutional Court. It is now two days since he was supposed to do that. He is again taking the law into his own hands. He has not asked for the variation of that period before the Constitutional Court," Ngcukaitobi said.

The Constitutional Court last week sentenced Zuma to 15 months of direct imprisonment for being in contempt of its order earlier this year that he must appear before the state capture commission. He was given until Sunday to hand himself over either at Nkandla or Johannesburg Central police stations, failing which the minister of police and national commissioner would have to implement his arrest.

"We are dealing with a recalcitrant, deliberately defiant litigant. He is in defiance of the present contempt of court," said Ngcukaitobi, adding that by bringing his application to the high court, Zuma was trying to deflect and delay his incarceration as ordered by the apex court.

"Six times, Mr Zuma has been invited either by the Constitutional Court or the commission to make his representations. Three times, he has personally rejected those invitations and denounced the Constitutional Court publicly, and raged at the judges of the Constitutional Court, and insulted the institution of the judiciary."

The Constitutional Court first ordered in January that Zuma appear after he had walked out in November last year during a scheduled hearing of his testimony. It was at the start of that appearance that he applied for the recusal of the commission's chairperson, Deputy Chief Justice Raymond Zondo, on 16 November 2020.

When Zondo refused days later to recuse himself, Zuma's then counsel, Advocate Muzi Sikhakhane, told him that his client would appeal the refusal with the North Gauteng High Court. That matter is still pending and has not been heard. It was on the basis of its status that Zuma opted not to participate in the application by the commission to the Constitutional Court to compel him to testify.

In the majority judgment of the contempt matter, six judges noted that while Zuma could have used his entitled right to apply for a stay of the Constitutional Court hearing of the application pending the high court appeal, he chose not to, but instead attacked the integrity of the court.

Mpofu argued that the Pietermaritzburg high court had the jurisdiction required to hear the latest application, even if the Constitutional Court was yet to hear Zuma's rescission application on Monday next week. The application was made on Friday last week.

If the court did not rule in Zuma's favour, said Mpofu, it would be allowing a potential repeat of Marikana – the 2012 police massacre of miners in the North West. This was because Zuma's supporters would close ranks around him at his home in Nkandla as was the case since last week.

Mpofu inferred that this would happen if the court were to dismiss his application, and effectively send him to prison. Should the high court rule that Zuma must await the hearing of his application for rescission of the Constitutional Court on Monday, it would essentially be pre-judging the outcome of that process, he said.

“By that act alone, the Lordship would be saying the exercising of orders four, five and six of this court order [contempt judgment] must be immediately executed.”

But Ngcukaitobi challenged Mpofu's argument on the basis of process. “Mr Zuma was never entitled to refuse to submit himself to the police. Submitting himself would not dis-entitle him to pursue his rescission application or any bail application ... but he has refused to do so. His refusal is a further example of an aggravated contempt.”

Judge Mnguni reserved judgment until Friday. Police Minister Bheki Cele in the meantime wrote to the acting chief justice – incidentally being Zondo – saying that the police would await the current litigation before making the move to arrest Zuma, who has made it clear in public utterances made since the contempt judgment that he would not hand himself over.

State attorney Johan van Schalkwyk, however, said on Tuesday Cele's position was not in order as nothing stopped the police from effecting the arrest.

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