

South African Constitutional Court Sentences Former President Jacob Zuma to 15 months in Prison Effective Immediately

By Jemma Muller

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On 29 June 2021, the Constitutional Court of South Africa (“**CC**”) handed down a precedent setting judgment in which it sentenced the former President of South Africa, Mr Jacob Zuma (“**Zuma**”) to 15 months imprisonment after finding Zuma guilty of contempt of court which was both “*extraordinary and unprecedented in respect of just how blatant it is*”.

Essentially, Zuma failed to comply with the CC’s order on 28 January 2021 wherein he was ordered to attend to and give evidence at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (“**Commission**”).

Instead of complying with the CC’s order, Zuma released various public statements wherein he confirmed that he would neither comply with the CC’s order, nor would he co-operate with the Commission. Moreover, Zuma proceeded to direct significant criticism against the Judiciary by alleging, *inter alia*, that both the Commission and CC were victimising him and politicising the law in their favour.

In terms of urgency, the CC considered it appropriate for it to exercise its jurisdiction, having regard not only to the fact that the Commission’s lifespan is drawing to a close, but because of the damaging impact on the rule of law, the authority of the judiciary and the need to send a clear message to society that such conduct will not be tolerated by our courts.

This is particularly so having regard to the fact Zuma is no ordinary respondent- both because he is a former President, and because he still exercises significant influence over society, who may in turn view his actions as acceptable.



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In order to be found guilty of contempt of court, a court must be satisfied that: (i) an order has been granted, (ii) such an order was either duly served or the respondent had knowledge of the order, and (iii) there was non-compliance with such an order. If these elements are present, it is up to the respondent to create reasonable doubt. In respect of the latter point, it is worth mentioning that Zuma blatantly refused to advance evidence which would create reasonable doubt.

In terms the sanction imposed, the CC considered the appropriateness of imposing a punitive order versus a coercive order. A coercive order allows the respondent a chance to avoid imprisonment by complying with the relevant court order, whereas a punitive order encompasses imprisonment which cannot be avoided.

Having regard to the seriousness of Zuma's contumacy, the need to protect the dignity of our courts and to send a clear message to others, the CC exercised its right to raise and consider a purely punitive order on its own volition. Furthermore, the CC emphasised that a coercive order would prove pointless and would be "*akin to flogging a dead horse*" as Zuma's attitude and actions indicate that he has no intention of complying with the CC's order, nor does he intend to cooperate with the Commission.

It is noteworthy that an order akin to this (i.e., a purely punitive order of committal) has yet to be ordered in similar proceedings. According to Khampepe ADCJ, "*Never before has the legitimacy of this Court, nor the authority vested in the rule of law, been subjected to the kind of sacrilegious attacks that Mr Zuma, no less in stature than a former President of this Republic, has elected to launch. Never before has the judicial process, nor the administration of justice, been so threatened. It is my earnest hope that they never again will.*"

Director at **Primerio Law Incorporated**, **Michael-James Currie** says that the CC's decision not only confirms the seriousness of being found in contempt of court but more importantly, to send the former president of the ruling party to prison will send a strong message of impartiality and go a long way in instilling confidence in the South African judiciary.

You can access the full judgment here: <http://www.saflii.org/za/cases/ZACC/2021/18.pdf>