



Office of the State Attorney Johannesburg

Private Bag X 09
Johannesburg
2000

95 Albertina Sisulu Street
And Corner of Kruis Street
North State Building
Johannesburg
2001

Tel: Switchboard: 011 3307600
Direct Line:
Cell:
Secretary: **M.Motsoko**
Direct Line:
Email Secretary

Fax: (General):
(Direct):

17 December 2022

Enquires: H.Mncube
Email: HMncube@justice.gov.za

Our ref:
Your ref:

To: WN Attorneys Inc
477 Falda Street
Garsfontein
PRETORIA
Ref: Mr WN Niedinger/VS/Z009
waltern@mweb.co.za

Dear Sirs

**JACOB GEDLEYIHLEKISA ZUMA v MATAMELA CYRIL RAMAPHOSA CASE
NUMBER 2022-059772**

1. We act for the State President of the Republic of South Africa Mr Matamela Cyril Ramaphosa ("**the President**").
2. It has been brought to our attention that on 15 December 2022, a purported summons was served at the President's personal residence, on behalf of above your client Mr Jacob Gedleyihlekisa Zuma ("**your client**").

3. On the face of it, the delivery and content of the document amounts to a violation of the integrity of the Constitutional institutions of the Republic of South Africa, a gross abuse of process and evidences multiple breaches of the Criminal Procedure Act 51 of 1977 ("**the CPA**").
4. It is an act that in law may and must be ignored.
5. We reserve the right to expand on this at the appropriate time and in the appropriate forum.
6. For now, we note only the following:

No nolle prosequi certificate

- 6.1 As you are aware, to establish a right to prosecute privately under section 7 of the CPA, the Director of Public Prosecutions must have declined to prosecute. Section 7(2) specifically provides that:

"(2) (a) No private prosecutor under this section shall obtain the process of any court for summoning any person to answer any charge unless such private prosecutor produces to the officer authorized by law to issue such process a certificate signed by the attorney-general that he has seen the statements or affidavits on which the charge is based and that he declines to prosecute at the instance of the State.

(b) The attorney-general shall, in any case in which he declines to prosecute, at the request of the person intending to prosecute, grant the certificate referred to in paragraph (a)."

- 6.2 The document delivered to the President's private residence did not include a *nolle prosequi certificate* in relation to him. It therefore has nothing to do with the President. The *nolle prosequi certificate* that is included in the summons concerns a certain Mr William John Downer. The

President was never cited in those proceedings and could thus not be the subject of such a certificate, at any rate.

- 6.3 For these reasons, that document was not properly processed for purposes of section 7(2) and as such is not a valid summons. A *nolle prosequi certificate* is a basic requirement for private prosecution. This requirement has clearly not been met. The purported summons lack any legal validity. (See *Nundalal v Director of Public Prosecutions KZN* 2015 JDR 0876 (KZP) at para 40).

Mis-citation and non-joinder

- 6.1 The Inditement appears to cite and “accuse” the President as if he were a private individual.

- 6.2 While not conceding that there would be any lawful basis to level the accusations in the Inditement against the Office of the State President, of which the President is the current occupant, the Inditement is clearly premised on an alleged failure by the Office of the State President:

“to take or follow up on any of the undertaken action and/or institute the requested enquiry against any of the officials and/or state functionaries complained about thereby making himself guilty as charged summons and/or indictment to which this summary is attached”

- 6.3 In any event, the alleged conduct does not constitute a criminal offence under South African law.
- 6.4 That aside, the President’s power to institute an inquiry flows directly from the Office of the State President and does not lie in the hands of the President, (*qua* Matamela Cyril Ramaphosa) as an individual.
- 6.5 Service on the President at his personal residence and as an individual clearly evidences a failure to respect the institutions

created and supported by the Constitution of the Republic of South Africa, 1996.

- 6.6 This mis-citation and non-joinder is also a fatal defect in the Inditement and we reserve the right to take all necessary steps in regard to both of these matters.

Abuse of process

7. Your client does not have any title to prosecute. It is established that if a private prosecutor has an ulterior motive with the prosecution, or lacks an interest, then the title of the prosecutor is lacking. The question is whether the private prosecution was instituted or conducted for some collateral and improper purpose, rather than with the object of having criminal justice done to an offender. (See for instance, *Phillips v Botha* 1999 (2) SA 555 (SCA) at 565G-I).
8. The purported summons were served on the President a day before the 55th National Conference of the African National Congress were due to commence. It is common knowledge that the President will stand for re-election as Presidential candidate. It appears that the purported summons were served to halt this candidature. This is an abuse of process.

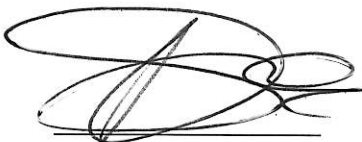
The summons may and must be ignored

9. Given the fundamental defects with the content and service of the document served on the President, the President is entitled to ignore it. No person is entitled to act on the summons to disadvantage the President or adversely affect his rights.
10. Our law recognises occasions where an act, decision or ruling should be treated as invalid even though no action has been taken to strike it down. In such cases the target of compulsion "*is entitled to await events and resist only when the unlawful condition is invoked to coerce it into compliance*". (See for instance, *Merafong City Local Municipality v AngloGold Ashanti Limited* (CCT106/15) [2016] ZACC 35; 2017 (2) BCLR 182 (CC); 2017 (2) SA

211 (CC) (24 October 2016) at para 44; *City of Cape Town v Helderberg Park Development (Pty) Ltd* [2008] ZASCA 79; 2008 (6) SA 12 (SCA) at para 50 and *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* (41/2003) [2004] ZASCA 48; [2004] 3 All SA 1 (SCA) (28 May 2004) at para). This principle applies in this case because the lawful prosecution of the President depends upon the validity of the purported summons.

11. The President and those affected by the invalid summons are entitled to ignore the purported summons. The President is entitled when coerced to present himself to a criminal prosecution on the strength of the summons to challenge them as invalid and have them declared as such. For present purposes, the President may not be subjected to any disadvantage or limitation of rights based on the plainly invalid summons.
12. We thus call upon your client to withdraw the invalid summons on the basis that each party pays their own costs. Should your client not do so by 19 December 2022 we reserve the right to take such further steps as may be required and shall seek a punitive costs against your client for the wasteful costs arising therefrom.

Yours faithfully



Mr HN MNCUBE

Assistant State Attorney

FOR STATE ATTORNEY (Johannesburg)

