



## CONSTITUTIONAL COURT OF SOUTH AFRICA

*Secretary of The Judicial Commission of Inquiry into Allegations of State Capture,  
Corruption and Fraud in the Public Sector including Organs of State v Jacob  
Gedleyihlekisa Zuma*

CCT 295/20

Date of judgment: 28 January 2021

---

### MEDIA SUMMARY

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Thursday, 28 January 2021 at 10h00, the Constitutional Court handed down judgment in an urgent application filed directly in this Court by the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture (the Commission). On 20 October 2020, the Commission summoned former President Jacob Zuma to appear before it on 16 November to 20 November 2020 to give evidence and be questioned on various matters that are subject of the Commission's investigations. Mr Zuma attended the Commission's proceedings on 16 and 17 November 2020. On 16 November 2020, during his attendance at the Commission's proceedings, Mr Zuma moved an application for the recusal of the Chairperson. The ruling was given on 19 November 2020 and the Chairperson dismissed the recusal application. Thereafter, Mr Zuma's legal team informed the Chairperson that Mr Zuma had decided to "excuse himself" from the proceedings. The proceedings adjourned for a break, after which it transpired that Mr Zuma and his legal team had left without the Chairperson's permission. This led to the Commission's urgent application in this Court.

The Commission sought to compel Mr Zuma to comply with the summons issued by the Secretary of the Commission, directing him to appear before the Commission on specified dates in January and February 2021. It also sought an order declaring Mr Zuma's conduct, leaving the Commission without permission in November 2020, to be unlawful and in breach of section 3(1) of the Commissions Act.

In a unanimous judgment penned by Jafta J, this Court granted direct access on the ground of urgency. In doing so, it considered the prejudice in the public interest in the Commission's investigations, the fact that the matter was not opposed and that it bore

reasonable prospects of success. The Court held that section 3 of the Commissions Act empowered the Commission to compel witnesses to appear before it and that failure by those summoned to obey laws that govern the Republic amounted to a direct breach of the rule of law, one of the values underlying the Constitution and which forms part of the supreme law. The Court further held that Mr Zuma was entitled to the privileges envisaged in section 3(4) of the Commissions Act, including the privilege against self-incrimination. However, Mr Zuma was not entitled to the right to remain silent, as this right, guaranteed by section 35 of the Constitution, is only available to arrested and accused persons, and not witnesses appearing before a commission of inquiry. The Court directed that Mr Zuma appear and testify at the Commission.

The applications for admission as *amicus curiae* by the Council for the Advancement of the South African Constitution and the Helen Suzman Foundation were granted. Advocate Ngalwana SC's application to be admitted as *amicus curiae* was dismissed as it sought relief that differed materially from that sought by the Commission and introduced facts that were not already on record.