



OFFICE OF THE CHIEF JUSTICE
41 Fox Street, 14th Floor, Edura House, Johannesburg, 2000
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Tel: (010) 493 2652

JUDICIAL CONDUCT COMMITTEE

COMPLAINT FORM:

Note: 1. Documentary evidence in support of the complaint must be attached.

[If the space provided is inadequate, information may be submitted as an Annexure to this form and must be signed on each page]

Particulars of complainant

Name: Boutshitswe Preddy.....

Surname: Mothopeng Msieleng.....

Address: Hola Bon Renaissance Foundation

88 Marshall Street,

Marshalltown

Johannesburg

2107.....

Contact details: Tel No:0681596956

email:hbrfoundation@gmail.com or info@hbrfoundation.org.za....

Particulars of Judge (s) complained against:

Name of Judge: ...Justice Raymond Mnyamezeli Mlungisi Zondo.....

(herein shall be referred to as **the Judge**)

Division: ... Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State in terms Proclamation No.3 of 2018 published in Gazette No. 41403 dated 25 January 2018; (**herein shall also be referred to as the Zondo Commission on Inquiry of State Capture**) – “Commissions Act (8/1947)”

Particulars of complaint:

A - Affidavit/ Affirmed statement:

1. On the 23 January 2018, The Judicial Commission of Inquiry Into State Capture, Corruption and Fraud In the Public Sector Including Organs of State (Commission) was appointed by the President of the Republic of South Africa in terms of section 84(2)(f) of the Constitution of the Republic of South Africa by way of Proclamation No 3 of 2018 published in the Government Gazette of 25 January 2018 (Government No 41436).

2. The terms of reference of the Commission appear as a Schedule to the Proclamation. In terms of section 1 of the Commissions Act, 1947 (Act No 8 of 1947), the President declared the provisions of that Act applicable with reference to the Commission and made regulations applicable to the Commission.

3. Regulation 13 of the Regulations confers on the Commission the power to determine its own procedures.² The Commission has determined the Rules set out herein as the Rules that govern its procedures. The proceedings of the Commission will be conducted in accordance with the Constitution, the Commissions Act 8 of 1947, the Commission's Terms of Reference, the Regulations, any other applicable law and these Rules.

4. On Behalf of the Hola Bon Renaissance Foundation I whereby would like to lodge a formal complaint against above mentioned Judge, the complaint emanates from **Judge's** public utterances, conduct, actions, decision and operandi in running the affairs of the **Zondo Commission on Inquiry of State Capture** as proscribed by the **Rules that Governs the Proceedings Section 4 (Annexure 1) which state** "*Hearings to be held in public*"

5. The complaint is of the results of the **judge's** inconsistency, conflict of interest, violation of the Republic of South Africa Constitutions, violation of the mandate, violation of the rules governing the proceedings, violation of Term of Reference and infringement Commission Act as well as violating the Judiciary Services Commission Act and while the Judge protect some Ministers and President of the Republic to list a few from State Capture.

6. I bring to the attention of the Judiciary Conduct committee -(herein shall be referred to as **JCC**) to note that the terms of the **Schedule Regulations, Section 7** of the **Zondo Commission on Inquiry of State Capture (Annexure 2)** which states that "*the Chairperson or an officer generally or specifically authorized thereto by the Chairperson may, where necessary, administer an oath to or accept an affirmation from any person appearing before the Commission*".

i) - Judge Zondo // Mr Pravin Gordhan

7. On the 19 August 2020, The Public enterprises Minister Pravin Gordhan, who was meant to be cross-examined by former Sars boss Tom Moyane, failed to appear before the state capture inquiry, citing “cabinet commitments”.

8. a) Mr Gordhan applied for the postponement of his appearance until 31 August 2021. **Judge** was “not happy” with this, saying Gordhan ought to have had a compelling reason not to appear and cabinet meetings were not a good enough excuse.

b) the **Judge** said if Gordhan's reason for non-appearance was cabinet duties, it might well be that everyone in future may use “work commitments” as a reason to avoid showing up

c) When the **judge** said “This commission has limited time to finish its work. If everybody is going to say I have work commitments, I cannot appear, then we are not going to finish. Maybe the solution is to make sure that summons are issued against everyone who is supposed to appear before the commission. I am not happy but I will postpone it to a date that I will fix”. (**Annexure 4**)

d) Mr Gordon was only called to appear before the commission on the 30 November 2020, giving the Minister three months to prepare his statement , noting that Mr Gordon was not cooperating in answering the questions posed by Adv Dali Mpofu

e) See the attached link

<https://www.youtube.com/watch?v=UWTiO6wPd54>)

9. Refers to Paragraph 8 **The Judge** failed to exercise **and or invoke** his authority as enshrined in terms of the Schedule Regulations point 8(1) of the **Zondo Commission on Inquiry of State Capture**. Which states “*No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947)*”.

10. Refers to paragraph 7 The **Judge** failed to exercise **and or invoke** his powers and or authority as mandated in terms of the **Terms of Reference section 3** of the **Zondo Commission on Inquiry of State Capture (Annexure 3)**, which states “*all organs of the State must cooperate with the State*”.

11. Refers to paragraph 7, **The judge failed to execute and or invoke In terms of the Schedule Regulations section 10(6) of the Zondo Commission on Inquiry of State Capture which states** “*For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person*”.

ii) - Judge Zondo // Mr Brian Molele

12. On the 15 January 2021, the Judge summons Mr Brian Molefe and the commission heard the affidavit and/or testimony of Mr Brian Molefe, who in his tenure as the group CEO of Eskom he explain and implicated in his statements the current President of the Republic of South Africa “Mr Cyril Ramaphosa” on state capture when he said :

- a) “ Eskom management and board was reporting to the war room an that was chaired by Cyril Ramaphosa”
- b) Load shedding returned after the Ramaphosa became President

- c) President was the chairperson when the Glencore when it head penalties against Eskom -.
- d) The real problems of Eskom and what is currently collapsing Eskom is that while in 2015 four white rich company supplied over 80% of Eskom coal to the value excess of R40 billion rand per annual with 40 year contracts it goes into the trillions over the 40 years
- e) He also implicated the former Public Protector Adv Thuli Madonsela
- g) Brian Molefe submitted his affidavit voluntary to the commission since May 2020, and yet he was summons within 3 days to appear before the commission, which is inconsistency with how Minister Pravin Gordhan was treated (this an unfair and unjust natura

I justice)

- h) The Judge and commission secretariat have conducted an administrative action that is unjust and violated the Promotion of Administrative Justice Act (PAJA) sections 1(i)(b) and/or Section 3(1)
- i) see the attached link <https://youtu.be/w2jANBIVuPk>

13. Taking into account paragraph 12 , **The Judge** has violated the **Terms of Reference of the of the Zondo Commission on Inquiry of State Capture** section 1 (1.4) which states “ *whether the President or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any state owned entities (SOEs) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE's or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or organ of State*”.

14. Referring to paragraph 12 , **The Judge** has violated the **Terms of Reference of the of the Zondo Commission on Inquiry of State Capture** the section 1 (1.5) which state that the“ *terms of the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organizations by public*

entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended”.

14. Referring to paragraph 12 , The Judge has neglected and intentionally ignores testimony and or affidavit that of public interest by violating the **Terms of Reference of the of the Zondo Commission on Inquiry of State Capture** Section 1(1.6) which states “*the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organizations by Government Departments, agencies and entities. In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest*”;

15. The JCC should note the impact of COVID19 and there regulation there off, It was due to a case of Covid19 the hearing was stop, ever since the judge has not recalled the witness to finish his testimony on Eskom , instead Judge and/or the commission had since sent Mr Molefe a summons to appear before Deputy Chief Justice Raymond Zondo “**The Judge**” from 8 to 12 March 2021 to answer questions about Transnet (**see Annexure 4**)

16. However **the Judge** has authorized and summons the same witness (Mr Brian Molefe) to present on a different case “Transnet”, while the is still a pending hearing to be finalized and the implicated to be summons by the commission .

17. The Judge prejudice has violated In terms of the Schedule Regulations point 10(6) Zondo Commission on Inquiry of State Capture which state “ *for the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person*” .

18. The conduct of **the Judge** against Mr Brian Molefe is an evidence of what is referred to as **justice delayed is justice denied**, that includes the affidavit of Brian Molefe is not on the website of the Zondo Commission for the public to have access to the implication of the President in the State Capture (**see Annexure 5**)

19. I bring to the attention of JCC of the fact that since President Ramaphosa is now being implicated in the State Capture, **the Judge** has deliberately ensured that a report to the president omit the name of the President as per **the terms of reference Sections 5 of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture** which state “ *The Commission shall submit its report and recommendations to the President within 180 days of the commencement of the Commission*”.

20. **The Judge** operandi are insubordinate of the rules governing proceedings and furthermore the Judge purport the injustice that South Africans are facing every day through Eskom and the current State Capture taking place.

21. The judge is protecting the implicated person whom is the President of The Republic Of South Africa “ Mr Cyril Ramaphosa“ and the former Public Protector whom was supposed by end of the proceeding to have filed his Statement. the Judge has violated **Section 3.4 of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture** , which states “*An application in terms of Rule 3.3.6 above must be submitted in writing to the Secretary of the Commission with fourteen calendar days from the date of the notice referred to in Rule 3.3. The application must be accompanied by a statement from the implicated person responding to the witness’s statement in so far as it implicates him or her. The statement must make it clear what parts of the witness’s statement are disputed or denied and the grounds upon which those parts are disputed or denied*”.

iii) Judge Zondo // Mr Jacob Zuma

21. On the 16 November 2020, at the **Zondo Commission on Inquiry of State Capture after Mr Jacob Zuma requested that the judge to recuse himself due to conflict of interest and allegation of biaseness,**

a) Judge in his response confirmed that there was a cordial relationship with former President Zuma, when he said I quote “ *our personal relationship has been a cordial and pleasant one over the years but did not generally speaking involve of serious discussions matters, this had to be so because we would normally interact when we met at the opening of parliament or other government or State functions*”

b) the judge further said that “ *Mr Skhakhani has made a very good case for recusal and I must recuse myself that means there is a vacuum or do I say what should happen should another Judge be appointed to hear Mr Zuma evidence and the question is How will that work ?*

c) both above (a) and (b) are a clear admission of guilt, that there is a conflict of interest, and therefore our complaint to the JCC is how the Judge address this matter, that includes approaching the Constitutional court which clearly indicates that the judge has revengeful Interest which may result of a fruitless expenditure.

22. See the attached link <https://youtu.be/DMXk4DISbLo>,

23. **The Judge** refused to use and follow the guidelines in order to address conflict of interest, thereby opting to ignore **the Schedule Regulations point 3 of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture which state that** “*The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than of a member*”.

iv) Judge Zondo // 6th Administrations or Executive

24. The judge has been pro current Executive, Members cabinet of the 6th Administration and as well as the former Public Protector , it be noted by the JCC that there has been no follow-up and/or summons to most current Ministers implicated in the State capture and/or the President f the Republic of South Africa and as well no procedures have been executed by the judge and/or commission on the implicated President of the Republic of South Africa.

NATURE OF THE COMPLAINT

25) Violation of the mandate of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

26) Violation of the rules governing the proceedings of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

27) Violation of Term of Reference of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

28) Infringement Commission Act

29) Violating the Judiciary Services Commission Act and

30) Judge biasness' and protecting implicated Ministers and

31) Judge biasness' and protecting the implicated President of the Republic.

32) Violation of Human Rights

33) the Judge has violated Part III, of the Judicial Service Commission Act, 1994 (Act 9 of 1994) which are :

“(a) Incapacity giving rise to a judge's inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177 (1) (a) of the Constitution;

and

(e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d) , that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.”

34) The Judge has violated Part III, of the Judicial Service Commission Act, 1994 Section 12(1)(a) of the Judicial Code of Conduct which state that

(1) A judge may not—

(a) belong to any political party or secret organization and, except insofar as is necessary for the discharge of judicial office, may not become involved in any political controversy or activity;

35) The Judge has violated Part III, of the Judicial Service Commission Act, 1994 Section 11(1)(c) and (d). Restraint of the Judicial Code of Conduct which state that

(1) A judge —

(c) must refrain from any action which may be construed as designed to stifle legitimate criticism of that or any other judge;

(d) must avoid any personality issues with colleagues, lawyers and parties, and must seek to foster collegiality; and...”

36) Gross misconduct and insubordinate by the judge

- 37) Failure to uphold the rule of law and the integrity of the judiciary.
- 38) Gloss negligent conduct
- 39) Denying access to justice and contravening chapter 2 section 34 of the constitution
- 40) Undermining South Africans rights to justice
- 41) Protecting some Members of the 6th administration and unfair treatment to members of the public
- 42) Judge failure to address the current state capture which has presented itself in the hearing that include ESKOM and by the President of the Republic of SA
- 43) Denied the public Social Justice by putting a blind eye on allegation against some current Ministers, Adv Thuli Madonsela and the President of the 6th administrations
- 44) No justifiable grounds of dismissing the decision to refuse to recuse himself from the Mr Jacob Zuma matter
- 45) Failure to allow, record and consider the “Mr Brian Molefe” Statement accusing the President of the Republic of South Africa
- 46) Judge failure to recuse or step aside and allow and/or consider his relationship with Mr Jacob Zuma and the conflict of interest
- 47) Allowing disruption using COVID19 and not reverting and finalizing the Mr Brian Mofele since the Judge was quarantined that was more than a month

48) Predetermine outcome

49) Conflict of Interest in the matter

50) A judge behavior that reduces the public trust and/or respect for the judiciary and the judicial system

52) Failure to upload the Brian Molefe affidavit on the Commissioner website
<https://www.statecapture.org.za/site/documents>

53) Failure to finalize the matter of public interest to address the Eskom Issue in particular the load shedding

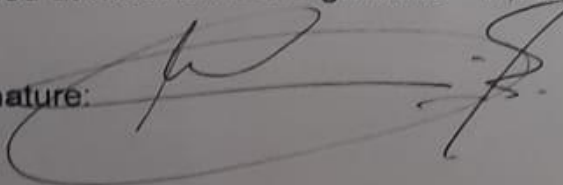
54) The Judge conduct was prejudicial to the independent, impartiality, dignity, accessibility, and efficiency of the court

55) The Judge and commission secretariat have conducted an administrative action that is unjust and violates the Promotion of Administrative Justice Act [No. 3 of 2000], sections 1(i)(b) and/or Section 3(1)

56) The nation takes the matter of State Capture as of public important and have confident to the judiciary system and ignorance of the public interest that bring the reputation of judges and the judiciary into disrepute

Signed at ...Johannesburg.....this 24 day of ...February. .year ...2021.....

Signature:

A handwritten signature in black ink, appearing to be a stylized name, written over a horizontal line.

Affidavit:

I certify that before administering the oath/affirmation. I asked the deponent the following questions and wrote down his/ her answers in his/her presence:

1. Do you know and understand the contents of the declaration?

Answer: YES

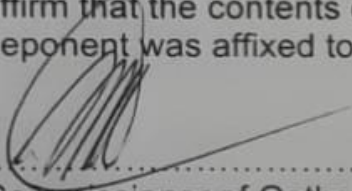
2. Do you have any objection to taking the prescribed oath?

Answer: NO

3. Do you consider the prescribed oath to be binding on your conscience?

Answer: YES

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God." "I truly affirm that the contents of the declaration are true" The signature/ mark of the deponent was affixed to the declaration in my presence.



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