

Contradictions galore

13 May 2016

The developments and contradictions of the past month are too many to keep in one's head.

- The Rand strengthened and then deteriorated again; so did that Big Gorilla, the long bond rate.
- Against all expectations Moody's did not downgrade SA.
- On the same day as Moody's announcement the president paid a pointed symbolic visit to the Eskom and SAA head offices in what is seen by many as undermining his minister of finance's efforts to improve SOEs (and also the country's rating).
- The cabinet appointed three ministers to look into the four big banks withdrawing their support for the Gupta companies; the banks politely declined to discuss the issue; and this week the Secretary-General of the ANC said the ministerial task team talking to the banks is not a good idea, they should rather raise the with the relevant regulators.
- More than twenty schools got torched in the Limpopo Province in undemocratic protests against being demarcated into a municipality where the protesters do not want to vote in democratic elections.
- The High Court ruled that the dropping of charges against Mr Zuma 7 years ago was irrational and that decision is set aside.
- The High Court dismissed the Free Market Foundation's application to prevent agreements negotiated with representative unions from being made applicable to other employers.
- 355 000 people lost their jobs during the last three months but the country still employed 204 000 more people than 12 months ago.
- Eskom announced the end of load shedding and figures released show a sharp slump in mining and manufacturing.

Like Charles Dickens one can say "It was the best of times, it was the worst of times". We cannot deal with all these contradictions in this newsletter, but to my mind the most important are the labour market developments and court rulings.

More employed

More than 355 000 people lost their jobs in the first quarter of 2016; yet after such bloodletting the country still employed 204 000 more people than a year ago. How is that even possible, you may ask?

Both numbers come from the StatsSA quarterly Labour Force Survey. Though the media reporting is all about the quarterly numbers, I have over the years come to prefer annual figures because they are less volatile and more reliable. At the end of March 2016 the country employed 15.6 million workers, 204 000 more than in March 2015, 12 months earlier. (That is AFTER 355 000 lost their jobs in the March quarter).

Since the 2009 recession the country has employed more people every year. If you want to go quarterly, since the 3rd quarter of 2010 more people were employed in every single quarter.

These were not enough to roll back unemployment, a stubborn contradiction that we have discussed before; and which arises from the demographic bulge that is hitting the labour market. Many more youngsters enter the labour force than jobs are created. So **both** employment and unemployment increase at the same time. The downside is more unemployment; the upside is more employment with more consumers and taxpayers.

It is rather obvious that to break this stubborn contradiction economic growth would have to be much higher. We need significantly more economy if we want more jobs.

Not a more flexible labour market

Some argue that the same size economy could absorb more labour if only the labour market was more flexible. Enter a landmark High Court case.

In a unanimous decision (there were 3 judges on the bench) the High Court dismissed the Free Market Foundation's application that agreements negotiated with representative trade unions should not be made applicable to non-party employers. A summary of the various arguments and the Court's reasoning are beyond this note, but the judgement is very tightly argued and I doubt an appeal will happen.

The ruling means that activists who seek a more flexible labour market will now have to direct their efforts elsewhere.

In the meantime government is seeking different changes to the labour market: a national minimum wage and a secret ballot before strikes can commence. I reported on a minimum wage in a note last April, a year ago and the issue has yet to materialise. Similarly I reported on a strike ballot in Aug 2014 and again in Oct 2015 and it has yet to generally materialise.

A small but significant ruling

The Court dismissed the Free Market Foundation's application unambiguously, in fact, with some flowery language. Yet, it still refused to grant a cost order against the Foundation. The Court said: "...the open market-place of ideas is all the more important to us in this country because our democracy is not yet firmly established and must feel its way. For that reason civil society activists should not be discouraged from pursuing constitutional claims for fear of being mulcted in costs." (Para 131, pg 45). This cost ruling reduces a barrier to citizens' activism and contributes to open society dynamics.

Do your job properly

The other significant court ruling of the month was that the decision in 2009 by the then head of the National Prosecuting Authority to drop criminal charges against Mr Zuma was irrational and set aside. "...Mr Mpshe ignored the importance of the oath of office which demanded of him to act independently and without fear or favour". (para 92).

Also in that paragraph the Court made the side comment that the President should stand trial: "Mr Zuma should face the charges as outlined in the indictment." (pg 47). That, however, is a mere side comment and not a ruling (the lawyers call it an *obiter dictum*.)

The expectation is that Mr Zuma and the NPA will appeal this decision, not necessarily because they have a good case (they may or may not, the appeal judges will decide that), but simply to buy time. The parties have 30 days to lodge an appeal and it would probably be done on day 29 or 30. That takes us to 29 May.

However, a surprise outcome could be that the NPA does not appeal and takes the view that since the decision to withdraw charges has now been set aside, the previous position simply reverts i.e. the charges proceed as before they were withdrawn in 2009. So the Prosecuting Authority does not have to apply its mind again, the original charges simply proceed. If this interpretation prevails, Mr Zuma would then have to face the charges.

Either way, I think there is little doubt that Mr Zuma wants to make it to the 2017 ANC Conference where a new ANC leader will be elected. Once a new leadership is in place, post-Zuma arrangements can be made. I also have no doubt that he would like to finish his term in 2019. But those events are respectively 19 and 36 months away, and a week is a long time in politics....

So What?

- There is clearly a stand-off between the president and his minister of finance on the issue of SOE reforms.
- The Secretary General of the ANC is increasingly articulating a line ever so slightly different from the Zuma administration.
- It is almost as if there are two administrations simultaneously in power – or two centres of power – articulating different stories, each finely balanced with the other.
- This divide is clearly not good for growth and ratings, but the reality is that it probably will go on for another 19 or 36 months.
- The courts continue to play an important role in shaping the rules of society's behaviour – or develop the "habits of the heart". Their willingness to do so will encourage citizens to pursue their constitutional rights. This genie will not go back in the bottle.