

Zuma spy tapes decision

16 October 2017

Eight and a half years after the first application was brought to court, the Supreme Court of Appeal on Friday finally ruled that the decision to withdraw the charges against Mr Zuma in April 2009 was invalid. Over the eight and a half years there were numerous cases, cases within cases, appeals and counter appeals in this on-going saga.

Timeline

Let us briefly look at the timeline, excluding all the court cases.

- 1999 – Jacob Zuma is elected deputy president of South Africa.
- 2001 – investigations commence into criminal charges against him.
- 2005 –
 - 2 June: Shabir Shaik is found guilty on charges of corruption.
 - 14 June: Zuma is fired as deputy president after being implicated in the Shaik case.
 - Still in June: the NPA institutes charges against Zuma.
- 2006 – the case against Zuma is struck off the role after the State applied for postponement and the judge refused. As a consequence, an application by Zuma for permanent stay of prosecution is also terminated.
- Dec 2007 –
 - Zuma is elected as president of the ANC at Polokwane.
 - On the 28th, a new charge sheet is served on Zuma. Mokotedi Mpshe, acting Director of National Prosecution, took the decision.
- 2009 –
 - In February, Zuma's lawyers make representations to the NPA on why it should not proceed with the case. They disclose that they are in possession of tape recordings proving a political conspiracy by NPA staff against Zuma – the so-called "spy tapes".
 - In April, Mpshe withdraws charges against Zuma. The DA launches a challenge in the High Court against the withdrawal, claiming the decision is "irrational".
 - In May, Zuma is elected president of South Africa.
- 2009 – 2017 – numerous court cases on this matter.
- 2017 – On 13 October, the Supreme Court of Appeal rules that the dropping of the charges was indeed irrational and they are reinstated.

So where are we now?

Paragraphs 60, 61 and 62 of the SCA's judgement make it clear that the charges are reinstated – the NPA has no discretion. Comments like Gwede Mantashe's that the party must wait for Shaun Abrahams to take a decision, are not correct. The only question is when the NPA will serve an indictment on Mr Zuma i.e. charge him. In that sense the spotlight now moves from Zuma to Shaun Abrahams, National Director of Prosecutions.

Zuma's strategy all along has been to play for time and use every legal option available to prevent his case coming to court. He has done so successfully for eight and a half years. He will do so again. He has three further cards to play: he can make representations to the NPA on why the charges should be discontinued; once an indictment is served, he can apply to the High Court for a permanent stay of execution; he can appeal to the Constitutional Court. In support of the first two, all kinds of contrived arguments can be advanced. Some were floated in the media this past weekend, i.e. that too much time has passed; he cannot get a fair hearing; the KPMG investigator critical to the state's case was also involved in the SARS rogue unit report which has now been repudiated by KPMG itself and so

on. Legally, of course, it is all nonsense. Paragraph 86 of the SCA judgement makes it clear that these issues are to be decided by the trial court, not by the prosecutor. For a Constitutional Court appeal, he will have to prove that a constitutional principle is at stake.

Whatever the legal merits of these three courses of action, it will once again buy him time.

Court scathing of the NPA

The SCA was really scathing in its comments on the NPA. From “...it beggars belief that the present regime at the NPA ... saw fit to defend (the) decision (to withdraw charges) as being rational” to “... it is difficult to understand why the present regime at the NPA considered that the decision to terminate the prosecution could be defended.”

Even if one is very thick-skinned, the bottom line is that rules and values exist against which the NPA will be measured. Abrahams cannot quite do as he wishes.

The critical question for South Africa is whether the NPA will actually serve the charges. Can SA do what Brazil has done, and that is to send a former president to jail on corruption charges? (Lula da Silva was found guilty and given a ten year jail sentence; he is currently free pending an appeal.)

Should Shaun Abrahams decide not to prosecute, a private prosecution – difficult as it is – is likely to be launched by Afriforum and Gerrie Nel; over the weekend they indicated their intention to do this.

Political consequences

There are only 61 days to go to the ANC elective conference. Whether the party will make any move before then, remains to be seen. Past record suggest no.

Even if they do nothing, the verdict on Friday the 13th must add some pressure on the Zuma camp. The real question is how it will influence branch nominations, if at all. An impact of the judgement could be that it makes it very difficult for the ANC not to have the December conference.

So what?

- After eight and a half years, the Appeal Court has ruled that Mr Zuma must stand trial. The wheels of justice grind slowly, but they do grind.
- In line with his strategy in the past, Zuma will duck and dive again, buying as much time as possible.
- The ball is now in Shaun Abrahams’s court. The stakes are high for him as well.
- The political consequences are difficult to predict. The process of branch nominations is underway, and as we have repeatedly said, we will know by the end of October what those results are.