



The Hon Justice Jappie JP and Madondo DJP  
KwaZulu Natal Division

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Your Ref:  
Our Ref: Mr ET Mabuza/Mr RN Baloyi /Ms Z Longwe  
Date: Monday, May 25, 2020

Dear Honourable Judge President and Deputy Judge President,

**The State / JG Zuma & Thales South Africa (Pty) Ltd - Case No: CCD30/2018V**

1. We act on behalf of former President Jacob Gedleyihlekisa Zuma, Accused No. 1, (“**our client**”) in this matter. Ordinarily, we should address this correspondence only to the Honourable Deputy Judge President Madondo (“**the Honourable DJP**”). As it will become clearer below, we have addressed it to the Honourable Judge President Jappie (“**the Honourable Judge President**”) as well.
2. We refer to the email dated 21 May 2020 which was addressed to the Honourable Jappie JP by the State *per* Adv Downer SC. The email was allegedly sent “*pursuant to your request to be informed of the expected duration of the trial and a proposed trial date*”. For the record we were not copied in this correspondence and we are not privy to the reasons, justification and precise nature of the *ex parte* discussion between the Honourable Judge President and Adv Downer SC and whether there were other discussions of this nature.
3. We also refer to the email dated 20 May 2020 which Adv Downer SC sent to the office of the Honourable DJP, in which we were also not copied, wherein he stated, *inter alia*, the following: “[p]lease will you inform the Honourable Deputy Judge President that the Judge President had directed the same questions to the NPA”

*regarding the expected duration of the trial and a trial date.*” For ease of reference, we attach a copy of the correspondence which Adv Downer SC sent to the office of the Honourable DJP, marked “**A**”.

4. Again for the record, we still have not seen the precise questions which the Honourable Judge President allegedly directed to the State or whether such questions were in writing or oral. We place it on record again that we have not had any *ex parte* oral or written communication with the Honourable Judge President or the Honourable DJP regarding this matter. We would consider it inappropriate to do so unless it was with the consent and/or knowledge of all the parties involved as to the exact issues discussed and the reasons thereof.
5. The email above was sent pursuant to a formal written request from the office of the Honourable Madondo DJP enquiring from the parties “*when the criminal matter mentioned above is likely to commence and what the estimated duration of the proceedings will be*”. For ease of reference, we attach a copy of the correspondence the parties received from the office of the Honourable DJP, marked “**B**”.
6. It appears from the correspondence that there has been what we consider to *ex parte* communications between the State and the Honourable Judge President without our knowledge or involvement or consent. This is despite the fact that the enquiries to all the parties had initially come from the Honourable DJP. Our understanding was that the Honourable DJP is the only designated judicial officer with whom the parties should communicate in respect of the management of this case. It is apparent from Annexure A that the Honourable Judge President is the one that initiated this *ex parte* communication.
7. Having consulted with our client, we are instructed to register his and our concern that such *ex parte* and indeed parallel communications were apparently initiated by the Honourable Judge President.
8. We understood from the correspondence above that the matter was being handled and case managed by the office of Honourable DJP. We do not suggest that the

involvement of the Honourable Judge President *per se* is inappropriate, but object to what we regard as a parallel *ex parte* discussion between the State and the Judge President in which it is apparent that the Honourable Judge President even ventured into matters relating to possible amendment of the indictment. Accordingly, our client is seriously concerned about why the Honourable Judge President has seen it fit to run a separate parallel process which excluded him and/or his legal representatives.

9. The situation would have been understandable if the Honourable Judge President was not aware of the fact that the Honourable DJP was already communicating with all the parties about the same issue he was secretly discussing with the State, i.e. the duration and date for the commencement of the trial. On the contrary the email of Adv Downer SC makes it patently clear that the Honourable Judge President was well aware that the Honourable Deputy President was already communicating with the parties. Adv Downer SC refers to his discussions with the Honourable Judge President as follows:

*“As you told me I should, I replied to the Deputy Judge President yesterday that you would inform him of my answer.”*

10. It is indeed of grave concern to us and our client that the Honourable Judge President discussed with the State matters which are directly related to or are connected to or have a material bearing on the merits of the case. For example, the Honourable Judge President and the State discussed, *inter alia*:

- 10.1. First, the fact that the State will apply for the amendment of the indictment to include a number of payments from the Shaik/Nkobi group to Mr Zuma that FTI discovered during their review of the old KPMG report. With respect, we consider it inappropriate that the Honourable Judge President would want to know the State’s evidence against our client before the commencement of the trial.

- 10.2. Second, the fact that the State will request the trial to commence in the first term of 2021. It is well recorded and has been boisterously submitted by the

State over the years to the court and the general public that it has always been ready to commence with the trial. It is self-evident that these discussions between the Honourable Judge President and the State extended beyond a mere enquiry about the commencement of the trial. In any event, whatever the discussions were about, we and our client regard them as highly inappropriate and unfortunate. They open themselves to the impression that the State is engaged in a lobbying exercise for its preferred postponement and its exclusive convenience.


- 10.3. Lastly, how the State should respond to the Honourable Madondo DJP. It is clear from the sequence of the emails mentioned above that when he replied to the enquiry from the Honourable DJP, Adv Downer SC had already discussed the matter with the Honourable Judge President. Yet he omitted to mention or disclose in full to the Honourable DJP all the issues he had discussed with the Honourable Judge President.
11. Our client is aggrieved by the fact that the Honourable Judge President, who is the most senior Judge in the Division, has deemed it appropriate to discuss the matter directly with the State without any consultation with him or his legal representatives.
12. It is a long established and commendable practice to hear all concerned parties in respect of such matters as allocation of dates of hearings. The reasons for this are obvious and related to fairness, equality of arms and the elimination of any reasonable perceptions or apprehension of bias.
13. For example and in line with this correct tradition, the Honourable Madondo DJP wrote to all the parties to obtain their views on the estimation of the duration of the trial and its commencement. We are really concerned that the Honourable Judge President deemed it necessary to open a separate channel of communication between himself and the State, to the exclusion of other parties and the Honourable DJP, in which he entertains the State's preference.

14. We register that all this correspondence was not disclosed to us voluntarily. The State disclosed it only after some prompting by our Senior Counsel on 22 May 2020, to confirm their telephone discussion on the previous day and to enquire whether Adv Downer SC had written any letter to us or the court. It is difficult to accept that our exclusion from both the telephone discussion with the Honourable Judge President and the follow up emails were not deliberate and initiated to gain some strategic advantage over the accused.
15. We remind all involved that this matter is very sensitive and has attracted much public interest for several years, during which our client was castigated for delaying the trial, adopting “Stalingrad Tactics” and avoiding his day in court.
16. No amount of assurances from his legal team that there may be some logical explanation for these mishaps seem to be totally satisfactory to our client at this stage. Understandably, he apprehends that these *ex parte* discussions land themselves to the suspicion that their purpose is to disadvantage him in the manner in which the court approaches his case.
17. Unless a satisfactory explanation is given our client will be left with no choice but to suspect that there are attempts to manipulate the composition of the Bench which ought to hear this matter. We have indicated to our client that this must be some misunderstanding or genuine error. However, given the history of this matter and how he believes he has been persecuted by the system, he remains apprehensive and concerned by what appears to be secret and inappropriate discussions between the State and the Honourable Judge President.
18. In the circumstances, we are instructed to register our client’s strong objection to the conduct referred to above. In addition, our client humbly requests an explanation as to how this situation was allowed to occur. On the basis of that explanation and any proposed remedial measures, he will consider whether or not there is still a need to escalate the matter any further to the Judicial Services Commission and/or the Chief Justice or the Integrity Division within the office of the National Director of Public Prosecutions. It cannot be overemphasized that the stakes are very high in

this litigation, which may arguably be the biggest and much anticipated case in post-Apartheid South Africa. We submit that the *ex parte* discussion referred to above betrays a lack of appreciation for the nature and impact of this trial on our client and the persecution he has endured at the hands of the State. We would respectfully request that this trial be approached with much restraint, absolute integrity and circumspection by all involved.

19. We further wish to reiterate the point reflected in Adv Downer SC's letter regarding the commencement of the trial. It is correct that our Senior Counsel indicated to Adv Downer SC that our client would not accept the State's suggestion that the trial should be postponed to 2021. It must be remembered that throughout the years, the State has always attributed the delays to our client. The State is on record stating that it was ready to run this case long ago. We are dismayed that the State is the one employing all manner of justifications, including blaming Covid-19, to have the case postponed to 2021. With no resources, and having received the documents as late as we did, we have familiarized ourselves with the case and reiterate that we will insist that the State commences with the trial as soon as possible as reflected in the letter. It is not necessary for present purposes to deal with our attitude towards the State's envisaged application to have the trial postponed to 2021. We will do so at the appropriate time and forum.
20. We humbly await your response so that it can be duly conveyed to our client.

Yours faithfully



**MABUZA ATTORNEYS**

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