

## Battered Zuma faces his final round

'Under Nelson Mandela's ethical leadership the party was all reconciliation, bringing people together and letting bygones be bygones. Thabo Mbeki, apart from mining old wounds, pointed us towards the continent and reminded us that we are part of it and that we should work for its betterment. Zuma came into office dragging a caravan of scandals, and proceeded to corrupt his party and plunged the country into shame and embarrassment.' This assessment of the state of the nation by analyst Barney Mthombothi (in the *Sunday Times*) gives an indication of just how damaging President Jacob Zuma has been to the African National Congress (ANC) and the country. **Legalbrief** reports that **the next couple of days will determine the extent of the backlash against the corruption-prone politician** as the governing party's national executive council meets in East London on Wednesday. The Constitutional Court brought down the curtain on a series of adverse judgments for Zuma when it ruled on 29 December that the National Assembly had failed to hold him to account over the Nkandla matter. A divided court found that the lawmakers failed in their constitutional duty to put in place mechanisms to hold the President accountable. It ruled: 'The failure of the National Assembly to make rules regulating the removal of a President in terms of section 89(1) of the Constitution constitutes a violation of section 89.' In the majority judgment, notes a **News24** report, Justice Chris Jafta said Parliament must comply with section 237 and make rules to allow for the impeachment of Zuma 'without delay'. However, the majority judgment was severely criticised, not least by Chief Justice Mogoeng Mogoeng who said it was a case of judicial overreach. During Jafta's reading of the judgment, Mogoeng noticeably interrupted and startled Jafta, asking that his minority judgment be read out by Jafta for the record. Mogoeng called the majority judgment a 'textbook case of judicial overreach' and was 'at odds with the dictates of separation of powers'. The EFF is looking forward to its date with Zuma, whom it describes as a 'constitutional delinquent'. 'We look forward to the National Assembly reconvening very soon to actually develop the necessary rules and hold the President accountable,' EFF general secretary Godrich Gardee is quoted as saying in a second **News24** report. 'The constitutional delinquent, Mr Zuma, in no time will be scrutinised, will be brought before Parliament to be (held) accountable, because his own political party has actually failed to hold him accountable, and we can't wait (another) day longer,' said Gardee. 'We need to be in Parliament in no less than 30 days before the State of the Nation Address of (8 February) 2018,' he said. The EFF envisages a format for impeachment that includes Zuma giving evidence at an inquiry akin to the long-running SABC hearings, and that witnesses also be called.

*As expected, notes **Legalbrief**, Zuma has filed for leave to appeal the landmark judgment of the Gauteng High Court (Pretoria) setting aside his application to review former Public Protector Thuli Madonsela's *State of Capture* report. The DA quickly noted it will oppose the appeal and the EFF said the move indicated Zuma had 'lost all capacity to feel shame'. A **BusinessLIVE** report says the 11-page application cites about 20 grounds Zuma will use to argue that the court erred in ordering him personally to pay all the legal costs in that matter and that he must institute a judicial commission of inquiry, as recommended by Madonsela. **The phrase 'the court erred in law' appears at least 16 times in his notice, in which he twice cites the separation of powers doctrine.** Zuma also sought to appeal against the decision by Judge Dunstan Mlambo that Mogoeng choose the judge to head up the commission. 'The Constitution confers only on the President the power to appoint a commission of inquiry, the court erred in holding that this is a power exercised with the Chief Justice,' the papers read. 'This also offends the separation of powers doctrine.' Zuma also submits that the High Court 'erred in law' in holding he was 'ill-advised and reckless in launching the challenge against the remedial actions'. As in previous papers, Zuma brought into question the powers of the Public Protector, saying there was no law that authorised Madonsela or her office to instruct another organ of state to conduct a further investigation. He also argued that because he was never cited as a respondent in his personal capacity he should not and cannot be held personally liable for costs. Mlambo had held in awarding costs that because Zuma's litigation was ill-advised, it could not be a further 'burden to the taxpayer'.*

*The DA will oppose the appeal. 'We cannot allow this abuse of court processes to become a feature of the way the President gets away with things,' James Selfe, the DA's federal council chair, is quoted as saying in a report on the **News24** site. 'We will once more seek a punitive, personal costs order against Mr Zuma.' Noting state capture represents 'one of the worst chapters in our history', Selfe said there was only one way that newly-elected ANC president Cyril Ramaphosa could assert his authority and end the farce, and that was by recalling Zuma. **The DA accused Zuma of 'simply playing for time, delaying the inevitable, and wasting the time of the courts'.** 'He clearly wants to delay the appointment of the commission for as long as possible, so that witnesses can forget and*

evidence can be destroyed. It is instructive that his decision to appeal appears to be at variance with a decision of his own conference, not even a week ago, to the effect that the commission should be appointed as soon as possible,' said Selfe. 'He is undermining the reputation of the Presidency and provoking a showdown with the courts. And he is doing it on taxpayers' money,' he added.

*In another significant blow for Zuma*, the ANC's elective conference has resolved that he must immediately appoint the judicial commission of inquiry into state capture as recommended by Madonsela. A **BusinessLIVE** report notes that this puts more pressure on Zuma to appoint the commission following a recent High Court ruling that ordered him to appoint the commission within 30 days. The report suggests this is a blow to Zuma who has expressed his intention to appeal the ruling. In addition, Zuma appears to have lost the battle within the ANC as the national conference resolved that the commission should focus only on Madonsela's recommendations. **Zuma and his national executive committee supporters were pushing for a broad inquiry dating back to 1994.** Madonsela released the report with allegations of an improper relationship between Zuma, his son Duduzane, other state officials and the Gupta family in November 2016. 'On the ANC reputation and integrity dealing with corruption, (it was decided that we) implement the national executive committee resolution on state capture, including the expeditious establishment of a judicial commission of inquiry,' said Fikile Mbalula, chair of the subcommittee on organisational renewal. The court found that Zuma was unable effectively to exercise his powers as head of state due to personal conflicts of interest.

[See Africa Analyses](#)