

Court dismisses painting racism argument

The highly-charged hearing on the controversial painting of President Jacob Zuma put an end to claims of racism in the matter before Advocate Gcina Malindi SC, for Zuma, suddenly burst into tears, effectively ending proceedings in the South Gauteng High Court yesterday, writes [Legalbrief](#).

The application to ban artist Brett Murray's painting, *The Spear*, has been postponed indefinitely. A report in [The Mercury](#) notes that the judges had been hammering at one point - how were they expected to implement a ban on a picture that had already gone viral, not only in SA, but around the world - when Malindi broke down. 'If the whole world can see it (*The Spear*), why not in this country,' Judge Neels Claassen asked. It was about the principle, argued Malindi, about vindication. After all, many of the Constitution's promises had not yet been fully reached, such as the right to food and shelter, but the fall of apartheid had acted as vindication for those who had struggled against it. 'That does not mean the Constitution or the law is an ass. They've been vindicated that their struggle was a just struggle,' he said. 'I don't think you've answered the question, but we'll leave it at that,' said Claassen. Then, Malindi's sobs began ringing through the court. The judges quickly adjourned and left the room.

Earlier, Malindi conceded that the legal battle was not a racial issue. Nobody deserved such an indignity, he said when the judge asked if he would be making the same submissions if it had been former President FW de Klerk's head on the portrait rather than Zuma's. 'Then why make it a racial argument,' asked Claassen, according to the report in [The Mercury](#). 'What evidence is there to say this is a colonial attack on the black culture of this country?' He said the respondents to the case - artist Brett Murray, the Goodman Gallery and City Press - had provided evidence from three black artists saying that the painting was not necessarily insulting. 'That's black against black. Where does the racism come from,' asked the judge. Malindi replied: 'Race in the eyes of three black experts is irrelevant because they are connoisseurs of art.' Claassen said the case should be a question of the dignity of one person versus the artistic expression of the other, regardless of their colour. According to a [Beeld](#) report, Malindi conceded the issue was not about racism, but of dignity. 'Even those who commit the worst crimes, murderers and rapists, are treated with dignity. Why then not the President of the country,' he asked the judges. [Full report in The Mercury \(subscription needed\)](#) [Full Beeld report](#)

The court also ruled that video footage of the emotional breakdown may not be televised, notes a [Mail & Guardian Online](#) report. 'Before we postpone the matter there is another thing that has to be dealt with,' said Claassen. 'It had been brought to the court's notice that the portion where the ANC and Zuma's Advocate Gcina Malindi broke down had been televised. And as a full court we are of the view that that should not be further televised,' he said. That would apply both locally and internationally. The case was then postponed indefinitely. Another date would be set and another full Bench constituted. [Full Mail & Guardian Online report](#)

Claassen made the point that the right to dignity and privacy applies to Jacob Zuma as an individual, not in his capacity as President of SA or the ANC. '(The right to) dignity and privacy do not apply to the second applicant (the ANC), and the first applicant (Zuma) in his capacity as President of SA and as president of the ANC,' said Claassen, dictating a note into the court record. Malindi had submitted that Zuma's constitutional right to dignity had been infringed by the painting. Zuma felt the painting violated his dignity as a president in those capacities, but the court heard that this right in the Constitution only applies to a human being. According to a report on the [News24](#) site, the court also heard that the application had been changed. Originally it was an urgent interdict that the painting be removed from the Goodman Gallery, and images of it from the City Press website. But now Zuma, the ANC, and Zuma's children want the painting and images of it not to be shown anywhere. Malindi could not immediately explain how this would be achieved, given its wide distribution on the Internet. Judge Fayeeza Kathree-Setiloane asked the party's counsel, since the painting had been defaced, 'is the relief you seek not academic?'. She was not convinced that a ban would work. 'This image is already out there on the Internet,' she said, and asked if a permanent interdict were granted that forbade the display of the painting or copies of it, 'how will this court monitor compliance?'. [Full report on the News24 site](#)

Malindi says his emotional breakdown 'shouldn't have happened', according to a [City Press](#) report. 'I'm an advocate and I work under ethical rules that we don't comment on a case in which we are involved,' he said. 'But you can say I broke down. As a former activist it brought back those issues, which was why I was overwhelmed.' [Full City Press report](#)

e.tv said it noted 'with grave concern' a statement issued by the government accusing the broadcaster of bias and selective reporting for not showing video footage of Malindi breaking down. 'Despite us cautioning (government spokesperson) Jimmy Manyi, that his statement would pre-empt a decision by the judges on the matter, he and his office saw fit to make false accusations about our news organisation,' the station said in a statement recorded in a **Business Day** report. Manyi said he was 'appalled' and 'disappointed' that e.tv had apparently censored the footage. 'The role of the media, with particular reference to television, is to show visuals that inform and educate society,' Manyi said. 'Government believes that, in this particular instance, e.tv was biased and failed to broadcast a true reflection of the court proceedings.' According to Patrick Conroy, group head of news, Malindi's breakdown was 'unexpected and caught our team off guard'. 'It was clear to us that Malindi's tearful breakdown was not only prompted by the arguments in court but also by a deeply personal and private trauma,' said Conroy. 'We were mindful the court may have taken a dim view of this being broadcast regardless of our editorial opinion.' [Full Business Day report](#)

Artist Brett Murray, in his affidavit, explains why he painted The Spear, notes a report in **The Times**. 'At the outset, I would like to say that I am a proud South African and a former supporter of the ANC. I am not a racist. I do not produce art with an intention to hurt, humiliate or insult, and that includes the painting that has caused this controversy. I emphatically deny that any such intention motivated the painting or exhibiting of The Spear. This will be borne out by my explanation as to the background and context of my work.' He outlined his time as an anti-apartheid activist and explained his decision to go into self-imposed exile in London until the ANC was unbanned. However, he noted 'heroes of the struggle now appeared to be corrupt, power-hungry and greedy'. His affidavit points to Zuma's relationship with Schabir Shaik, who was found guilty of corruption; 'the failure by the prosecuting authorities to proceed with corruption charges against Zuma, notwithstanding the apparent existence of evidence to sustain such charges'; his sex life, details of which have been well documented in the public domain. He added: 'For me, The Spear has a far broader meaning than some of the public discourse on its meaning, including the first applicant's interpretation. It is a metaphor for power, greed and patriarchy.' [Full affidavit in The Times](#)

City Press editor Ferial Haffajee has questioned the ANC's motives in calling for a boycott of her newspaper. The ANC called on 'all South Africans, members of the ANC and the alliance, to indefinitely boycott buying the City Press newspaper' until it removed images of the Zuma painting from its website, says a report on the **News24** site. Haffajee, in a televised interview, in response to the party's statement, said considering that the image is now everywhere - on the likes of Facebook, Twitter, and Wikipedia - it makes her think the call to boycott the newspaper is about more than just the painting. She did not elaborate, but the newspaper has a reputation for shedding light on wrongdoing by members of the ANC and its youth wing. Along with the call to boycott the newspaper, the ANC launched a scathing attack on City Press, saying it has singled itself out 'as anti ANC, the President, our democracy and the majority of South Africans'. The party said that by continuing to exhibit the offensive painting, the newspaper has clearly shown its collusion to the indecent depiction of President Zuma which violates his right to human dignity. [Full report on the News24 site](#)

The SA National Editors Forum said it was 'alarmed' at the boycott call, according to a **Business Day** report. It said this was 'tantamount to intimidation and abuse of power' and was 'unbecoming of a party that functions in an open democratic stage and especially one which leads the national government'. South African Communist Party general secretary Blade Nzimande also called for a boycott of City Press, beginning this Sunday. [Full Business Day report](#)

While the court proceedings were under way, Zuma was expressing strong opinions about how black people are depicted, notes a report in **Die Burger**. 'We are all painted with the same brush,' Zuma said in the Pixley Ka Isaka Seme memorial lecture at the University of Fort Hare. He claimed black people were depicted as backward, slow thinkers, corrupt and individuals that may be mocked. He added that people in a diverse society must respect each other. [Full report in Die Burger](#)

