

South Africa: Court case against ANC President Zuma withdrawn

Zuma and the South African working class

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On Friday, September 12, the Pietermaritzburg High Court ruled that the National Prosecuting Authority's decision to recharge African National Congress President Jacob Zuma on fraud and corruption charges was invalid.

Thousands of Zuma supporters gathered outside the court buildings erupted into jubilation as news of the judgment filtered through the crowd.

Judge Nicholson, who presided over the case, emphasised that the ruling did not speak to Zuma's guilt or innocence but was based primarily on a procedural point regarding the fact that the NPA should have allowed Zuma to make representation to the National Director of Public Prosecutions at the time he was recharged.

Nicholson went further and supported Zuma's argument that his prosecution was politically orchestrated by his factional opponents within the ANC, led by President Thabo Mbeki.

In his 115-page judgment, he stated, "I am not convinced that the applicant was incorrect in averring political meddling in his prosecution."

The judge said that Mbeki and his cabinet should be held accountable for abusing the prosecuting authority in an attempt to remove Zuma from the "titanic struggle" for the ANC presidency.

Nicholson stated that it was "very improbable" that former Justice Minister Penuell Maduna was "on a frolic of his own" and would have made illegal attempts to prosecute Zuma "without the president knowing and agreeing."

The ANC Youth League's spokesman, Floyd Shivambu, declared that "This [judgment] exposed Thabo Mbeki and everybody who did this to him [Zuma]."

The Youth League's president, Julius Malema, stated, "[W]e have said it before that he [Mbeki] had a hand in our president being charged and the judge has confirmed that. He must go now."

Although the NPA first fingered Zuma in 2003 while investigating charges against Zuma's associate and financial advisor, Schabir Shaik, charges were not laid against him. The former national director of public prosecutions, Bulelani Ngcuka, stated that although there was prima facie evidence of corruption, they did not believe that they had a "winnable case."

Judge Nicholson pointedly remarked on these events, maintaining that as corruption was a bilateral offence, Zuma should have been charged alongside Shaik. The failure to prosecute Zuma with Shaik "brought the justice system into dispute." He condemned the manipulation of the prosecuting authority, likening Mbeki's actions to those of the Apartheid regime.

Nicholson also slammed the conduct of the three successive national directors of public prosecution, Bulelani Ngcuka, Vusi Pikoli and Mokotedi Mpshe, stating that they had committed a "serious criminal offence," punishable by 10 years in prison, by allowing themselves to be

influenced by Justice Ministers Penuell Maduna and Brigitte Mabandla to act against Zuma in an attempt to deny him the ANC presidency.

Zuma's court battle

The decision to charge Zuma was made in June 2005, after his financial advisor, Schabir Shaik, was found guilty of fraud and corruption. Shaik is currently serving a 15-year sentence for these offences. Shortly after Shaik's conviction, the new NPA boss, Vusi Pikoli, announced that Zuma would be charged for offences arising from his relationship with Shaik.

The main charge was one of corruption in which Shaik attempted to solicit a R500,000 bribe on behalf of Zuma from Thint, the local subsidiary of Thales, the French arms manufacturing giant, one of the bidders in an arms deal. Further charges were later added. Zuma appeared in court on June 29, and the case was postponed to October 11 of the same year.

At Zuma's second court appearance on October 11, the NPA applied to the court for the matter to be transferred to the High Court before serving the indictment. The case was then adjourned to November 12 to allow for a provisional indictment to be served on Zuma. On November 12, Zuma was served with the provisional indictment and a trial date of July 31, 2006, was set.

Less than a month later Zuma was charged with rape. His accuser was the HIV positive daughter of a friend of the Zuma family. The case commenced on February 13, 2007 and was concluded with Zuma's acquittal on May 8.

In the interim, the Durban High Court had found that the search and seizure warrants served on Zuma and his lawyer, Michael Hulley, in August of the previous year were invalid. On July 31, 2006, the case was postponed to September 5 pending challenges to the Durban High Court ruling. Judge Herbert Msimang on September 20, 2006, denied a postponement to the NPA and struck the state's case off the court roll whilst slamming the state for using illegal documents in its main forensic report and for being inadequately prepared for the case.

However, within an hour of Judge Msimang's finding, the Scorpions, an elite unit attached to the NPA, raided an accountant's firm linked to Zuma's associate, Schabir Shaik. It was also revealed that the Scorpions had made a request to the French justice ministry for "mutual legal assistance," namely the establishment of a commission rogatoire in Paris so that more questions could be put to Thint/Thales.

In December 2006, the NPA asked the Durban High Court to request Mauritian authorities hand over documentation that may have shown that

a meeting took place between Zuma, Shaik and Alain Thetard, the former chief executive of Thint. In April 2007, the NPA's request was granted and a letter was issued to Mauritian authorities to hand over documents relating to alleged meetings between Zuma, Shaik and Thint. Zuma's team appealed the ruling, but in June 2007, the Durban High Court dismissed the appeal and gave the go-ahead to retrieve the relevant documents.

Zuma's team then took the matter to the Supreme Court of Appeals. In November 2007, the Supreme Court of Appeals dismissed Zuma's application to stop the NPA from obtaining the Mauritian documents and further ruled that the search and seizure warrants used to raid Zuma and Hulley's premises were valid, thus overturning the earlier Durban High Court ruling.

On December 28, 2007, the NPA recharged Zuma, now ANC president, with 18 counts including fraud, corruption, racketeering and money laundering.

In March 2008, the Constitutional Court heard four cases involving Zuma, Hulley, Thint and Thint Holdings for leave to appeal the November 2007 Supreme Court of Appeals' ruling concerning the validity of the search and seizure warrants and to stop the NPA from obtaining the Mauritian documents. On July 31, the Court ruled that the search and seizure warrants and the application to obtain the Mauritian documents were valid.

In May 2008, the KwaZulu Natal Judge President announced that a preliminary application would be heard by the Pietermaritzburg High Court on August 4, at which Zuma's trial date would be established. On August 4, Zuma asked the Court to set aside the NPA's decision to prosecute him and to declare it invalid. He was successful in his bid.

Succession battle in the ANC

These developments occurred against the backdrop of a bitter struggle over the presidency of the ANC. When charges were first brought against Zuma in 2005, then the deputy president of South Africa, Thabo Mbeki fired him.

Zuma, however, began to campaign vigorously for the post of party president, maintaining that the charges against him were part of a political conspiracy within the ANC to derail his candidacy. The Congress of South African Trade Unions, the South African Communist Party and the ANC Youth League rallied to his side.

In December 2007, Zuma won a landslide victory over Mbeki at the ANC's Polokwane conference and was elected to the post of party president.

The ANC Youth League has been amongst Zuma's fiercest defenders, with its president, Julius Malema, declaring at one point that they were ready to "shoot and kill" for Zuma. Members of the ANC's National Executive Committee denounced the Constitutional Court as "counterrevolutionary" and threatened a constitutional crisis should Zuma's prosecution continue. Sordid power struggles between supporters of Mbeki and those of Zuma characterised the regional conferences of the ANC.

According to various newspapers in South Africa, moves are afoot to install Zuma as the country's president now, without an early election being called. The *Sunday Independent* reported that senior party leaders have informally discussed Mbeki's future and reached consensus that he should leave office immediately. The ANC's National Executive Committee will meet this weekend (September 20) to decide Mbeki's fate.

Calls have been made not only to instruct Mbeki to step down but also

to strip him of his ANC membership and expel him from the party.

ANC chairwoman Baleka Mbete will call a meeting of senior ANC MPs on September 25 to announce the decision of the NEC and to plot a way forward to remove Mbeki. This could be done by one of two means. Firstly, there could be a vote of no confidence, which would need a majority of 201 of the 400 seats in the National Assembly. The ANC currently holds 293 seats. Patricia de Lille's Independent Democrats will likely support this vote. Secondly, an early election could be called. Reportedly, the ANC and its alliance partners favour the first option, the vote of no confidence.

Mbeki has thus far remained silent on the matter. A terse statement from the presidency indicated that they were "studying the judgement." But Mbeki, a lame duck president since Zuma's Polokwane victory, has been completely politically eviscerated.

Zuma and the South African working class

Zuma has been promoted by the ANC and its alliance partners, the South African Communist Party and the Congress of South African Trade Unions, as a friend of the South African working class. This portrayal is belied by the fact that shortly after his election as ANC president, Zuma met with business leaders in the United States, Britain and at home where he favourably impressed them with strong assurances that he would act to defend capitalism in South Africa.

Under Mbeki's rule, South Africa experienced a jobless economic growth, with the emergence of a thin layer of black capitalists, the so-called "black diamonds," who have amassed fantastic fortunes whilst the majority have witnessed a worsening of their social conditions. Ravaged by disease, burdened by unemployment and grinding poverty, it is understandable that many would place their hope, however mistaken, in a leader who promises to alleviate their urgent problems. Zuma's popularity amongst the abahlali (residents of informal settlements) and the rural poor, especially in his home province, KwaZulu Natal, is undoubted.

The bourgeoisie also recognises that Mbeki came dangerously close to igniting the South African "powder keg," threatening a massive social explosion. It is believed that Zuma's stewardship can contain and divert the massive social tensions rippling through South African society. His public appearances have been characterised by him singing his famous *mshini wami* (my machine gun) song and populist sloganeering.

The section of the bourgeoisie represented by Zuma consists primarily of those who were formerly excluded from power, often by the machinations of Mbeki and his associates. Tokyo Sexwale, the billionaire businessman, is a case in point. In his book, *After the Party*, former ANC MP Andrew Feinstein relates how Mbeki scuppered Sexwale's bid for the party presidency by orchestrating a campaign of damaging political rumours. Sexwale was amongst those outside the Pietermaritzburg High Court awaiting Nicholson's judgment.

The new National Executive Committee elected at Polokwane contains many faces whom Mbeki thought he had long dispatched to the political graveyard. It is reported that jostling for positions in the Zuma administration has already begun.

Nevertheless, Zuma himself remains disposable. The fact that charges against him could be revived at any time places a proverbial sword of Damocles above his head. In addition, he has undoubtedly accrued many political debts in his campaign for presidency of the ANC and his drawn-out legal battle. These, at some point, will have to be repaid. Zuma is thus a creature beholden to those who have benefited and stand to benefit massively from the capitalist order in South Africa.



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