

Comrades, fellow South Africans-- we are gathered together today in this new way in which we now gather to express our concern and show our support for our constitutional democracy and the institution so vital to its endurance and success, the Constitutional Court. In the words of that great man, who best personifies the aspirations of our constitutional democracy, President Nelson Rolihlahla Mandela, speaking at the opening of the Constitutional Court in February 1995:

The last time I appeared in court was to hear whether or not I was going to be sentenced to death. Fortunately for myself and my colleagues [and I should say most thankfully for the people of South Africa] we were not. Today I rise not as an accused but, on behalf of the people of South Africa, to inaugurate a court South Africa has never had, a court on which hinges the future of our democracy.”

Twenty six years later, that court and indeed our constitutional democracy faces grave threat. Far from the different branches of government working cooperatively in recent years to realise the promise of the Constitution and to ensure a better life for all, we have been knocked sideways by indisputable evidence that state resources have again and again been utilised to enrich and protect a very few, to the cost of the rest of South Africa, most especially the poorest and most vulnerable. Frequently it has been the judicial branch – the courts – that have served as the only check. But to require that only the Courts play the role of guardians of our Constitution is both unsustainable and inconsistent with the vision of our Constitution. It also means, as we have seen, that the Courts then become targets of the most egregious types of attack, attacks meant to destroy their legitimacy and impugn their integrity so that those intent on subverting the Constitution and abusing its powers have free reign.

Here again the words of our revered, Madiba:

The authority of government comes from the people through the Constitution. Your tasks and responsibilities, as well as your power, come to you from the people through the Constitution. The people speak through the Constitution. The Constitution enables the multiple voices of the people to be heard in an organized, articulate, meaningful and principled manner.

Undermine the Constitution, attack and suppress the institutions meant to give it life – like the Courts and our apex court, the Constitutional Court – and the danger is that the people will not rule because the political system far from working to realise the Constitution, which is the embodiment of the voices of our people, is instead sapped by corruption and arbitrariness.

There is no better example of these types of attacks than that currently being waged by former President Zuma. A man who occupied the same post as Madiba, ascending to the highest office in this land as President, vested with the most weighty responsibilities of our Constitution but also having also enjoyed its greatest powers and privileges says essentially that he will give no account to the South African public of his time in office and the alleged abuses that happened then. He will not appear before the Commission, he will submit no affidavit, he will respect no summons.

Instead when Deputy Judge President Raymond Zondo deliberates on the application made by former President Zuma for his recusal -- as judges are required to do when applications for their recusal are made -- and dismisses the application, former president Zuma and his legal team simply abscond from the Commission.

The Commission then approached the Constitutional Court seeking its order that the former President observe the summons and authority of the Commission on State capture. The former President makes no appearance. Instead when the order is made by the Constitutional Court, he

issues a statement that is false and malicious attacking the Court.[...]. he fails to respect the Court order and fails to appear at the Commission.

Left with no choice, the Commission again approaches the Constitutional Court, asking that it find the former President in contempt and that it sentence him to imprisonment for this contempt. It is worth here rehearsing the arguments made by the Commission before the Court: that the conduct of the former president in so publicly repudiating and renouncing the legal order of this land, what the law requires and what the highest court in the land expressly requires of him, threatens our entire constitutional order; that while making no appearance before the court, he makes public false and malicious statements against the court; that he would compare the Constitutional Court with the apartheid judiciary when he knows this – he appointed many of the current judges to their seats – to be palpably untrue; that he attempts to discredit the Constitutional Court and its individual members. All this he has cynically engineered – he would damage our judiciary, public confidence therein, even bring it to its knees, in order to escape any semblance of accountability.

Again the former President ignores the Court proceedings, not even sending a legal representative to observe these and instead issues another false and defamatory statement, impugning the integrity of the Court and our judiciary, demanding impunity from any form of accountability and uttering the implicit threat that if accountability is demanded from him only ashes will be left of what used to be our democratic state.

Still, the Court, concerned to ensure that every possible opportunity was extended to the former President to be heard, invited him to file an affidavit explaining what he believed would be the appropriate sanction were he found guilty of contempt. That invitation was rebuffed. Instead and again he issued public statement and in seeking to address the Court but not through the legal means prescribed by it – by affidavit – he again underlies his contempt of the Court and the legal process, his belief that he, unlike us ordinary South Africans, is not subject to the legal process but is immune, that he respects no equality under the law but demands that legal process should be drawn around him.

It is worth pausing here and again recalling the words of Madiba at the opening of the Constitutional Court:

People come and people go. Customs, fashions and preferences change. Yet the web of fundamental rights and justice which a nation proclaims must not be broken. It is the task of this court to ensure that the values of freedom and equality which underlie our interim constitution – and which will surely be embodied in our final constitution – are nurtured and protected so that they may endure.

And then, as if he had exactly anticipated such a time as this:

We expect you to stand on guard not only against direct assault on the principles of the Constitution, but against insidious corrosion.

Constitutionalism means that no office and no institution can be higher than the law. The highest and the most humble in the land, all, without exception, owe allegiance to the same document, the same principles. It does not matter whether you are black or white, male or female, young or old; whether you speak Tswana or Afrikaans; whether you are rich or poor or ride in a smart new car or walk barefoot, whether you wear a uniform or are locked up in a cell.

And so the Constitutional Court will have to make its deliberations and reach its decision without the benefit of submissions by former President Zuma. They are expertly placed to do so –it is their job.

We can anticipate that it will not be too long before they hand down their decision. When it comes, we may not agree with the decision. That is our right. Respect for the independence of the judiciary does not require that we be uncritical of it. The powers vested in judges are awesome ones. They too must be accountable. So long as criticism is reasoned, in good faith, honest such criticism is entirely consistent with the independence of the judiciary, in fact demanded by it. But we must adhere to and respect the ruling. That is what constitutionalism and rule of law demands.

I want to conclude with the words again of Madiba at the opening of the Constitutional Court, emphasising the tremendous responsibility vested in our our judges and the awesome power which they exercise:

To Judge Arthur Chaskalson and other members of the Constitutional Court let me say the following: yours is the most noble task that could fall to any legal person. In the last resort, the guarantee of the fundamental rights and freedoms for which we have fought so hard, lies in your hands. We look to you to honour the Constitution and the people it represents. We expect from you, no, demand of you, the greatest use of your wisdom, honesty and good sense - no short cuts, no easy solutions. Your work is not only lofty, it is also lonely.

In the end you have only the Constitution and your conscience on which you can rely. We look upon you to serve both without fear or favour.