



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
 (3) REVISED
 DATE: 4 December 2025
 SIGNATURE: [Redacted Signature]

Case No. 003372/2024

In the matter between:

ZUMA, JACOB GEDLEYIHLEKISA

APPLICANT

And

**THE PRESIDENCY OF THE REPUBLIC
OF SOUTH AFRICA**

FIRST RESPONDENT

THE STATE ATTORNEY

SECOND RESPONDENT

**THE SOLICITOR GENERAL OF THE REPUBLIC
OF SOUTH AFRICA**

THIRD RESPONDENT

DEMOCRATIC ALLIANCE

2
FOURTH RESPONDENT

In re:

THE PRESIDENCY OF THE REPUBLIC OF
SOUTH AFRICA

FIRST APPLICANT

THE STATE ATTORNEY

SECOND APPLICANT

THE SOLICITOR GENERAL OF THE
REPUBLIC OF SOUTH AFRICA

THIRD APPLICANT

And

ZUMA, JACOB GEDLEYIHLEKISA

FIRST RESPONDENT

HULLEY & ASSOCIATES INC.

SECOND RESPONDENT

LUNGISANI MANTSHA INC.

THIRD RESPONDENT

DEMOCRATIC ALLIANCE

FOURTH RESPONDENT

ECONOMIC FREEDOM FIGHTERS

FIFTH RESPONDENT

Coram: Millar J

Heard on: 1 December 2025

Delivered: 4 December 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12h15 on 4 December 2025.

JUDGMENT

MILLAR J

- [1] On 22 October 2025, this Court issued orders, declaring *inter alia* that Mr. Zuma make payment of the sum of R28 960 774.34 in respect of monies advanced for his legal fees and associated expenses. Orders were also made for the payment of interest and for the State Attorney to report to the Court on the steps taken to enforce the judgment. Costs orders were also made against Mr. Zuma.
- [2] Mr. Zuma has applied for leave to appeal against the whole of the judgment and the orders granted. I have considered the application for leave to appeal as well as the heads of argument filed by those parties who filed. I have also considered the arguments advanced by the respective parties at the hearing.
- [3] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act¹ as follows:

“(1) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that*

¹ 10 of 2013.

- (a) (i) *the appeal would have a reasonable prospect of success or*
- (ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration"*

- [4] The grounds of appeal relied upon by Mr. Zuma fall into three broad categories. The application for leave to appeal is some 9 pages in length and does not set out explicitly individual grounds. I propose dealing with each of these three categories in turn.
- [5] The first category is that neither the Full Court nor the Supreme Court of Appeal explicitly ordered that Mr. Zuma personally be responsible for the repayment of the costs expended on his behalf for his legal expenses.
- [6] This aspect was dealt with in paragraphs [18] to [22] of the judgment handed down on 22 October 2025. It is not necessary to burden this judgment with a repetition of what is set out there save to state that the extracts of the judgments of both Courts in plain language make it clear that both Courts contemplated that any order for repayment would have to be made against Mr. Zuma personally.
- [7] There is simply no rational basis to conclude that because the orders of the Full Court and the Supreme Court of Appeal did not explicitly say "Mr. Zuma it is you who must pay back the money" that that was not what was intended. The passages quoted in the judgement of 22 October 2025 from the judgments of both Courts, fortify this view. Since this Court is bound by the decisions of both

the Full Court and the Supreme Court of Appeal and there is no basis to distinguish or depart from what they found, this ground of appeal has no merit.

- [8] The second category was that the Court “lacked the empathy and Constitutional sensitivity” reflected in the Constitution by ordering Mr. Zuma to make repayment. The highwater mark of this argument was that the impact of the orders on Mr. Zuma were not taken into account.
- [9] Indicatively, Courts do consider and recognise empathy, albeit with limits and specific to the question at hand. However, it is prudent to bring to the fore that what Mr. Zuma effectively seeks in this matter, is for this Court to depart from or overrule the Full Court² and the Supreme Court of Appeal,³ based on “empathy” and “constitutional sensitivity”.
- [10] Even if judicial empathy and constitutional sensitivity were relevant, Mr. Zuma should have raised these arguments before the Full Court or the Supreme Court of Appeal. Those Courts, on the arguments advanced before them, did not find any basis to exempt Mr. Zuma from the corrective consequences of unconstitutional and unlawful state expenditure. The Full Court observed that Mr. Zuma “failed to contradict the EFF’s proposed remedy, nor did he explain why he should be entitled to retain the benefit of the unlawful payments.”⁴
- [11] The Full Court applied the “corrective principle”, which requires that the consequences of an unconstitutional or unlawful act be reversed where possible. This was with reference to the *Allpay Consolidated Investment Holdings (Pty) Ltd and others v Chief Executive Officer, South African Social Security Agency and*

² *Democratic Alliance v President of the Republic of South Africa and Others; Economic Freedom Fighters v State Attorney and Others* (21405/18; 29984/18) [2018] ZAGPPHC 836.

³ *Zuma v Democratic Alliance and Another* (1028/2019) [2021] ZASCA 39.

⁴ See n.6 at para 82.

others,⁵ where the Constitutional Court quoted *Steenkamp* with approval and elaborated on the “corrective principle”, as:

“[30] *Logic, general legal principle, the Constitution and the binding authority of this court all point to a default position that requires the consequences of invalidity to be corrected or reversed where they can no longer be prevented*”

...

... The Constitutional Court further held that a party has ‘no right to benefit from an unlawful contract’ (para 67).”

[12] This makes it moot whether Mr. Zuma aided or abetted the State’s conduct. Further, as the Full Court stated: “...*Simply declaring the agreements and the decisions to appoint private legal representatives and to pay Mr Zuma’s private legal costs unlawful, without ordering repayment, would not achieve the remedial objects inherent in the relief which a court should grant in the vindication of the rule of law.*”⁶

[13] Stressing the breadth and constitutional legitimacy of the remedy it granted, the Full Court relied on *Corruption Watch NPC and others v President of the Republic of South Africa and others*,⁷ where it was held:

“[68] *There is no preordained consequence that must flow from our declarations of constitutional invalidity. In terms of s 172(1)(b) of the Constitution we may make any order that is just and equitable. The operative word ‘any’ is as wide as it sounds. Wide though this jurisdiction may be, it is not unbridled. It is bounded by the very two factors stipulated in the section – justice and equity.*”

⁵ 2014 (4) SA 179 (CC).

⁶ See n.6 at para 81.

⁷ 2018 (2) SACR 442 (CC).

- [14] Considering binding authority, judicial empathy or constitutional sensitivity⁸, which have a limited scope and context cannot operate to displace the Full Court and Supreme Court of Appeal's findings. This is nothing more than an endeavour to re-litigate the matter and for this reason is also without merit.
- [15] The third category is that this Court failed to make a just and equitable order with regards to Mr. Zuma. This argument was premised on what was referred to as the "*delinquency of the State*" and a plea that it would have been fairer for the individual officials who had authorised the payment of Mr. Zuma's legal fees or his attorneys who had received payment, to first be excused before any order was made against Mr. Zuma. This ground is entirely self-serving and meritless having regard to what is set out in paragraph [14] above.
- [16] The issue that served before this Court was not whether repayment was a just and equitable remedy but rather what was to be paid by Mr. Zuma once it had been ascertained. Mr. Zuma did not place any of the accounts or the calculation of the legal costs in issue. Similarly, within this category, it was argued that there was a failure on the part of this Court to "*apply the principles of equity and justice when considering the DA's additional orders.*"
- [17] This was dealt with pertinently in paragraph [14] of the judgment of 22 October 2025 in which it was recorded that opposition to both the locus standi of the DA as well as to the orders to the payment of interest in its counter application, were

⁸ See Ellmann "Marking the path of the Law" (2009) 2 Constitutional Law Review 97 at 108 and especially at 114 where it is stated "*Is there anything more that can be said, then, about what values constitutional judges should hold? Certainly, one can say, 'judges should believe in such-and-such a vision of transformation.' And perhaps they should. One can even make arguments for such a vision that draw on the Constitution, and thus might be characterised as legal arguments. But if law can be employed to argue for such choices, I do not think we can deny that we are simultaneously in the realm of politics. On grounds of politics, you prefer one understanding of the constitution's values, someone else prefers another. If the choice of judges depends in part on their commitment to the best conception of the constitution's values, who is to say what the best conception is? That's not an easy question to answer.*"

not pursued in argument on behalf of Mr. Zuma. This category of grounds is also without merit.

- [18] It was also argued that there were other compelling reasons in terms of Section 17(1)(a)(ii) which militated in favour of granting of leave to appeal.

- [19] The reasons advanced included that the State's own unconstitutional conduct in the matter and its liability for it was a compelling reason which required consideration by a higher Court. Additionally, it was contended that this case is one of "*significant public importance*."

- [20] This is without merit. The reason for this is that firstly, two Higher Courts have already pronounced, *ad idem*, on the same issue. Secondly, the question of public importance cannot override decisions of the Court. While the issue of whether Mr. Zuma ought to have been held liable was indeed a matter of public importance, this has been put to rest by the Full Court and the Supreme Court of Appeal.

- [21] The amount of money to be repaid, while possibly a matter of public interest, is certainly not a matter of either public or legal importance. To keep the doors of the Court open indefinitely to a litigant who refuses to accept the judgment on a particular matter, serves no legitimate purpose. All it does, is serve to be a drain on scarce judicial resources and to strengthen the view that accountability can be deferred for so long as one has the means to do so. It is destructive of the notion that all are equal before the law and confirmatory of the view that "*there is far too much law for those who can afford it and far too little for those who cannot*."⁹

⁹ From an address given by Derek Bok, Dean of the Harvard Law School from his annual report to the University's Board of Overseers in April 1983. This sentiment is also attributed to GK Chesterton, English writer and philosopher.

[22] I am not persuaded that another Court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.

[23] The costs will follow the result.

[24] In the circumstances, I make the following order:

[24.1] The application for leave to appeal brought by Mr. Zuma is dismissed.

[24.2] The applicant is ordered to pay the costs of the first to third respondents in the application for leave to appeal, which costs are to include the costs consequent upon the engagement of two counsel. In respect of senior counsel, such payment is upon scale C and in respect of junior counsel upon scale B.

[24.3] The applicant is ordered to pay the costs of the fourth respondent in the application for leave to appeal, which costs are to include the costs consequent upon the engagement of two counsel, both upon scale C.

— 
A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	1 DECEMBER 2025
JUDGMENT DELIVERED ON:	4 DECEMBER 2025
COUNSEL FOR THE APPLICANT:	ADV. T MASUKU SC ADV. C MZAMO
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COUNSEL FOR THE FOURTH RESPONDENT:	ADV. S ROSENBERG SC ADV. J BLEAZARD
INSTRUCTED BY:	MINDE SHAPIRO AND SMITH INC.
REFERENCE:	MS. E JONKER