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MKHWEBANE'S REMOVAL EXPOSES A CONSTITUTIONAL CRISIS IN SOUTH AFRICA

After a lengthy and troubled inquiry, Parliament has finally voted to remove Adv Busisiwe Mkhwebane from the position of being the Public Protector. Parliament removed Mkhwebane on the basis of "incompetence" and "misconduct". In a lengthy inquiry process funded by the State, Mkhwebane defended herself against the accusations and even threw in bribery claims against three ANC Members of Parliament, namely, inquiry Chairperson Qubudile Dyantyi, Pemmy Majodina and the late Tina Joemat-Pettersson.

Strangely, the majority of the political parties that hurriedly voted for the removal are the very same ones that were enthusiastic about Mkhwebane's appointment. They shot down any suggestions that sought to question the candidate's credentials. This enthusiasm was occasioned by the rush to see the back of the then incumbent Public Protector Thuli Madonsela, who had proved to be a disappointment to the majority political party that favoured her appointment. Obviously, she was not towing her party line as was expected. On the contrary, she unleashed her axe on the necks of her own ANC leaders. Her "unending" term was too long for the rolling heads.

For obvious reasons, Madonsela soon became the darling of the Opposition parties. Madonsela seemed not to care that her work had immediate political benefits for the Opposition. She went about her work in a manner that pushed her predecessors Selby Baqwa and Lawrence Mushwana into oblivion. Those that were frustrated and tired of the corruption of the ruling ANC party, found a protector of the public in Public Protector Madonsela.

The ruling party had hoped Mkhwebane's appointment would rectify the earlier Frankenstein appointment. Mkhwebane's appointment took place at a time when the people had had enough of the abuse of political power and rampant corruption in government. This was evident in the way the voters voted in the 2016 Local Government Elections to make a statement that caused the political elites to wet their pants. This shift generated panic in the ruling party ranks that they hastily sacrificed Cde Jacob Zuma and blamed all the sins of the ANC on him under the phrase "nine wasted years".

Before that, the governance defects of South Africa had come to the fore. Majoritarianism was in full swing with the ruling party using their numbers in Parliament to defend Cde Zuma against 8 Votes of No Confidence. They felt so invincible that it didn't dawn upon them that their deeds might amount to the creation and accumulation of the "nine wasted years". It was the time when fiction ruled over fact; that time when zeroes could easily be heroes. Quantity was giving no audience to quality.

Mkhwebane's tenure took off in this governance turbulence. If Madonsela was viewed as harassing the Zuma faction of the ruling party, Mkhwebane soon gained notoriety in some sections of that party as strangling the Ramaphosa faction. While Madonsela received an approving embrace from the Opposition and elitist sections of society for accelerating the demise of the Zuma faction, Mkhwebane fell out of favour in the elitist quarters, which included business and the liberal media, for daring to take the light out of Ramaphosa's "New Dawn" that had fastly become the New Down to those that expected better from him.

The last straw that broke the camel's back was Mkhwebane's insistence in 2021 to probe the so-called CR17 accounts, which bulged to the bursting point with big business generous donations that catapulted Ramaphosa to the ANC presidency and, by extension, the country's presidency. The Pretoria High Court agreed with Ramaphosa to seal those accounts with the result of excluding any possible transparency for the public's "right to know". While Ramaphosa believed those accounts had no more than R300 000, Mkhwebane found that the money was about R1.2 billion.

Mkhwebane was not done with Ramaphosa. In 2022 her office reported that she would investigate a complaint that related to a leaked audio with a voice that sounded like Ramaphosa's. The voice was admitting to the knowledge of the misuse of public funds for the purposes of ANC's programmes. There was also the Phala Phala-gate.

It is at that stage that Ramaphosa moved with lightning speed and suspended Mkhwebane. Therein lies what appears to be a constitutional crisis. The Office of the Public Protector is part of the Chapter 9 institutions that are supposed to be independent in order to safeguard the country's fledgling democracy. However, the Public Protector (Mkhwebane) is appointed by the President (Ramaphosa). The constitutional tension was obvious where the appointee (junior) sought to investigate her appointer (boss).

This constitutional crisis is apparent where the Police Commissioner (appointee) and the Minister of Police (appointee) were plunged into an awkward position when they were expected to cause the investigation and possible resultant arrest of the President (appointer) with regards to the Phala Phala alleged crimes and money laundering.

This constitutional crisis rears its ugly head when we witnessed the South African Reserve Bank Governor (appointee) mumbling that they found nothing untoward with the President (appointer) failing to declare the US dollars in his position within 30 days as required by the law. They rationalised that the transaction by an alleged buyer to purchase some buffaloes from the President business was not "perfected" because the buyer didn't collect the goods bought. The appointee had no choice but to pose in front of the cameras and bite his tongue in an unsuccessful attempt to cleanse his appointer on the eve of an important BRICS summit. The stain could not be bleached out.

In 2022 an Independent Panel found that there was prima facie evidence that Ramaphosa may have broken the law with regards to the Phala Phala saga. That meant that he had to face Parliament and answer to this case. Despite his party enjoying an overriding majority in Parliament, Ramaphosa chose to file papers to the Constitutional Court and asked the court to review and set the report aside. He went further to pray for Parliament to be barred from implementing the Independent Panel's finding. As it happened with the frustrating of the 8 Votes of No Confidence and a Constitutional Court ruling by the then Chief Justice Mogoeng Mogoeng, Parliament deliberately forgot its oversight and once again voted to throw out the report it had commissioned. Once again, there appears to be some evidence of a constitutional crisis in this instance. Instead of the exercise of the brains, Parliament seems to favour an uncritical reliance on the show of hands.

Oh well, Chief Justice Raymond Zondo (appointee) wouldn't entangle himself by entering a negative finding against President Ramaphosa (appointer) during the so-called Zondo Commission. That was yet another example of an apparent constitutional crisis.

This country's democracy is guaranteed to stagnate if the constitutional loose ends identified in this casual exercise are not tied. This constitutional crisis conspires against the necessary development of both the people and the country's systems of governance. The people sacrificed a lot to see their struggle gains going up in smoke.