

14057 EFF hearing

REPRESENTATION TO THE POWERS AND PRIVILEGES COMMITTEE:

07 October 2014

Chairperson of the Committee:

1. We have come here as Members of the Parliament, representing the Economic Freedom Fighters, the economic emancipation movement which is the third largest political party in South Africa.
2. We are appearing before this committee because the Speaker of Parliament, has through the Secretary of Parliament preferred charges on members of the EFF, citing misconduct as a basis of all the charges which our members have received.
3. **This committee is supposed to prefer charges on members of Parliament, but we have it on good authority that after the appointment of the Initiator, this committee did not sit to consider the charges and members of this committee are seeing the charges for the first time. What kind of a Judge can appear before a committee before they are familiar with the charges that are going to be tabled against accused people? What justice are we pursuing here?**
4. We are of the view that this committee should not proceed with the disciplinary processes which you intend to embark on, because as members of opposing political parties, you are all conflicted and are in no position to arrive at a fair and just conclusion.
5. Majority of you in this committee are members of the ANC, which from the 21st of August has been calling for a harsher sentence against members of the EFF, in response to the developments of the 21st of August 2014.
6. To remind you, on the 21st of August, we asked the President of the Republic of South Africa, Jacob Zuma as to when is he going to pay back the money as prescribed by the remedial actions which the Public Protector correctly and constitutionally said should be implemented by all parties involved in the illegal and corrupt construction of the private residence of the President in Nkandla.
7. It is common cause that there was illegality and corruption in the construction of the private residence, and this matter will be settled by Courts of Law since the president is refusing to pay back the money as directed by the Public Protector.
8. On the said date, we asked the question of when the President will pay back the money because it is our considered view that he should pay back the money.
9. No one in South Africa is above the law and the President is therefore obliged to pay back the money.
10. When we did so, the Speaker of Parliament refused us an opportunity to receive an answer from the President and continued to recognise other members of Parliament to ask further questions despite the fact that our question was not answered.
11. Chairperson, we would like to draw your attention to the fact that there is a difference between a response and an answer, and what Jacob Zuma did on the said date was to respond to the question and failed to answer the simple question of when will he pay back the money.
12. We therefore request that this committee pays attention to the following realities:

13. When Members of the EFF rose on the point of order and asked for the attention of the Speaker of Parliament, she blatantly ignored them, and instructed them to sit down.
14. Under no occasion or circumstance did members of the EFF defy the Speaker despite the reality that she did not mention any member by name.
15. She recurrently said that Members who are not serious should leave the house, basically suggesting that members of the EFF were not serious in asking the questions of when will the President pay back the money.
16. The Speaker then suspended the house and ordered that the Serjeant at Arms to remove members who she said were not serious.
17. Now on that question, we want to put it on record that all members of the EFF are serious and were serious on the said date.
18. The Speaker suspended the house for few Minutes and said she is doing so in order to allow members of the EFF to be removed.
19. She specifically said that the house is suspended for three minutes.
20. As a party leader, I then called the EFF hon. members for a caucus as all other members of parliament from other parties were leaving the house.
21. They (EFF members) stayed back and received directives from the Whippery now that the House has been suspended.
22. Members of the ANC were seen and heard singing "Umshini wami" trying to intimidate EFF members for holding the President to answer the question asked.
23. Once outside, ANC members tried to force their way into the house such that it would have been dangerous for EFF members to leave the house.
24. One member who successfully pushed her way in is Nokukhanya Mthembu seated amongst you and a judge in a matter she is not only a potential witness or witnessed the alleged misconduct, but herself sang the song "umshini wami" and forced herself inside the House during house suspension, trampling over police line and successfully pushing police officers way to gain entry.
25. All members in this committee are not only witnesses to the alleged misconduct, you actively participated in the singing of Umshini wami song inside the house as it was suspended.
26. All members of this committee are not only potential witnesses of the defence, but you actually witnessed the alleged misconduct.
27. Notwithstanding you witnessing the alleged misconduct, you are comfortable to be judges in a matter where you witnessed the alleged misconduct.
28. It is trite in law that a person who witness a conduct which conduct ends up in court where the witness is a judge, the judge cannot preside in that matter.
29. In your determination to trample over principles of natural justice, you are not apologetic to insist that you be judges over a matter that involves the whole party membership in a house business, robust debate and holding the executive accountable.
30. The complainant is your party boss and any suggestion to differ with her will be career limiting. The complainant is not only a speaker but a party national chairperson who on Mondays sits with the President and on Thursday attends the ruling party caucus and on other days preside over house meetings where she is expected to be impartial.

31. Complainant is not only a Speaker, but sits in the powerful deployment committee about who becomes a whip, a minister and committee chairperson, it will career limiting for you to differ with her.
32. The complaint is based on matters on the Nkandlagate and the President. You are aware that your Secretary General has instructed you not only to protect the President, but to deal harshly with members of EFF who humiliate and embarrass the President. Gwede Mantashe is not an ordinary person, he is a secretary of the ruling party and he attends your party caucus together with the speaker every Thursday. He made this statement from the Monday meeting of the Top Six that includes President Zuma.
33. The complainant is the national chairperson of the ruling party. In your majority here, you are members of the majority party and decisions in this committee are based on the majority rule.
34. So you represent the complainant, you represent the subject of the complaint, President Zuma, you represent Gwede Mantashe. You are the witnesses, you are the complainant, you are the prosecutor and you are the judge and the jury. You see nothing wrong in you conflicting role.
35. It is trite in law that you cannot be a judge in your own matter, You are so determined, that the basic tenets of common law and natural justice makes no sense in your compromised conflicted role.
36. You cannot wait to haul the whole opposition before the royal ruling party to account for holding your president accountable and insisting that your national chairperson should allow the president to answer.
37. It is unprecedented that all members of the opposition are hauled before a ruling party to beg for mercy and pardon.
38. Several letters have been sent to you to consider alternative dispute resolution of this political matter because this is not an ordinary misconduct, you have ignored those letters.
39. You have been written a letter to consider removing other members who are not only perceived bias but are clearly biased, you have ignored the letter.
40. Since neither your common sense nor the courts can resolve this conflicted role you are in, you are at liberty to do as you wish, but posterity shall judge you.
41. You are aware but you choose to ignore the fact that the complainant never called any of the members by name each of them to move out of the house and they refused. She referred to members who are not serious and EFF members were very serious.
42. It is a practise and a convention in parliament that a member is who must go out by directive of the speaker should have his name called, Rule 53 (4). None of the EFF members were named, this committee is ignoring that.
43. I have had the opportunity to watch the video of the proceedings and surprisingly, you only charged 20 members out of 25 in attendance. None of the 25 members stepped out of the House prior to the suspending of the house and after it was suspended. As to what informs you in not charging them can only be explained by yourself.
44. It is not clear who decided who must be charged, is it the speaker, the committee or the prosecutor?
45. It is the firm belief of EFF that charges once drawn up, they would have been discussed by the Committee before being served to accused members. As to why the committee

decided as such, can only be explained by the uncontrollable ambition to quickly find EFF members guilty at all cost, by hook or crook.

46. Complainant, the speaker, had been made to withdraw her threat of tabling to the house a recommendation for suspension of members. She knew very well in that since EFF is accused of misconduct involving the President of the ruling party, the house majority which is the ruling party, would so vote for suspension. The humiliation and embarrassment the ruling party wants to inflict to EFF knows no bounds.
47. The rules and the ACT never anticipated that this committee for once, will ever deal with such a grave matter of the President refusing to account and the Speaker will protect the President. Never was it in the mind of the framers of the act and the rules that a whole opposition party will be hauled before the ruling party to beg for forgiveness and mercy.
48. The rules and the law cannot accordingly be invoked blindly because it was never intended to be so then. Such a scenario as this of today was never anticipated.
49. It would be unconstitutional to haul the whole opposition before a committee majority for disciplinary hearing. Multiparty democracy and existence of the opposition would perpetually be at the back and whims of the majority party.
50. The electoral system of South Africa is not constituency based but, members of parliament are deployed to parliament at the pleasure of the party leadership and expected to toe the party line unfailingly. Party and its top leadership have spoken on how this matter should be handled and concluded. The President of the ruling party, the secretary General of the ruling party and the National Chairperson of the ruling party have spoken in public on what should happen. It would be career limiting and suicidal for this committee to act otherwise.
51. EFF cannot assist the committee to legitimise the wishes of Luthuli House.
52. You are hell bent to finish the little humanness and soul remaining of us after all the insults hurled on us at the house by members of your party who will never for once ever appear before you for such crude insults.
53. What justice and fairness should EFF expect in a process where the judge is ANC, the complainant is ANC, the witness is ANC and the prosecutor is ANC, the house decision maker is ANC. You may as well hold this hearing at Luthuli House.
54. EFF has all the merits of the case and would have proceeded successfully on this matter before an impartial jury.
55. Just to remind you once more, after the suspension of the house, the Searjant at Arms approached the EFF Members of Parliament.
56. It was when the house was suspended when members of the EFF started to chant PAY BACK THE MONEY.
57. And in the in process of chanting PAY BACK THE MOMEY, the Speaker said "Aphi Amaphoyisa?", asking "WHERE ARE THE POLICE?".
58. This Committee should note and know that all our members are charged with Chanting Pay back the money, which is a development that happened when the house was suspended.
59. We are quite sure that the Speaker is aware more than all of us and this committee is aware that you cannot apply the Rules of a House sitting even when it is suspended.
60. Members of Parliament have in previous occasions chanted and sang even when the house was in session.

61. Members of the ANC have in several occasions sung Umshini wami during the sitting of the house and never before have they been subjected to a disciplinary process.
62. As she said during a City Press gathering recently, the Speaker of the National Assembly lost it on that day, and we cannot as members of the EFF be subjected to a disciplinary process because of a Speaker who admitted publicly that she lost it.
63. The speaker not only said she lost, she continued her tirade against EFF members referring to them as "young people that provided excitement in the House"
64. She is quoted and can be heard on video footage that we have where she says "I'll tell you about August 21 (when Zuma fielded questions) where I thought I lost it that day. Alright? It's out there, I cannot deny it but it is wrong to reduce the cause of what went on that day to the speaker".
65. The charge which we were expected to answer here does not hold water and does not deserve our attention.
66. The Speaker ordered members to leave the House so that "Amaphoyisa" could come to physically remove members of the EFF from Parliament and unfortunately, police did not come, instead later, the house resumed peacefully.
67. Members of Parliament of the ANC, two of whom are members of this Committee (Hon Luzipho and Nokukhanya Mthembu), forced their way back into the Chambers with intentions and threats that they will physically assault members of the EFF yet today they are judges in a matter of their own.
68. The ANC caucus here in parliament and in Luthuli House issued statements calling for harsher action against members of the EFF.
69. Now, we are expected to come here and appear before an ANC committee which has already taken decision of what should happen.
70. In the events post 21st of August 2014, the Speaker wrote a letter to Members of the EFF asking them to write justification on why she should not suspend them for dates varying from 7 to 14 dates without a hearing and suspension without pay.
71. In doing so, the Speaker violated Sections of the Powers, Privileges and Immunities of Parliamentary and Provincial Legislatures Act which says it is illegal to threaten a member with withdrawal of any benefits, enjoyed by members of Parliament.
72. Section 7 (e) of the act provides that no person may deprive a member of any benefit on account of member's conduct in Parliament or House or committee and accordingly, it is and was illegal for the Speaker to threaten to suspend members without pay prior to a due process.
73. On the 2nd of September 2014, the Speaker addressed the National Assembly and made very problematic statements, and also misled the house on the developments of the 21st August 2014 when she said:
 - Let me state that at no point did I call on the Public Order Police unit during the events of 21 August.
 - I cannot but strongly condemn the disruption of the proceedings in the Chamber and the manner in which this impeded the House's ability to conduct and conclude its business.
 - Security was called upon to assist the Serjeant-at-Arms when members continued in their refusal to leave the Chamber, in complete and open defiance of the Chair.
 - On Tuesday, 26 August 2014, I made a statement to inform the House that the matter was being referred to the Powers and Privileges Committee, for the Committee to investigate whether the conduct of the members involved in the disruptive actions

constituted contempt of Parliament in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004.

- I further informed the House that while the matter was before the Committee, I was also considering the implementation of item 10 of the Schedule to the rules, which makes provision for the suspension of members where the allegations against them are of a very serious nature.
 - She claimed that she never called the Police into Parliament, despite her recorded call when she said, “aphi amaphoyisa”.
 - She made rulings that the EFF disrupted parliament despite the fact that a committee was set up to investigate whether there was disruption of Parliament.
74. It is our considered view that the Speaker should be the one who appears before this committee because in her own admission, she lost it on the 21st of August 2014.
75. It is our considered view that the Speaker should appear before this committee because she disrupted the proceedings of the house on the 21st of August 2014. Instead of recognising members of the EFF who were raising on the point on order, she suspended the house and called on the police to come and remove members of Parliament from the House,.
76. It is our considered view that Baleka Mbete should appear before this committee because she made illegal threats to members of the EFF.
77. It is our considered view that Baleka Mbete should appear because she misled parliament in claiming that she did not call the police while she is on record saying aphi amaphoyisa.
78. It is our considered view that Baleka Mbete should be charged because the house collapsed due to her lack of patience and leadership as she concedes that “I lost it”.
79. How can we be subjected to events that were caused by a Speaker who lost it?
80. Now, this committee is under no position to proceed in a fair and just process because all of you who are members of this committee were in one or another involved in the developments of 21st of August 2014.
81. Some of you here even tried to physically to confront members of the EFF and forced your way into the House with the intention of physically removing members from the house.
82. This committee is under no position to engage in a fair process because most of you are employees of the ANC who are here primarily to carry forward the directives of the ANC and the ANC has already said what should happen.
83. The complainant in this case is the ANC, and the members who should preside over this case are ANC members, so already there principle of natural justice has been compromised.
84. We do not want to waste our time engaging in fruitless processes which have already been decided in Luthuli House.
85. One thing we want to remind you though is that we are not employees of the ANC, and we are not employees of anyone of you here.
86. We were employed on the 7th of May 2014 by more than 1 million voters. Those are the people who will hold us accountable, not a puppet committee which works under the instructions of Gwede Mantashe, the secretary general of the ruling party.
87. And we want to remind you that in terms of section 13 (5)(g) of Powers and Privileges Act, the harshest sentence you can impose on us is suspension for 30 days without pay, and further, section 13(9) provides that such can only be considered after all

other sentences in subsection 5 (a) to (e) have been considered. The other sentences are as follows:

- a. A formal warning,
- b. A reprimand,
- c. An order to apologise to Parliament or the house or any person, in a manner determined by the House.
- d. The withholding, for a specified period, of the members' right to use or enjoyment of any specified facility provided to members of Parliament.
- e. A fine not exceeding the equivalent of one month's salary and allowances.

88. We are therefore here to make the following concrete recommendations:

- a. Stop the entire process because it is a contaminated process with the ANC acting as a complainant, judge and will possibly be witnesses if the case proceeds.
- b. The Committee should table a report to the house concerning the decision to withdraw the charges.
- c. The committee should summon the Speaker to caution her against the manner in which she conducted herself in the House on the said date.

89. Whatever is the outcome of this process, the EFF will not be participating.

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