

Why Zondo's appointment as Chief Justice should be welcome

11 March 2022

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Synopsis

The empowerment of one gender should never be at the cost of another especially where merit is concerned. This article unpacks why and how the appointment of Chief Justice Zondo was solely based on merit, highlighting how gender transformation should not be about simply overlooking a suitably qualified male over a female candidate – just for its own sake.

Article

President Cyril Ramaphosa, on Thursday 10th March 2022, announced the appointment of Deputy Chief Justice Raymond Zondo as the country's next Chief Justice. This has put to an end the noise and uncertainty surrounding the appointment.

This is a rare and courageous act of leadership that the President has shown in the recent past. Often accused of prioritising optics over substance, Ramaphosa deemed it fit this time around to place the interests of the country ahead of political and other considerations.

The President is empowered in terms of Section 174 (3) of the Constitution to appoint the country's Chief Justice, Deputy Chief Justice, President and Deputy President of the Supreme Court of Appeals. The involvement of the Judicial Services Commission (JSC) in the process of appointing these judicial officers has been the subject of much debate in the country, leading some to mistakenly believe that the JSC has the power effectively to instruct the President on who to appoint. Some political parties seem to have laboured under this wide interpretation of the phrase "in consultation with the JSC" in terms of the section referred to above.

The decision to appoint a Chief Justice, along with the other judicial officers referred to in the section, is the President's prerogative and his alone. It is encouraging that the President correctly understood the powers entrusted to him by the country's Constitution. For far too long, he seemed shy to use such powers to provide leadership. That he has done so in this instance should be commended. It provides a semblance of comfort and hope that in future we will likely see the President slowly, but certainly, leading from the front.

There are those who are accusing the President of having known all along whom he wanted as Chief Justice, using the JSC processes as a consultation ploy. This charge is either ignorant or political in nature. For the powers of the President in respect of appointing judicial officers is crystal clear in the Constitution.

Others are charging that the President missed an opportunity to appoint a first female Chief Justice, Mandisa Maya. They thus see the appointment of Zondo as an anti-gender transformation act on the part of the President. This too is mischievous. All the four candidates for the top judicial office in the land were, and remain, jurists of note. Unfortunately, some members of the JSC went into interviews with a clear intent of blocking the appointment of either Zondo or Gauteng Judge President Dustin Mlambo, on flimsy grounds that they were either captured by the so-called White Monopoly Capital or that they are agents of Ramaphosa. They thus turned a legal process into a political circus, asking questions that were not only irrelevant but that fundamentally and blatantly bordered on the political. They failed.

Their articulation of gender empowerment is not genuine. It is an attempt at casting aspersions on Zondo and Mlambo, and caricaturing Ramaphosa as an anti-gender transformation agent. Gender transformation is not simply about overlooking a suitably qualified male over a female candidate – just for its own sake. If anything, Zondo has been in the Constitutional Court while Maya has not been. Zondo has been the country's Deputy Chief Justice for nearly five years now. Nothing in his track record suggests that he was not fit and proper for the position of Chief Justice. His handling of the State Capture Commission has been commendable, despite efforts by some to discredit him and the very *raison d'être* of the Commission. He gave the Commission the teeth it needed, at one point precipitating the incarceration of the recalcitrant former president Jacob Zuma. He has stood firm against opportunist attacks on the judiciary by some of our political leaders. On what grounds would Ramaphosa elect not to appoint Zondo? Political grounds, like Zuma did when he overlooked then Deputy Chief Justice Dikgang Moseneke for the Chief Justice position? That would be a travesty of justice – substantively and procedurally. Ramaphosa, unlike Zuma, chose to uphold the law and the attendant due process.

By nominating Maya for the position of Deputy Chief Justice, Ramaphosa has effectively laid the ground for stability and succession in the country's highest court. Zondo is left with only two years before he reaches the mandatory retirement, at which point Maya would be in a better position to ascend to the role of Chief Justice.

South Africa still has a long way to realise gender equality. Accelerated efforts must be made to achieve this noble goal. However, attempts to discredit due processes under the pretence of gender transformation has no place in our politics. Women must resist being used as pawns in political fights and grandstanding. Justice Maya will do well to distance herself from elements that seek to make a mockery of true gender transformation.

The President, to whom many look up for direction as the country navigates a difficult transition from an era when state institutions were hollowed out, as part of the State Capture project, to predictability and certainty, must stay the course. He must continue along this path to have courage and inspire confidence. In the words of the late founding father of our nation, Nelson Mandela, "... courage [is] not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear." On his decision to appoint Zondo as the country's next Chief Justice, the nation, by and large, must necessarily rally behind him.