

## Concourt To Hear Argument On Diplomatic Protection

Written by Rudi Prinsloo

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Legal counsel for South African farmer Crawford von Abo will return to the Constitutional Court on Thursday in an application to confirm a lower court ruling.

The bid is in the hope that the highest court will confirm a Pretoria High Court finding that the South African president and the 2007 government had violated his constitutional rights by not protecting him when he asked for diplomatic help.

In November the Constitutional Court postponed to February what was to be the final leg of the Free State farmer's legal battle to make the government help him protect his property and investments in Zimbabwe.

Von Abo maintains that farms he owned and built up since the 1950s were confiscated without compensation during the Zimbabwe government's land restitution programme, equipment was destroyed, game and cattle slaughtered and at one point he was arrested for being on one of his farms.

In March 2002 he turned to then president Thabo Mbeki and wrote to him asking for diplomatic assistance after effort to resolve the matter, according to him, were ignored.

During Thabo Mbeki's tenure the South African government pursued a policy of "quiet diplomacy" in its relations with Zimbabwe, which was facing mounting criticism over the way it was carrying out its land restitution policy, including land invasions by "war veterans".

Von Abo also tried various other departments including foreign affairs and justice.

Von Abo, reportedly, also discovered that international agreements that may have helped him had not been signed into force by the South African government, and court documents were filed late.

The high court declared that Mbeki and the other ministers cited had failed to consider properly the request for diplomatic protection.

It further declared that he had the right to diplomatic protection from the government and ordered that the government must within 60 days file a report in which it detailed what steps it had taken to have the Zimbabwean government's violation of Von Abo's rights remedied.

In the Constitutional Court, Von Abo seeks confirmation of the declaration that the conduct of the president in respect of his request for diplomatic protection was unconstitutional.

The Constitution requires that an order of constitutional invalidity regarding the conduct of the president must be confirmed by the Constitutional Court.

The application is opposed on three main grounds.

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That the application cannot be brought in terms of section 172(2)(a) of the Constitution, as the conduct complained of is attributable to the government as a whole and not just to the president.

Secondly, the application is premature because the order of the high court is a supervisory order and the high court is still seized with the matter.

Lastly, it has been submitted that the president (then Mbeki) and the government (of 2007) had given proper consideration to, and had properly acted on Von Abo's request for diplomatic protection.

The matter was initially due to be heard on November 11, 2008.

However at the hearing the respondent requested that the matter be postponed in order to file a formal application to tender new evidence, a portion of which they would request the Court to keep confidential.

The Court postponed the hearing, ordering the respondents to file the application no later than the November 28.

This was filed, however later than the due date.

For this reason at the hearing the respondent will ask the court to condone the late filing of the application to tender further evidence.

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