

SUMMARY OF REVIEW APPLICATION BY PRESIDENT RAMAPHOSA ON S89 INDEPENDENT PANEL REPORT

5 DECEMBER 2022

President Cyril Ramaphosa has applied to the Constitutional Court for the report of the Section 89 independent panel to be reviewed, declared unlawful and set aside.

Some of the key points from the President's Founding Affidavit are that the panel:

1. MISUNDERSTOOD ITS MANDATE

- According to Parliament's rules, the panel is meant to determine whether there is "sufficient evidence" to justify an impeachment process. Instead of doing this, the panel merely sought to establish that there is *prima facie* case for the President to answer.
- The panel overlooked the fact that Parliament's rules confine "serious misconduct" and a "serious violation of the Constitution" to deliberate misconduct by the President acting in bad faith.

2. ACCEPTED UNLAWFULLY OBTAINED EVIDENCE AND HEARSAY

- The panel is required by the laws of evidence to exclude information that is obtained unlawfully or that is hearsay. All of the information submitted to the panel by the ATM, mainly in the form of statements by Arthur Fraser, takes the form of allegations, speculation and hearsay. The panel accepted this information without question.
- The panel dismissed evidence that the President provided under oath in favour of speculation, hearsay and evidence that should have been ruled inadmissible. The panel gave more weight to Arthur Fraser's claims – for which he didn't provide any sources – than the President's evidence given under oath and supported by documentation.

3. MISINTERPRETED THE CHARGES

- The panel concluded that the President undertook "other paid work" in contravention of the Constitution simply because he's the sole member of a closed corporation. Yet, nothing prohibits members of the executive having financial interests – as long as they are declared and don't give rise to a conflict of interest. The President has declared this and all other financial interests every year.
- The panel wrongly concluded that the President was required to report the theft to the Hawks in terms of the Prevention and Combating of Corrupt Activities Act. Because the company has a separate management team, the President doesn't qualify in terms of the act as "holding a position of authority".
- The panel was wrong to conclude that the President abused his position by asking the head of the Presidential Protection Service (PPS) to look into a breach of security at his farm. It is the responsibility of the PPS to attend to the security of the President and there can be no way that reporting the theft to the PPS could be considered a serious violation of the Constitution.

4. CONSIDERED ISSUES OUTSIDE ITS MANDATE

- The panel went to great lengths to discuss issues that had nothing to do with any of the four charges in the ATM's motion. The panel is supposed to consider only the charges contained in the motion.
- Issues that fell outside of the panel's mandate which they used to arrive at their conclusions included:
 - the source of the money that was stolen
 - the nature of the sale of the game
 - claims around the head of the PPS travelling to Namibia
- The President confined his submission to the panel to the charges in the ATM's motion. He cannot be held responsible for the lack of information on other issues, and it is unfair that he was not asked to respond to issues that were not part of the panel's mandate.

In conclusion, the President said:

"I have carefully considered the report and respectfully submit that the process followed by the Panel and its conclusions are seriously flawed, thus making the recommendations irrational.

"In summary I submit that the Panel misconceived its mandate, misjudged the information placed before it and misinterpreted the four charges advanced against me. It moreover strayed beyond the four charges and considered matters not properly before it.

"I submit that a proper case is made out for this Court to review and set the report aside."
