



THE ELECTORAL COURT OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE ELECTORAL COURT OF
SOUTH AFRICA

From: The Registrar, Electoral Court

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Electoral Court of South Africa

Democratic Alliance v Ramaphosa and Others (0027/2024EC) [2024] ZAEC 24 (21 October 2024)

The Democratic Alliance (DA), a registered political party, brought an application against the first respondent, Cyril Ramaphosa, in both his personal capacity and as President of the Republic of South Africa, and the African National Congress (ANC), the ruling party at the time. The fourth respondent in the matter was the Electoral Commission of South Africa, which opted not to oppose the application and instead abide by the Court's decision.

The DA's complaint concerned a televised address made by President Ramaphosa on 26 May 2024, three days before the national elections. The DA alleged that the address, delivered in the President's capacity as head of state, was a form of political campaigning that violated several provisions of the Electoral Code of Conduct (the Electoral Code) and the Electoral Act 73 of 1998 (the Electoral Act). The DA argued that the President abused his position of power by using public resources to campaign for the ANC under the guise of a national address. The party sought relief declaring that the President's address violated s 87(1)(g) of the Electoral Act, which prohibits the use of public funds for political campaigns, and Item 9(2)(e) of the Electoral Code, which forbids the abuse of a position of power to influence elections.

The central issue before the Electoral Court was whether the President's address constituted an abuse of power and a contravention of the electoral laws. The Court had to determine whether President Ramaphosa, in his capacity as the President of the Republic, used his office improperly to influence the conduct or outcome of the election.

The DA contended that the content of the address presented the ANC's political achievements over the preceding five years and was thus intended to sway voters. They argued that this amounted to political campaigning and was a misuse of public funds for electoral purposes.

On the other hand, the respondents, including President Ramaphosa and the ANC, denied these claims. They argued that the address was a legitimate presidential communication, delivered

in the public interest to inform the nation about the government's readiness to conduct the elections. The President maintained that the speech was not aimed at soliciting votes but rather encouraging South Africans to participate in the democratic process.

The respondents also raised a preliminary point of jurisdiction, arguing that the Electoral Court was not the appropriate forum for the DA's application, as it was primarily a court of review and appeal. However, the Court dismissed this point, affirming its authority to act as a court of first instance in electoral disputes, particularly where the relief sought pertains to prohibited conduct under the Electoral Act.

The Court found that while s 87(1)(g) and Item 9(2)(e) were designed to ensure free and fair elections, they must be interpreted in a manner that balances electoral fairness with the constitutional responsibilities of the President. The Court held that the President, as the head of state, has an obligation to address the nation on matters of public importance, including during election periods. The Court emphasised that an overly restrictive interpretation of these provisions could inhibit the President's ability to fulfil his constitutional duties.

After considering the contents of the President's address, the Court concluded that the address did not amount to political campaigning. The Court accepted the President's submission that the speech was a legitimate exercise of his duties as head of state. It found that the address did not directly promote the ANC or its manifesto but rather focused on national issues and the collective achievements of the country. The Court reasoned that a reasonable observer would not have construed the speech as a political campaign for the ANC.

Additionally, the Court held that there was no evidence to suggest that the address influenced the outcome of the election or violated the constitutional rights of any political party or individual. The Court further noted that the prohibitions in the Electoral Act and Code carry penal sanctions and must therefore be interpreted narrowly, ensuring they do not unduly restrict free speech or legitimate governmental communication.

As a result, the Electoral Court dismissed the DA's application, finding that there was no violation of the Electoral Act, the Electoral Code, or the Constitution. The Court held that President Ramaphosa's address did not constitute an abuse of power or the misuse of public funds. The application was dismissed with no order as to costs.

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