

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA) HELD AT ST. GEORGE HOTEL ON 25TH JANUARY 2016**

CASE NUMBER: 1/2016

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**SUSIMPI NGUBANE
SAM DUMA
MORGAN NGUBANE
MUSA NGUBANE
TU NGUBANE
SGUBHU SHELEMBE
SENZO NDLOVU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 15 December 2015 the Chairperson of the PDC in Kwa Zulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution

for an extension of time to conclude the disciplinary proceedings against the above-named charged members.

Background

2. Charges 1 and 2 relate to the alleged disruptive behaviour of the charged members and the subsequent stoning of busses and vehicles on 7 December 2014 at Ward 1, Kwa Ximba at or near an ANC branch meeting which was in progress at the time. The charge sheet alleges that the charged members, by their conduct, contravened various sub-sections of Rule 25 of the ANC Constitution.
3. Charge 3, which was preferred against comrade Morgan Ngubane only, relates to an incident during November 2014 when he allegedly slapped the branch secretary of Ward 1 Kwa Ximba branch.
4. Charge 4 was preferred against comrade Sam Duma only. It was alleged that his disruptive behaviour (referred to in charges 1 and 2 above) was also sufficient to support a charge of factional behaviour as provided for in Rule 25 of the ANC Constitution.
5. The PWC decided to institute disciplinary action against the charged members and a charge sheet was prepared and was ready to be served by 28 January 2015.
6. For various reasons, which are dealt with below, the charge sheet was only served on the charged members on 5 July 2015.
7. The proceedings commenced before the PDC on 25 July 2015 and was postponed to 6 September 2015 at the request of the representative of the charged members.
8. On various dates thereafter the disciplinary hearing could not continue due to an unsuccessful plea bargain, sudden illness of the wife of one of the charged members and the unavailability of PDC members who had to attend to other duties in the ANC.

Evaluation by NDCA

9. When considering an application for an extension of time, the NDCA is obliged, in terms of Rule 25.54, to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
10. Furthermore, each charge must be considered separately.

Charge 3

11. Charge 3 against comrade Morgan Ngubane relates to an alleged assault committed during November 2014 when he slapped the branch secretary of Ward 1 Kwa Ximba branch.
12. This charge is unrelated to the other charges; is preferred against one of the comrades only and has no relevance to or common purpose with the other charged members.
13. In the view of the NDCA, this charge should have been preferred against comrade Morgan Ngubane on a separate charge sheet.
14. Thereafter and with the consent of the PDC Chairperson, the charges against comrade Morgan Ngubane could have been brought together for the sake of convenience and to save time and included in a consolidated charge sheet. This is the only way that Charge 3 could have been included in the current proceedings.
15. The current charge sheet makes no reference to this procedure or the intention of the Provincial Presenter to follow this procedure when the disciplinary proceedings eventually got underway.
16. In ANC disciplinary proceedings, procedural fairness is just as important as substantive fairness. This mechanism is designed to protect both the interest of the ANC and charged members and the ANC Constitution sets out this requirement in express and clear terms.
17. The NDCA is of the view that the ANC failed to follow proper procedure in instituting Charge 3 against comrade Morgan Ngubane.
18. Furthermore, even if the ANC sought and obtained the consent of the PDC at the next sitting to follow proper procedure in consolidating the charge sheet to include Charge 3 against the comrade, it would be outside the 3 month time limit prescribed by Rule 25.49 of the ANC Constitution.
19. For these reasons, the PDC's application for an extension of time in respect of Charge 3 is refused.
20. It is still open, however, for the PEC and the branch secretary to institute a criminal charge of assault with the SA Police Services against comrade Morgan Ngubane.

Charge 4

21. Based on substantially the same allegations to support Charges 1 and 2, the PEC decided to charge comrade Sam Duma only for

factional behaviour as provided for in Rule 25 of the ANC Constitution.

22. The specific wording of the charge is that, the charged member *"refused to go into the meeting and participate in the processes of the Organisation. Instead he remained outside with the intention to disrupt the meeting."*
23. In the view of the NDCA, the ANC would have to lead more substantive evidence to prove factional behaviour in order to sustain a conviction for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
24. Moreover, it would not be possible for a member acting alone to engage in factional activity. In the view of the NDCA, factional behaviour is an act of misconduct which can only be committed in concert with other ANC members and/or third parties.
25. For these reasons, the NDCA is of the view that the PDC should not continue with Charge 4 against comrade Sam Duma. Consequently, the PDC's application for an extension of time in respect of Charge 4 is refused.

Charges 1 and 2

26. The charge sheet was served on the charged members on 5 July 2015 i.e. 8 months after the acts of misconduct were allegedly committed.
27. For the purpose of evaluating procedural fairness both to the ANC and the charged members, the NDCA was obliged to take into account Rule 25.49 which provides that, *"notice of the charge shall be delivered to the charged member or his or her representative within 3 (three) months of the date when knowledge of a member's alleged act of misconduct or conviction in a court of law is brought to the attention of the ANC."*
28. The purpose of Rule 25.49 of the ANC Constitution is to give certainty to members who face disciplinary proceedings by the organisation. They should know within 3 months after the alleged commission of an act of misconduct whether or not the organisation intends to discipline them. The Rule is also designed to give the ANC sufficient time to consider the allegations against the charged members, draw up a charge sheet and serve it on the charged members.
29. If the ANC conducts its investigations in a dilatory manner and fails to act timeously within the 3 month time limit, then, on the grounds of procedural fairness, the ANC Constitution gives the benefit to the charged member and precludes the ANC from proceeding any further

with the disciplinary proceedings.

30. In the present case, there is no evidence of dilatoriness on the part of the ANC. The charge sheet was prepared and ready to be served by 28th January 2015 – well within the 3 month time limit prescribed by Rule 25.49.
31. The affidavits submitted by the Provincial Presenter, comrade Ravi Pillay, and the Provincial Secretary, comrade Sihle Zikalala, point to the deep divisions in Ward 1 and an atmosphere of fear which has become such a pervasive feature in this ward that even the Chairperson of the branch was afraid to assist with serving the charge sheet on the charged members.
32. Ultimately, the ANC had to secure the services of comrade Ben Ntuli, the Chairperson of the Peace and Security sub-committee to serve the charge sheet.
33. Charges 1 and 2 are of a very serious nature and the ANC will be severely prejudiced if the charged members were allowed to create a ring of untouchability around themselves and prevent the ANC from exercising its authority over them.
34. Consequently, no fault can be attributed to the ANC for failing to serve the charge sheet within the 3 month time limit prescribed by Rule 25.49.

NDCA Finding

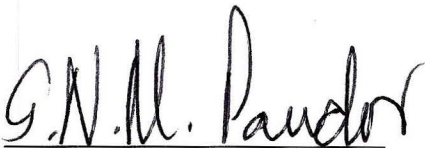
35. The PDC's application for an extension of time in respect of Charge 3 against comrade Morgan Ngubane is refused.
36. The PDC's application for an extension of time in respect of Charge 4 against comrade Sam Duma is refused.
37. The PDC's application for an extension of time in respect of Charges 1 and 2 against all the charged members is granted.
38. The PDC Chairperson is directed to send a strongly worded letter to the charged members to indicate the following:-
 - 38.1 The number of witnesses that will be permitted at the hearing is entirely at the discretion of the PDC Chairperson and the threat by the charged members to call 300 witnesses appears to be a time-wasting exercise which would not be tolerated;
 - 38.2 Once a date has been set by the PDC, the disciplinary hearing will continue even in the absence or unavailability of the representative of the charged members and/or in the absence of

any or all of the charged members.

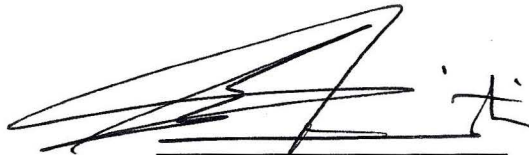
Dated at IRENE, PRETORIA on this 25th day of January 2016



JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



GUGILE NKWINTI
MEMBER
NDCA

NGOAKO RAMATHLODI
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA



SUE VAN DER MERWE
MEMBER
NDCA



PAM TSHWETE
MEMBER
NDCA