

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON 20
APRIL 2017 AT LUTHULI HOUSE, JOHANNESBURG**

Case No. 1/2017

In the matter between:

AFRICAN NATIONAL CONGRESS

And

MARIUS LLEWELLYN FRANSMAN

Charged member

FINDING

Background

1. The charged member is the Provincial Chairperson of the ANC in the Western Cape.
2. On 9 November 2016 the National Disciplinary Committee (NDC) found the charged member guilty on two counts of misconduct and suspended his ANC membership for a period of 5 (five) years.
3. On 1 December 2016 the charged member applied to the National Disciplinary Committee of Appeal (NDCA) to review the decision of the NDC.
4. On 3 April 2017 the NDCA considered the review application and referred

the matter back to the NDC with the following directive:-

- 4.1 That the charged member adduces evidence to support his allegation that the NDC was biased and a judge in its own cause and that he did not get a fair hearing;
 - 4.2 That the two witnesses, which the charged member intended to call, adduce factual evidence to show cause why the Finding of the NDC on Charge 1 should be reviewed and set aside;
 - 4.3 That the NDC convenes the hearing with 21 calendar days: and
 - 4.4 That the charged member, his representative and witnesses rearrange their schedules to make themselves available on the date set by the NDC for the hearing.
5. The NDC set the matter down for hearing on 20 April 2017 and the charged member and his representative were duly notified.
6. At the commencement of the hearing the NDC was informed that on 18 April 2017 the representative of the charged member, comrade Brandell Turner, informed the NDC Note Taker in writing that the charged member decided not to subject himself to any further processes of the NDC and the NDCA and accordingly will not attend the scheduled hearing on 20 April 2017. He likened the proposed rescheduled NDC hearing to a 'kangaroo court which was intent on imposing a factional outcome on the disciplinary process'. The representative went on to state that his client 'will be petitioning the NEC shortly where he will ventilate his case more fully in the hope of receiving a proper constitutional consideration of the issues at hand and a fair outcome.' The letter was read into the Record.

Submission made by the complainant

7. The Chief National Presenter, comrade Uriel Abrahamse, argued that the conduct of the charged member showed further disdain for ANC processes and structures. Since the NDC Finding in November last year the charged member's conduct in public contradicts what he says that he is a disciplined member of the ANC.
8. The Chief National Presenter cited Rules 25.35 and 25.41 of the ANC Constitution to underscore the point that a charged member is entitled to one opportunity only to either appeal or review a finding of a disciplinary committee and that he had exhausted that opportunity when he applied

to the NDCA on 1 December 2016 to review the finding of the NDC. Consequently, he submitted, the Finding of the NDC in this hearing will be final and binding on the charged member to which no further appeal or review will lie.

9. In light of the charged member's continued negative outbursts since the NDC's previous finding in November last year, he submitted that the NDC should review its previous sanction and expel the charged member.

Evaluation by NDC

10. The NDC took cognisance of an article in the New Age newspaper of even date titled, 'Fransman snubs ANC probe', in which the charged member made it abundantly clear that he would not be attending the NDC hearing.
11. After considering the correspondence between the Note Taker and the charged member and his representative to inform them of the details of the hearing, the NDC was satisfied that the charged member was properly and timeously notified of the hearing and consequently, the NDC could proceed with the hearing in his absence as provided for in rule 25.72 of the ANC Constitution.
12. Notwithstanding the charged member's prior notification that he would not be attending the hearing, the NDC is of the view that it is under a constitutional obligation to convene and execute the directive of the NDCA.
13. The NDC is also of the view that the charged member has denied himself a second opportunity to present his case and prove his innocence which he protested publicly after the allegation of sexual assault became public knowledge in January 2016. The Finding of the NDCA was intended precisely to afford the charged member such an opportunity because he had complained publicly that the NDC denied him procedural justice.
14. The NDC expressed its disappointment that the charged member, as a senior leader, misled the public that he was cleared by the NDCA whereas in truth the NDCA in paragraph 11 of its Finding made the point that the referral of the matter back to the NDC was being done to further fulfil a point of procedure and protect the image and reputation of the ANC and not because of any procedural irregularity committed by the NDC or on a point of law raised by the charged member. Also, the ANC did not present any new evidence to make a different finding.

15. The NDC also took into account that the ANC is very dependent on its internal structures such as the NDC and NDCA to maintain discipline in the organisation. The charged member's conduct in undermining these structures, reflected his disdain for such structures and the organisation itself.
16. In all the circumstances, the NDC is satisfied that it has complied with the NDCA directed that the charged member be afforded a further opportunity of procedural fairness and that the charged member has elected not to utilise this opportunity and attend the hearing and present his evidence and that of his witnesses.


NDC Finding


17. The NDC confirms its previous finding that the charged member is guilty on two counts of misconduct and that his membership of the ANC is suspended for a period of 5 (five) years.

Dated at Luthuli House, Johannesburg this 20th day of April 2017


SUSAN SHABANGU
ACTING CHAIRPERSON
NDC

AGREED BY TELECON
EDNA MOLEWA
MEMBER
NDC


LINDIWE SISULU
MEMBER
NDC


JOE PHAAHLA
MEMBER
NDC


FIKILE XASA
MEMBER
NDC

- NDC Chairperson, comrade Derek Hanekom, recused himself