

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 27 FEBRUARY 2016 and 1 APRIL 2016 IN CAPE TOWN**

Case No. 2/2016

In the matter between:-

AFRICAN NATIONAL CONGRESS

Complainant

AND

FAIEZ JACOBS

Charged Member

FINDING

Background

1. On 6 December 2015, the Provincial Executive Committee (PEC) of the Western Cape decided to charge its Provincial Secretary, comrade Faiez Jacobs, for misconduct in terms of Rule 25 of the ANC Constitution. It was alleged that he assaulted comrade Wesley Seale, an ANC employee responsible for policy co-ordination, in the ANC Provincial office on 30 November 2015.
2. The PEC referred the matter to the Provincial Disciplinary Committee for adjudication.
3. On 1 February 2016 the National Officials met with the PEC and the NEC Deployees in the Province to discuss a range of challenges facing the Province.

4. Pursuant to this meeting, the National Officials decided to refer the disciplinary case of comrade Faiez to the National Disciplinary Committee for adjudication.
5. The disciplinary hearing was held on 27 February and 1 April 2016 in Cape Town.
6. The ANC was represented by comrade Uriel Abrahamse in his capacity as Chief National Presenter of the ANC. By agreement with the charged member's representatives, he was assisted by comrade Joseph Thee, the Vice Chairperson of the Dullah Omar Region and the chairperson of its regional disciplinary committee.
7. The charged member was represented by comrades Johnny de Lange and Rafeek Hendricks.
8. The NDC wishes to thank both parties for the preparation of the bundle of documents, including exhibits, and a transcript of the record, all of which were of great assistance to the Committee.
9. The NDC has noted that comrades Wesley Seale and Faiez Jacobs have laid criminal charges against each other with the South African Police Service.

Charges

10. Comrade Faiez was charged with contravening the following sections of Rule 25 of the ANC Constitution:-

Main charge

- 10.1 Contravening Rule 25.17.15 – fighting, assaulting another member or behaving in a disorderly or unruly manner at ANC meetings, assemblies or gatherings and/or disrupting meetings and interfering with the orderly functioning of the ANC. The specific allegation was that on 30 November 2015 and at the Western Cape Office of the ANC, 7th Floor Sahara House, Thibault Square, Cape Town, the charged member assaulted a member of the ANC, namely Wesley Seale, who is also an employee of the ANC, by hitting and kicking him in his face and abdomen and thereby causing him serious bodily injury.

Alternative charges

- 10.2 First alternative charge - contravening Rule 25.17.16.3 for prejudicing the integrity or repute of the Organisation, its personnel or its operational capacity by doing any act which undermines the ANC's

effectiveness as an organisation;

10.3 Second alternative charge - contravening Rule 25.17.4. for behaving in a manner or making any utterance which brings or could bring or has the potential to bring or as a consequence thereof brings the ANC into disrepute; and

10.4 Third alternative charge - contravening Rule 25.17.11 for undermining the respect for or impeding the functioning of any structure or committee of the ANC.

Plea

11. The charged member pleaded not guilty to the charges. It was later submitted that his defence was self-defence.

Summary of evidence led by ANC

12. The ANC called four witnesses and a summary of their evidence is as follows:-

Wesley Seale

13. Comrade Wesley was the policy co-ordinator of the ANC in the Western Cape.
14. On 23 November 2015 comrade Wesley agreed with the Provincial Secretary that he would compile the Provincial Executive Committee Report in preparation for the Provincial Executive Committee which was due to take place in two weeks from then.
15. By virtue of this assignment, his task was to liaise with the Regions and the Leagues and to obtain their reports to prepare the provincial report.
16. He also testified that he was asked to perform certain duties in the Dullah Omar Region although he was not an office bearer in that Region and it was not part of his job description with the ANC.
17. The compilation of the Provincial Report was not within his competency and direct area of responsibility. He was going beyond the call of duty to assist comrade Faiez.
18. He wrote to the Regions to provide information for the report and by 26 November none of the Regions had responded.

19. On 27 November 2015, the charged member contacted comrade Wesley and wanted to know whether he had completed the report.
20. On 30 November 2015, comrade Wesley met the charged member and explained that he was not able to make progress on the report because he was deployed to conduct BGMs on the weekend of 28 and 29 November and the Regions had not provided the required information.
21. Comrade Wesley testified that when he went into comrade Faiez's office, comrade Faiez was finalising some documents with his personal assistant, comrade Elma Geswindt. Comrade Elma went out of the office and left the door open.
22. Comrade Faiez closed the door to his office, stood directly behind him and wanted to know what his problem was.
23. Without provocation, comrade Faiez punched him from behind on the side of his head. The force of the punch dislodged him from his chair and he fell to the floor.
24. He testified further that the charged member kicked him in his stomach and face and he shouted out for help.
25. From his position on the floor, he saw that comrades Elvis and Ruwayda had entered the room.
26. He received medical attention and seven stitches for the laceration to his left ear and laid a charge of assault with the SA Police Service against the charged member.

Under cross-examination

27. He denied that he provoked the charged member at any stage and expressed shock that such an incident could happen in the workplace.
28. The stitches to his left ear were necessary after being kicked by the charged member.
29. There were also bruises on his right arm and neck.
30. He left the employ of the ANC on 29 January 2016.
31. He disputed Exhibit 6 which was a photograph of the layout of the

charged member's office, stating that the furniture was not in those positions on the day of the incident.

32. He said that the doctor's medical report (Exhibit 7) was wrong because it stated that he was bruised on the left arm whereas in his testimony he pointed to his right arm.
33. He was not able to explain omissions and certain discrepancies between the statements he had made to the ANC and the one to the police.
34. The charged member kicked him between three and six times on his face and abdomen while he was on the floor.
35. The report to the PEC was only due in the first week of December, for its meeting on the 6th, and he was not able to understand the charged member's anxiety about the report.
36. The meeting between him and the charged member was short before the charged member assaulted him.
37. He denied that he prodded and pushed the charged member and that the charged member only slapped him. He also denied that he fell backwards against the safe.

Re-examination

38. Comrade Wesley testified that the ANC did not have a social media policy and he was never warned or reprimanded for his postings on Facebook.
39. He was not aware that the charged member had lodged a complaint of insubordination against him with the ANC Human Resources department and denied being in any meeting with a member of the ANC Human Resources department to discuss the issue of insubordination.

Elvis Malibongwe Terblanche Dyongo

40. Comrade Elvis testified that he was employed by the ANC as a security guard since 1996.
41. On 30 November 2015, in the afternoon, he heard screaming coming from comrade Faiez's office.
42. When he entered he found comrade Wesley lying on the floor and crying. He saw blood on comrade Wesley's left ear.

43. He said that comrades Elma and Ruwayda were trying to intervene between comrade Wesley and comrade Faiez. He heard comrade Faiez saying to them, "get out of my office."
44. He said to comrade Faiez that this behaviour does not happen in the ANC office.
45. Comrade Faiez listened to him when he told him to stop. Comrades Wesley, Ruwayda, Elma and him left comrade Faiez's office.
46. He enjoyed good personal relations with comrade Faiez.

Under cross examination

47. In all the time he was employed at the ANC office, he did not witness any assault taking place in that office.
48. When he entered comrade Faiez's office he did not witness any assault.

Ruwayda Mohamed

49. She was employed by the ANC since 2011 as the Provincial Administrator and reports to the Provincial Secretary.
50. On 30 November 2015 she was in the office. She heard a scream for help coming from the charged member's office.
51. I went into the charged member's office and saw that comrade Wesley was lying on the floor and was bleeding.
52. I asked comrade Faiez what happened and he replied that it was none of my business and that I should shut up. He turned to comrade Wesley and said that he was not done with him.
53. As she tried to help comrade Wesley to get up, her hands were full of blood. She went out to wash her hands. Comrade Elma helped comrade Wesley to get up on his feet.
54. She saw no reason for the use of physical violence and everyone in the office was stunned.

Under cross examination

55. She confirmed that by 30 November 2015 no reports had been received from the lower structures. If reports were sent directly to the Provincial Secretary, she would not know.
56. She was not aware of any tension between comrade Wesley and comrade Faiez.
57. Comrade Elma was the first person to go in the Provincial Secretary's office. She came out and shouted that she needed help. I went into the Provincial Secretary's office with her.

Thandi Makivana

58. She is the elected Deputy Secretary and, due to the suspension of comrade Faiez, she is acting as the Provincial Secretary.
59. She has comradely relations with comrade Faiez.
60. She was at home and not in the office on 30 November 2015 when the incident took place.
61. Comrade Wesley sent her a picture on her cell phone of his bleeding ear.
62. She contacted comrade Faiez. He said that he had messed up and lost it. Comrade Wesley did not want to account to him.
63. The incident affected the ANC negatively and brought the organisation into disrepute. She was taken through four newspaper articles and confirmed the negative reports about the ANC.

Under cross examination

64. Comrade Thandi was referred to Exhibit 21 which was a document submitted by comrade Faiez to the PWC on 11 December 2015 in which he tabled alleged acts of misconduct by ANC members, notably comrades Yonela Diko, Bulelwa Ntoyato and Wesley Seale and asked why nothing was done about this complaint. Her response was that these incidents would be dealt with after comrade Faiez's case, which was given priority.
65. She agreed that staff were not normally deployed to conduct political work in the Regions and branches.
66. She denied that she would benefit if comrade Faiez was suspended or

expelled from the ANC.

The ANC closed its case

Case for the charged member

67. The charged member testified and called one witness.

Faiez Jacobs

68. He was a political activist since the age of fourteen and was part of the ANC underground structures.

69. He brought comrade Wesley into the ANC in 2012 and enjoyed good relations with him.

70. After his election as Provincial Secretary in 2015, he got the impression that comrade Wesley was part of comrade Marius Fransman's group and was working against him.

71. Comrade Wesley did not accept him as Provincial Secretary, openly undermined him and questioned his authority.

72. Comrade Faiez complained to the ANC's Human Resources department last year about comrade Wesley's insubordination.

73. When comrade Faiez asked comrade Wesley for the Report, he said it was not part of his job description, he was doing comrade Faiez a favour but has changed his mind.

74. He said that comrade Wesley prodded him in the chest. He instinctively struck out at him and slapped him with his open hand on the left side of his face. He did not hit him with his fist.

75. Comrade Wesley fell against the safe. He did not kick or punch comrade Wesley.

76. Comrade Elma came into his office and was followed by comrade Ruwayda.

77. He did not have an opportunity to give his version to the Provincial Officials nor apologise to comrade Wesley but he did meet with the Chairperson, comrade Marius, who allegedly said that this case was a

Christmas box to him.

78. He was very remorseful and regretted the incident. He was sorry about what happened. His emotions got the better of him. It was a big mistake.

Under cross examination

79. When asked to explain his conduct, he replied that he was provoked by comrade Wesley.
80. When asked whether he apologised, he said he reached out to comrade Wesley through the Catholic Church. He was not given an opportunity to apologise to the ANC.

Elma Geswindt

81. She was the Professional Assistant to comrade Faiez.
82. She had known comrade Wesley since 2009 and had a good relationship with him.
83. She closed the door after she led comrade Wesley into comrade Faiez's office.
84. She was the first person to enter comrade Faiez's office and saw comrade Wesley on the floor with a few drops of blood on the side of his face.

Under cross examination

85. When asked whether she heard anything from comrade Faiez's office, she replied she heard comrade Wesley say twice that he was not accountable to the Provincial Secretary.

The charged member closed his case

Argument

ANC

86. The ANC argued that the defence of private defence put up by comrade Faiez should be rejected because the force he used was disproportional to any threat he may have faced and his life, limb or property were not under threat.

87. He assaulted comrade Wesley without provocation.
88. Since only comrades Wesley and Faiez were in the room, the NDC would have to exercise its discretion and decide which version to accept.
89. His conduct brought the ANC into disrepute.
90. Comrade Faiez was not remorseful.
91. Assault was a very serious transgression of the ANC's code of conduct and comrade Faiez should be expelled for his behaviour.
92. The ANC also argued that comrade Faiez was defiant because he participated in the voter registration weekend in March 2016, although the NWC resolved on 27 January 2016 that comrade Faiez's suspension should remain in force until the finalisation of the disciplinary proceedings against him.

Charged member

93. The charged member set out the principles of private defence and argued that the charged member acted in self-defence and in the circumstances of the case, the defence of self defence or private defence constituted a complete defence and comrade Faiez should be acquitted.
94. He also argued that provocation, although it diminished responsibility, did not wipe out the charged member's liability completely. In short, it was a mitigating factor.
95. The ANC did not have jurisdiction to charge comrade Faiez with assault under Rule 25.17. 15 because it was a spat between two members and was not embraced by the rule which was limited to fighting and assault at ANC meetings.
96. In evaluating the evidence, the NDC should be mindful of the cautionary rule when dealing with the evidence of a single witness viz. comrade Wesley.
97. Comrade Wesley's was not a credible witness because he made contradictory statements to the ANC and the SA Police Service and the doctor's reports were contradictory because he sought to exaggerate his injuries and was not able to explain the contradictions under cross examination.

98. Insofar as the alternative charge that the newspaper reports brought or had the potential to bring the ANC into disrepute, the charged member conceded that he could be found guilty of bringing the ANC into disrepute because of the wide ambit of the rule in the ANC Constitution relating to disrepute.
99. He did argue, however, that the publication of the incident was done by comrade Wesley and therefore blame should not be apportioned to him.
100. He also argued that with respect to all the charges, expulsion was not an appropriate sanction.

Evaluation by the NDC

101. From an organisational perspective, the NDC took judicial notice that the tension among the Provincial leaders and Provincial office staff at the disciplinary hearing was palpable. It appeared to the NDC that the discipline among the cadres had broken down. In the view of the NDC, these internal tensions, coupled with structural weakness, is probably responsible for the perception in the public domain that the ANC's Western Cape Provincial structure lacks unity of purpose and is a collection of different groups or factions.
102. It is common cause that comrade Faiez assaulted comrade Wesley and that comrade Wesley suffered a laceration and received stitches and medical treatment as detailed above.
103. With regard to the argument that comrade Faiez defied his suspension and circulated pictures on social media of his participation in the voter registration weekend, the view of the NDC is that suspension of membership in the ANC attaches to a member and not to a position. It follows that comrade Faiez should not have participated in ANC activities during the voter registration weekend.
104. However, the fact that he sought legal advice and was in the company of NEC members does not smack of defiance or contempt for the decision of the NWC. In the view of the NDC; it was a case of an over-enthusiastic member.
105. Comrade Faiez testified that he complained to the ANC Human Resources department about comrade Wesley and sought advice from the organisation.
106. With the consent of both parties, the NDC approached comrade

Khawulizile Noruka of the ANC Human Resources department at Luthuli House to establish whether comrade Faiez complained to the ANC in October 2015 about the trust and working relationship between him and comrade Wesley and sought urgent advice from the ANC (see Exhibit 14).

107. Comrade Khawulizile Noruka, in his written response, marked Exhibit 28, confirmed that comrade Faiez complained about comrade Wesley to the Human Resources department of the ANC in writing on 28 October 2015 and verbally to comrade Khawulizile in September 2015 when he was in Cape Town to conduct employment interviews.
108. From this information the NDC concludes that comrade Faiez did raise his concerns about comrade Wesley with the ANC and sought advice from the organisation, prior to the incident, as to how the matter should be dealt with. The NDC also concludes that comrade Wesley did not take instructions from comrade Faiez as the Provincial Secretary.

Argument that Rule 25.17.15 does not apply to the assault

109. The charged member argued that Rule 25.17.15 does not cover an altercation between two members and therefore the main charge was not a competent charge.
110. Prior to amendment at the 53rd National Conference at Mangaung in 2012, Rule 25.5 (p) of the ANC Constitution provided that, “fighting or behaving in a grossly disorderly or unruly way” was an act of misconduct.
111. At the Mangaung Conference, the ANC Constitution was amended to regulate organisational discipline between the ANC and its members. In other words, there must be a causal connection between the alleged misconduct of a member and the functioning of the ANC. This means that the act of misconduct of fighting and assault had to take place at an ANC meeting, gathering or assembly to be brought within the ambit of Rule 25 of the ANC Constitution. Consequently the ANC’s jurisdiction was restricted. As such, the ANC would not have jurisdiction over acts of fighting or assault between two ANC members in their home or at a soccer match.
112. The current rule 25.17.15 provides that, *“fighting, assaulting another member or behaving in a disorderly or unruly manner at ANC meetings, assemblies or gatherings and/or disrupting meetings and interfering*

with the orderly functioning of the ANC” constituted misconduct.

113. The NDC agrees with the charged member’s interpretation of Rule 25.17.15 of the ANC Constitution.
114. Applying this interpretation to the facts of the case, gives rise to the conclusion, in the view of the NDC, that the meeting between comrades Faiez and Wesley was an ANC meeting because they were meeting at the ANC Provincial office to discuss ANC business viz. the production of the Report for the PEC. It was a formal meeting between the Chief Provincial Administrator and his subordinate.
115. Consequently, the charged member’s argument that the ANC did not have jurisdiction to discipline him for assaulting comrade Wesley must fail.

Argument that the NDC should apply the cautionary rule

116. Disciplinary committees of the ANC make decisions and findings on the principles of fairness and equity and on a balance of probabilities.
117. The charged member’s argument is based on the assumption that comrade Wesley was the only witness and that the admissibility of his evidence should be treated with caution.
118. The cautionary rule normally applies in criminal charges where the onus to prove the guilt of an accused person has to be beyond a reasonable doubt. This burden of proof is intended to remind judicial officers that they should be reluctant to convict an accused person if there is only one witness and there are doubts when assessing the evidence of that single witness.
119. In the view of the NDC, the cautionary rule has no application in the present case because six witnesses including the charged member and his witness testified.

Argument that the charged member’s defence of private defence should be upheld

120. The charged member set out the principles and requirements that should be met for the defence of private defence to succeed.
121. Some of the essential elements include that the attack must be

unlawful, and the private defence must be to protect life, limb or property.

122. The defence of private defence becomes applicable if the charged member, in the face of an imminent attack, was prevented from fleeing and therefore had to defend himself. No such evidence arose in this case.
123. Comrades Wesley and Faiez had given almost mutually exclusive accounts of what transpired in the office of the Provincial Secretary that day and, in the view of the NDC, it would not be fair and equitable to accept the version of any one party to the exclusion of the other.
124. In the absence of direct evidence, the NDC has to resort to secondary and corroborative evidence to establish whether the ANC has proved its case on a balance of probabilities or whether the defence of the private defence should be upheld and the charged member acquitted.
125. In the view of the NDC, the evidence tendered by comrade Elvis probably stands as the most reasonable secondary evidence to establish that the charged member exceeded the bounds of self defence.
126. Comrade Elvis testified that when he entered the room, comrade Wesley was lying on the floor crying and comrades Ruwayda and Elma were trying to intervene between comrades Faiez and Wesley. He spoke directly to comrade Faiez to stop and comrade Faiez listened to him. This version is corroborated by the evidence of comrade Ruwayda.
127. The charged member did not challenge the evidence of comrade Elvis. In the view of the NDC this secondary evidence offers the most probable and reasonable account of what happened in the aftermath of the meeting between comrades Faiez and Wesley.

See: pages 140 – 141 of Record

128. Based on this secondary and corroborative evidence, the NDC finds that comrade Faiez fought with and assaulted comrade Wesley and did not act in self defence.
129. Consequently, the NDC finds that the ANC has established the causal connection between the evidence tendered and the contravention of Rule 25.17.15 and proved its case on a balance of probabilities.

130. Comrade Faiez is found guilty on the main charge.

The alternative charge of bringing the ANC into disrepute

131. Comrade Thandi provided compelling evidence that the charged member's conduct brought the ANC into disrepute.

132. The ANC did not lead evidence on the first and third alternative charges.

133. The general rule in proceedings of tribunals and courts is that once a finding is made on the main charge, the alternatives fall away. Any other approach would result in double jeopardy for the charged member or accused person and would detract from the principles of fairness and equity.

134. In the charge sheet, the charge of bringing the ANC into disrepute was present as an alternative to the main charge. This was confirmed by the Chief National Presenter during argument.

135. Pursuant to a guilty finding on the main charge, the alternative charges will fall away and not be considered.

Sanction

136. In determining an appropriate sanction, the NDC took into consideration the following factors:-

136.1 the seriousness of the misconduct;

136.2 the interest of the ANC and its membership;

136.3 the interest of the member who was assaulted; and

136.4 the interest of the charged member.

137. The ANC is a voluntary political organisation and persons join the organisation in the expectation that their physical safety would be respected and protected.

138. The ANC has an obligation to protect the reputation of the organisation

in the interest of the organisation and its members and to act with fairness, particularly with reference to paragraph 64 above, which must be resolved as recommended in paragraph 147 below.

139. Assaulting another member is a very serious act of misconduct in the ANC Constitution.

140. An act of assault committed in the workplace is seen as very serious misconduct. In the view of the NDC this is primarily because of the harm that is or could be caused to workplace harmony.

141. In June 2014, the NDC suspended comrade **Sabulone Mphofela** for 18 months for assaulting a female member who was deployed to facilitate the BGM at the branch which he chaired. The charged member was also required to vacate his position as a local councillor. The charged member instituted a High Court application against the ANC for his reinstatement which failed and was unrepentant for his conduct in the disciplinary proceedings before the Regional Disciplinary Committee in Limpopo.

142. In the present case, the NDC has taken into account the following distinguishing factors from comrade Sabulone's case:-

142.1 The charged member was remorseful for his conduct;

142.2 The charged member was about 6 months into his position as Provincial Secretary. The sheer pressure and workload was in all likelihood a contributory factor to explain his conduct;

142.3 His perception that comrade Wesley provoked him and was out to undermine him, although a subjective view, probably contributed to his actions. The NDC also noted as a fact that he reported the matter to the Human Resources department of the ANC;

142.4 He reached out to apologise to comrade Wesley;

142.5 The statement by comrade Wesley that he was going beyond the call of his duties in producing the report required of him by the charged member served to incense and provoke the charged member and contributed to his action;

142.6 The charged member started out in politics at the tender age of fourteen and knows no other political home; and

142.7. The charged member is capable of being rehabilitated.

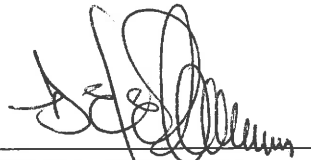
143. For these reasons, the NDC is of the view that expulsion or outright

suspension would be harsh and inappropriate sanctions in the circumstances of this case.

NDC Finding

144. The charged member is found guilty of contravening Rule 25.17.15 of the ANC Constitution for fighting with and assaulting comrade Wesley Seale by punching him when they met to discuss ANC business at an ANC meeting on 30 November 2015 at the ANC Provincial Office, Sahara House, Thibault Square, Cape Town.
145. The charged member is suspended for 18 months.
146. The operation of the 18 month sanction, referred to above, is suspended for a period of 3 years, subject to the condition that should the charged member be found guilty of *any* act of misconduct specified in Rule 25.17 of the ANC Constitution during the next 3 years, the 18 month sanction shall become operative and the charged member shall be required to vacate his position as the Provincial Secretary of the ANC in the Western Cape.
147. The NDC recommends that the Western Cape Provincial Executive Committee, with the support of the National Executive Committee deployees, enlists the help of religious groups and professionals in the Province to reinforce the unity and strengthen governance in the organisation and to help re-dedicate the Provincial structure to the character, culture, values and purpose which held the ANC in high esteem over the past one hundred years of its existence.

Dated at Cape Town this 6th day of April 2016



EDNA MOLEWA
MEMBER
NDC



SUSAN SHABANGU
ACTING CHAIRPERSON
NDC



JOE PHAAHLA
MEMBER
NDC