

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 16 MAY 2015 AT ST. GEORGE HOTEL, IRENE, PRETORIA**

Case No. 3/2015

In the application of:-

**ABRAHAM MASHISHI
APSON MAKANG
SAM MASANGO**

**1st Applicant
2nd Applicant
3rd Applicant**

APPLICATION IN TERMS OF RULE 25.20.2 OF THE ANC CONSTITUTION

Background

1. The Applicants, members of the Tshwane region, were charged for misconduct in September 2014 in terms of Rule 25 of the ANC Constitution.
2. On 3 occasions during November 2014 the Regional Disciplinary Committee (RDC) did not quorate and the hearing was postponed to 19 January 2015.
3. On 19 January 2015 the RDC could not proceed with the hearing because the chairperson was involved in a motor car accident and did not attend.
4. The disciplinary hearing was only able to get underway on 26 January 2015. The charged members pleaded to the charge and requested further particulars. The case was adjourned to 6 February 2015.

5. The disciplinary hearing could not proceed on the adjourned date of 6 February 2015 because the ANC had not provided the further particulars that were requested.
6. On the adjourned date of 19 February 2015, the disciplinary hearing had to be postponed because there was no electricity due to load-shedding.
7. On 6 March 2015, when the hearing was due to continue, the applicants applied for the proceedings to be stopped and the charge withdrawn because more than 6 months had passed and the disciplinary proceedings were not finalised.
8. The RDC dismissed the application without providing reasons. Hence, this application to the NDC.

Applicants' arguments

9. The Applicants advanced the following two arguments:-
 - 9.1 That the NDC has jurisdiction to consider the application in terms of Rule 25.20.2 of the ANC Constitution.
 - 9.2 That 6 months had passed after the charge sheet was served and the disciplinary proceedings were not finalised.


Respondent's response

10. At the request of the NDC, the regional secretary of the Greater Tshwane Region informed the NDC in writing on 5 May 2015 that on or about 20 April 2015, the parties presented their closing arguments to the RDC and the RDC Finding is imminent.

Evaluation by NDC

That the NDC has jurisdiction to consider the application

11. Rule 25.20.2 gives the NDC jurisdiction to act as an appeal committee in respect of cases adjudicated upon by a Provincial Disciplinary Committee.
12. The current disciplinary hearing is currently being adjudicated by a regional disciplinary committee and has not been finalised.

13. On this ground the NDC has no jurisdiction to hear the application and it should be dismissed.
14. However, the NDC is of the view that the applicants feel aggrieved because of the delays occasioned and are seeking redress. In such event the applicants should have brought their application in terms of Rule 25.52 which provides:-
- “Where a BDC, RDC, PDC or NDC unduly delays the commencement or finalisation of disciplinary proceedings within the time limit referred to in Rule 25.50 above, the charged member may apply for the charge to be withdrawn or proceedings to be stopped, as the case may be.”***
15. For the sake of fairness and equity, which are cornerstones of the ANC Constitution, the NDC has decided to consider this application as if it was instituted in terms of Rule 25.52. In such event the NDC would have the necessary jurisdiction.
16. A second reason for the NDC’s decision to hear this application is that the NDC would not be involved in the further prosecution of this matter. If the Applicants are found guilty by the RDC and they decide to appeal, such appeal would lie to the PDC and would be final. The NDC would have no further role in this matter. 

That the disciplinary proceedings were not finalised within 6 months

17. The act of misconduct was allegedly committed on 1 August 2014 and the charge sheet was served on the Applicants between 1 and 3 September 2014. The delay of one month can be attributed solely to the Respondent.
18. Rules 25.48 and 25.50 provide that disciplinary proceedings should be finalised within a reasonable time considered to be 6 months from the date the charge sheet was delivered to the charged member.
19. A period of 9 months has passed (1 September 2014 to end of May 2015).
20. However, the delay of about 3 months due to the failure of the RDC to quorate and the car accident of the Chairperson cannot be attributed to the Respondent.
21. Furthermore, the disciplinary hearing could have been finalised in March 2015 had the Applicants not instituted an application to dismiss the

charge.

22. The reluctance of the Applicants to proceed with the hearing in February 2015 because further particulars were not provided also contributed to the delay.
23. The Gauteng PDC decision in the disciplinary case of *Mluleki Nkosi and Others*, upon which the applicants rely, is distinguishable from the present case. In that case the PDC found that the delay was occasioned substantially by the dilatory and time-wasting attitude of the presenters of the Respondent.
24. In the present case, the delay can be attributed mainly to the failure of the RDC to quorate. In the absence of a quorum of the RDC, the disciplinary proceedings could not have proceeded. In such event, it would be unfair to prejudice and penalise the Respondent and stop the proceedings against the Applicants.
25. It appears from the written response of the Respondent that the Finding of the RDC is imminent.

NDC Finding

26. For the above reasons, the NDC finds that the delay in finalising the proceedings within 6 months cannot be attributed solely to the conduct of the Respondent and the application is dismissed.

Dated at St. George Hotel, Irene, this 16th day of May 2015



LINDIWE ZULU
MEMBER
NDC



DEREK HANEKOM
CHAIRPERSON
NDC



FIKILE XASA
MEMBER
NDC

Shabangu
SUSAN SHABANGU
MEMBER
NDC