

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, IRENE, PRETORIA

ON FRIDAY 27 NOVEMBER 2015

CASE NUMBER: 5/2015

In the application of:

The KZN PDC Chairperson Applicant

In the matter between

AFRICAN NATIONAL CONGRESS Complainant

AND

Sifiso Mkhize

Nkosimpendulo Dlamini

Bongumuso Mkhize

Stanley Moonsamy

Mwolisi Ndzimbomvu

Application Granted

Reason appear in attached ruling

Members Present:

- | | |
|-----------------------|-------------|
| 1. Cde Jeff Radebe | Chairperson |
| 2. Cde Naledi Pandor | Member |
| 3. Cde Gugile Nkwinti | Member |

J. Radebe

Cde Jeff Radebe
NDCA Chairperson

African National Congress



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**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**SIFISO MKHIZE
NKOSIPHENDULE DLAMINI
BONGUMUSA MKHIZE
STANLEY MOONSAMY
MWOLISI NDZIMBOMVU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 5 November 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 abovenamed charged members.

Background

2. On 23 February 2015 the charged members allegedly led a march to the provincial ANC office and disrupted the provincial executive committee meeting which was in progress and uttered words or made statements that were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson.
3. They were subsequently charged for contravening the following provisions of Rule 25 of the ANC Constitution:-
 - 3.1 Rule 25.17. 4 - bringing the ANC into disrepute;
 - 3.2 Rule 25.17.6 – behaving in a manner which provokes or is likely to provoke or has the potential to provoke division or impact negatively on the unity of the ANC;
 - 3.3 Rule 25.17.9 - participating in organised factional activity;
 - 3.4 Rule 25.17.11 – impeding the functioning of any structure or committee of the ANC;
 - 3.5 Rule 25.17. 15 - disrupting meetings or interfering with the orderly functioning of the ANC.
4. The proceedings commenced before the PDC 25 April 2015 and was postponed.
5. At subsequent PDC hearings on 6 June, 26 July and 12 September, the proceedings could not be finalised due to the unavailability of the representative of the charged members.

Evaluation by NDCA

6. 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.

7. On 23 April 2015 the charged members requested further particulars to the charges, in particular they wanted to know what were the words they allegedly uttered which were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson.
8. The ANC in its reply stated that the words uttered were a matter of evidence but went to state that the charged members, inter alia, howled, 'No' and 'that one has betrayed the struggle'.
9. One of the fundamental principles of a fair trial is the charged member should be given sufficient particulars of the charge to enable him or her to plead to the charges.
10. In the present case, the charged members were not informed what were the words uttered by them against the provincial leadership or the provincial chairperson in particular that would constitute a breach of Rule 25.17 of the ANC Constitution.
11. As such, the charged members would not have been able to prepare adequately for their disciplinary hearing or understand what act of misconduct in Rule 25.17 they could have been charged for.
12. The NDCA also finds that the facts of the charge (disrupting a PEC meeting) do not provide any basis or constitute a prima facie case for the members to be charge for engaging in factional activity or provoking divisions or impacting negatively on the unity of the ANC.
13. In the view of the NDCA, the ANC would have to lead more substantive evidence to sustain a conviction for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
14. Consequently, the NDCA is of the view that the PDC should not continue with the two charges for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
15. On the last three sittings, the PDC could not continue with the hearing due to the unavailability of the representative of the charged members.
16. Consequently, no fault can be attributed to the PDC for failing to finalising the disciplinary hearing within the prescribed time stipulated in the ANC Constitution.

NDCA Finding

17. The PDC should withdraw the charges for contravening Rule 25.17.6 and 25.17.9 of the ANC Constitution.

18. The charge that the comrades uttered derogatory words which were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson should also be withdrawn.
19. Insofar as the remaining charge is concerned, the NDCA is satisfied that a prima facie case exists for the PDC to continue with the charge that the charged members disturbed or disrupted a provincial executive committee meeting. For this purpose, the PDC's application for an extension of time is granted.
20. The PDC Chairperson is directed to send a strongly worded letter to the charged members that the ANC would not tolerate their dilatory conduct and that should their representative not appear on the next date of the hearing, the proceedings will continue in the absence of their representative.

Dated at Irene, Pretoria on this 27th day of November 2015

Sgd. J. Raडेbe

**JEFF RADEBE
CHAIRPERSON
NDCA**

Sgd. N. Pandor

**NALEDI PANDOR
MEMBER
NDCA**

**PRAVIN GORDHAN
MEMBER
NDCA**

**NGOAKO RAMATHLODI
MEMBER
NDCA**

Sgd. G. Nkwinti

**GUGILE NKWINTI
MEMBER
NDCA**

**SUE VAN DER MERWE
MEMBER
NDCA**

**PAM TSHWETE
MEMBER
NDCA**