

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON 3, 4, 8
AND 9 NOVEMBER 2016 AT GOOD HOPE BUILDING, PLEIN STREET,
CAPE TOWN**

Case No. 5/2016

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 27 January 2016 the National Working Committee (NWC) resolved that the charged member should step down as Chairperson of the ANC in the Western Cape until:-
 - 2.1 the South African Police Service had taken a final decision on the criminal charge preferred against him on 8 January 2016 at Rustenburg; and

2.2 the Integrity Commission had investigated the case against him and made its Findings.

3. On 4 July 2016 the Integrity Commission made its Findings and recommended to the National Working Committee (NWC) that the charged member be disciplined by the National Disciplinary Committee. The NWC accepted the recommendation.
4. After experiencing some difficulty in attempting to serve the charge sheet on the charged member personally whilst in Cape Town, the Chief National Presenter, comrade Uriel Abrahamse, eventually emailed it to him on 22 August 2016. Similarly, attempts by the NDC to adjudicate the matter during September and October did not materialise because the charged member was not available in one instance and in the other he was awaiting a ruling from the NDCA on an application he had made to quash the charges.
5. On 15 September 2016 the NDCA dismissed the application to set aside the suspension and advised the charged member to place his arguments regarding the quashing of the charges before the NDC as the appropriate forum to consider and finalise them.

Charges

6. The ANC preferred 3 charges against the charged member.
 - 6.1 **Charge 1** – Contravening Rule 25.17.7 read with 25.17.4 of the ANC Constitution for abuse of office to obtain sexual or any other undue advantage from one Louisa Wynand (on or 5 January 2016) to engage in sexual intercourse with her without her consent and against her will. The alternative charge was a contravention of Rule 25.17.8 read with Rule 25.17.4 as contained in the charge sheet (see page 3 of file).
 - 6.2 **Charge 2** – Contravening Rule 25.17.4 for issuing a media statement and addressing a press conference on or about 13 July 2016 where he made utterances which brought the ANC into disrepute and cast aspersions on the organisation, NWC, Secretary General and the integrity Commission.
 - 6.3 **Charge 3** – Contravening Rule 25.17.16.3 in that on or about 25 July 2016 he entered into baseless and frivolous litigation against the ANC in the Western Cape High Court.

7. Full details of the charges are set out in pages 2 to 8 of the file.

Pre-hearing conference

8. The NDC directed that a pre-hearing conference be held between the ANC's Chief National Presenter, the charged member and his representative to streamline issues and a meeting was set for 1 September 2016 in Cape Town.
9. On 26 August, the charged member informed the NDC Note Taker that he was consulting with his lawyer only on 2 September 2016 and for that reason he could not attend the meeting on 1st September.
10. A second pre-hearing conference was scheduled for 19 September 2016 in Cape Town. The charged member and his Representative were present but the Chief National Presenter had a problem with his flight arrangements and could not attend.
11. A third pre-hearing conference, planned to be held in Johannesburg after 24 October when the charged member returned from abroad, did not materialise because the Representative was experiencing difficulty in contacting the charged member.

Disciplinary Hearing - 3, 4, 8 and 9 November 2016 at Good Hope Building, Plein Street, Cape Town

Representation of the parties

12. The ANC was represented by comrade Uriel Abrahamse, the Chief National Presenter and the charged member by comrade Brandell Turner, a member of the ANC in good standing.
13. The charged member elected not to attend the disciplinary hearing and chose rather to release a media statement (see pages 98 to 99 of file).

Preliminary Proceedings

14. The charged member's Representative informed the NDC that he was given a limited mandate viz. to apply for a postponement of the hearing and to raise certain points *in limine*. Once these matters were dispensed with, he had no further mandate or reason to remain in attendance at the hearing.

15. The Representative handed in a document which contained the arguments and a one page statement made by the charged member which the Representative said was emailed to him by the charged member that morning. The NDC accepted these documents and numbered them as pages 74 to 89 in the file of documents.
16. After argument on the postponement of the hearing, the NDC ruled that the hearing would continue.
17. The key aspects of the ruling were:-
 - 17.1 Rule 25.71 of the ANC Constitution makes it mandatory for a charged member to appear at the venue and at the specified date and time to answer the charges against him.
 - 17.2 The charged member was not under any incapacitation and elected not to attend the hearing.
 - 17.3 By electing not to attend the hearing, the charged member missed an opportunity to take the NDC into his confidence and make out his case on both the procedural and substantive aspects.
 - 17.4 His stated reason for not attending the hearing was his contention that the charges against him were tainted by a factionalist agenda aimed at removing him from his position as the elected chairperson of the ANC. He maintained that the disciplinary hearing was being used as part of this nefarious process. These reasons detracted from his professed loyalty to the ANC and his view that he was a disciplined cadre of the Movement.
 - 17.5 The NDC was satisfied that all relevant documents and information necessary to enable the charged member to plead to the charges and prepare his defence were given to him timeously and prior to the hearing.
 - 17.6 The NDC decided to proceed with the hearing in terms of Rule 25.72 of the Constitution.
 - 17.7 The points *in limine* were not considered because the charged member was not present to confirm what was stated in the document. His Representative indicated that he had a limited mandate and could not deal with any matter raised by the NDC at the hearing in relation to the points *in limine*.

18. After the NDC turned down the charged member's request for a postponement of the hearing, the charged member's Representative left the hearing and the Chairperson directed the ANC to proceed with its case.
19. On 7 November 2016 the charged member's Representative made inquiries with the Note Taker about the case and was given a report on the process and was informed that the ANC was presenting its closing argument at 19h30 on 8 November 2016.

Evidence led by ANC

20. The ANC called 3 witnesses and a summary of their evidence is set out below.

Louisa Wynand

21. On or about 23 October 2015 she met the charged member at a wine estate in Stellenbosch where she worked.
22. A month later, the charged member returned to the wine estate and made a firm offer of employment for Louisa to work at the Kings and Cape Hotel in Cape Town in which he has an interest.
23. She was offered R3000 per month more than what she was earning at the wine estate with the additional offer of accommodation.
24. During the interview process which took place at the Kings and Cape Hotel in Cape Town on 3 January 2016, the charged member informed her that he was the Chairperson of the ANC in the Western Cape.
25. The charged member employed her and the date of commencement was 4 January 2016.
26. He showed her around at the Kings and Cape Hotel and asked her to give some thought as to how the decor could be improved.
27. The charged member insisted that she go with him to Rustenburg to attend an ANC celebration and informed her that the dress code was sensual.
28. The charged member asked her about her personal life and told her not

to tell her boyfriend that she was working for him.

29. She drove from Cape Town with the charged member and a certain Donovan Cloete whom she had met for the second time. At about 19h00 they picked up a certain Majiet in Worcester.
30. They made two stops. At the first stop, the charged member came to sit next to her in the back seat and one of the others drove.
31. The charged member constantly wanted to hold her hand and at one stage put his hand on her thigh.
32. She pulled down the arm rest between them and told him to stop because it made her feel very uncomfortable.
33. They made a second stop on the roadside for a comfort break.
34. They arrived in Kimberley at 02h19 and booked in at the Flamingo Casino Road Lodge.
35. Only two rooms were booked. She was under the impression that one of the rooms was for her exclusive use.
36. She became very concerned when she realised that the charged member would be sharing a room with her.
37. She asked the charged member for a cell phone charger and he left the room to find one.
38. She took a shower in his absence and got into bed.
39. The charged member returned to the room and said he could not find a charger.
40. He took a shower and came out dressed only with his boxer shorts.
41. She noticed that the charged member had 'vleis mosies' on both sides of his body.
42. When he got into bed, she moved to the furthest part of the bed.
43. He pulled her close to him, wrapped his legs around hers, fondled her breasts and rubbed himself against her until he fell asleep.

44. Despite her protestations to stop, he continued to fondle and rub himself against her.
45. She did not sleep at all and sat up until daybreak.
46. She left the room to look for a cell phone charger. She did not find one.
47. She had some coffee and then returned to the room.
48. She found the charged member awake and confronted him about what he was doing. He laughed and said that she should not let her personal issues become part of the job.
49. He said he was just petting and that other girls who accepted this behaviour went on to become successful. If she also wanted to become successful, that was the route to go.
50. At 10h00 that morning they left Kimberley and drove to Rustenburg. She did not tell the others about what had happened in the room because she could not trust them.
51. She asked Donovan and Magiet for a charger and discovered that they did have a charger which she borrowed to charge her phone.
52. She did not want to worry her parents. So she sent an SMS to Ryan Landon, an ex policeman and close family friend.
53. As they drove out of Kimberley, the charged member joined her in the back seat and wanted to hold her hand again. Once more she resisted.
54. At a garage, she bought two magazines and preoccupied herself with reading for the rest of the trip.
55. In Rustenburg they went to the house of a certain Chauke where they were supposed to stay. Chauke told her that the charged member was an important Politician and had arranged a meeting between the leader of the 28s gang and President Zuma. Chauke also told her that the charged member was very wealthy. [The NDC identified him as comrade Patrick Chauke, a Member of the National Assembly].
56. At about 19h00 that evening they went to Sun City. She discovered that the charged member had booked one room. She suspected that once again she could be forced to share a room with the charged member.

Out of concern, she sent an SMS to her friend Ryan seeking help. He advised her to report the matter to the security at Sun City.

57. The Sun City security took her to the SA Police Service, deployed at Sun City to protect the guests who were resident at the hotel and who were attending the ANC celebration.
58. The SA Police Service told her they were deployed there as VIP protection and that she should go to the Sun City Police Station.
59. At the Sun City Police Station she laid a charge and started writing her statement. At that point, Donovan and Chauke arrived and Donovan accused her of stealing his cell phone. She was searched and no cell phone was found. Chauke said she should have a safe trip home.
60. Due to harassment by Donovan and Chauke and the fact that the Sun City Police Station is small (it is a satellite station with no privacy), the police on duty moved her to the Phokeng Police Station where she finalised her statement and arranged with her mother for her return to Cape Town. She spent yet another sleepless at the Phokeng Police Station being petrified.
61. The next day her mother bought her a plane ticket and a Police Colonel drove her to O R Tambo International Airport.
62. On 8 January 2016 the charged member called her but she did not take his call.
63. She sought psychological help and spent 2 days at the Crescent Clinic in Cape Town. She had 3 sessions with a psychologist and was diagnosed with Post Traumatic Stress Disorder.
64. After telling her parents, she told her boyfriend about her ordeal.
65. Some time in February, she was invited by Minister Angie Motshekga to her home. John Pretorius drove her there. Angie listened to her and gave her support and arranged that she receive psychological help.
66. She has not been able to secure employment after this incident because many of the prospective employers told her they did not want to be involved because her ordeal was in the public domain.

67. She was interviewed by the Integrity Commission on 2 April 2016 at Lilliesleaf in Johannesburg.

68. She is currently assisting her father in his business.

Mrs Alba Wynand

69. She is the mother of Louisa.

70. Prior to this ordeal Louisa was a bubbly, outgoing person who loved singing and sport and did live shows.

71. Louisa enrolled at Stellenbosch University and wanted to become a social worker.

72. After Ryan came to her house and explained what had happened, she arranged a flight for Louisa to return to Cape Town.

73. Louisa told her that the charged member wanted her to do things she was not comfortable with.

74. The family fetched her at Cape Town airport. She was numbed and broke down and cried when she saw them.

75. Louisa is a totally different person, sits in her room alone and, in her view, has undergone a personality change.

76. Louisa now has a strained relationship with her brothers and is scared to be in the company of men to the extent that she sees the charged member in her father.

77. Louisa was engaged to be married before the incident but her boyfriend terminated the relationship about 2 months ago.

78. The family has received threatening phone calls and reporters have called her home and came to her place of employment.

79. The family is highly strained and many of their neighbours have begun to act differently towards them.

Zizi Kodwa

80. He is the national spokesperson of the ANC.

81. He is familiar with the media statements issued by the charged member and made reference to the statements issued by the charged member in July and his statement issued during the disciplinary hearing on 3 November 2016.
82. By his conduct, the charged member has questioned the authority of the ANC, cast aspersions on the independence of the NDC and created the impression that there is something untoward in the ANC towards him.
83. The charged member caused reputational damage to brand ANC because he created suspicion about the ANC and the impression that the ANC was fraught with problems and was not able to solve them. These conspiracy theories find resonance in the public space and are harmful to the ANC.
84. The charged member's intention to shift the focus away from the charges was part of a deliberate political ploy to delegitimize the structures of the ANC, particularly the National Disciplinary Committee and the Integrity Commission.
85. The charged member portrays the Secretary General as the leader of a factionalist group that is using ANC structures for personal reasons.
86. The charged member undermines the concept of a loyal disciplined cadre because he ventilates issues outside the ANC.
87. The charged member's public utterances have created divisions among members. He had spoken to the charged member to stop his actions but the charged member continued.
88. To mitigate the damage to the ANC he is now beginning to respond to media queries about what the charged member is saying publicly. He does not consider this to be appropriate but is put in a position by the media where he is forced to respond.
89. The charged member is not just an ordinary member but is a leader and should act more responsibly.
90. After these witnesses testified, the ANC closed its case and the matter was adjourned until 8 November for closing argument.

The ANC closed its case

Closing arguments

91. The Chief National Presenter also handed in 2 emails from comrades Donovan Cloete and Magamiet Majiet and left it to the discretion of the NDC as to how the emails should be dealt with. These comrades travelled with the charged member and Louisa Wynand to Rustenburg.
92. On 8 November the ANC presented its written arguments and called for a guilty finding on all 3 charges and proposed that the charged member's membership with the ANC should be terminated with immediate effect.
93. The NDC decided to deal with the emails during its deliberations.

Evaluation by NDC

94. On the admissibility of the emails, the NDC ruled that whilst it acknowledged receipt of the emails, it did not consider the contents because the information was not in affidavit form and the charged member was not present at the hearing to confirm whether he wanted these documents to be admitted as evidence in support of his defence.
95. Although the charged member chose to absent himself from the proceedings, the NDC applied the cautionary rule in evaluating the evidence led by the ANC.

Charge 1

96. The NDC is of the view that the specific act of misconduct complained of by the ANC was that the charged member had abused his office to obtain a sexual favour (Rule 25.17.7) and that such conduct brought the ANC into disrepute (Rule 25.17.4).
97. The NDC accepted the evidence of Louisa Wynand that the charged member:-
 - 97.1 initiated further contact with her subsequent to their initial meeting in Stellenbosch;
 - 97.2 informed her at the job interview in Cape Town that he was the provincial chairperson of the ANC in the Western Cape;
 - 97.3 lured her to accompany him to Rustenburg and contrived a

situation where she had to share a hotel room with him with the intention of creating opportunities for him to obtain a sexual favour from her;

97.4 made sexual advances towards her in the car and again in the hotel room;

97.5 came out of the shower semi-naked with only his boxers on.

97.6 attempted to breakdown her resistance by suggesting that other girls had become successful after submitting to his sexual demands.

98. The credibility of the evidence was supported by the fact that Louisa testified about bodily features of the charged member; tried to seek help at the earliest opportunity and laid a formal charge with the South African Police Service.

99. The NDC finds that the pressure brought to bear by the charged member to get Louisa to submit -both through his physical advances and psychological means- had put her in a state of involuntariness and in a helpless situation and made her very vulnerable in circumstances which she had little or absolutely no control over.

100. The NDC is satisfied that the ANC has proved on a balance of probabilities that the charged member abused his office (as a senior office bearer of the ANC) for the purpose of attempting to obtain a sexual favour from Louisa Wynand and that the causal connection between the elements of the charge in Rules 25.17.7 and 25.17.4 in the ANC Constitution which the ANC sought to prove and the evidence led at this hearing has been established.

101. The charged member is found guilty on Charge 1.

102. Having made a finding on the main charge, the alternative charge was not considered.

Charge 2

103. The nub of the charge is that the charged member's public utterances brought the ANC into disrepute in contravention of Rule 25.17.4 of the ANC Constitution.

104. Having considered the content of the utterances made by the charged member on 13 July (pages 46 to 47), 23 July (pages 55 to 56) and 3 November 2016 (pages 97 to 99), the NDC is satisfied that the charged member contravened Rule 25.17.4 of the ANC Constitution and brought the organisation into disrepute; the ANC has proved this charge on a balance of probabilities and that the causal connection between the elements sought to be proved by the ANC in Rule 25.17.4 and the evidence tendered at the hearing has been established.
105. No evidence was produced with regard to the utterance made on 17 July 2016 and consequently this aspect of the charge was not considered.
106. The charged member is found guilty on charge 2.

Charge 3

107. The charged member was alleged to have undermined the ANC's effectiveness as an organisation by instituting baseless and frivolous litigation, thereby contravening Rule 25.17.16.3 of the ANC Constitution.
108. The ANC alleged that the court application instituted by the charged member in the Cape High Court on 25 July 2016 caused disunity in the ranks of the ANC and brought the ANC into disrepute through the attendant media coverage.
109. No evidence was led to show whether the court action was intended to bring the ANC into disrepute or whether it was a sincere and desperate effort by the charged member to obtain a copy of the Integrity Commission report and get clarity about his political status in the Province.
110. As such, the NDC could not readily arrive at the conclusion that the litigation was baseless and frivolous.
111. The NDC took into consideration the fact that the charged member was on suspension since 27 January 2016 and that he was anxious to get clarity about his political future.
112. When considering the fact that no cogent evidence was presented to support the charge, the NDC gave the benefit of the doubt to the charged member when arriving at its decision to find in his favour.

113. Consequently, the charged member is found not guilty on charge 3.

Sanction

114. In considering an appropriate sanction, the NDC took into consideration:-

114.1 mitigating factors;

114.2 the seriousness of the charges and other aggravating factors;

114.3 the interest of the charged member;

114.4 the interest of the ANC and its members; and

114.5 the impact the actions of the charged member would have on the morale and discipline within the organisation.

Mitigating factors

115. Although the charged member did not attend the disciplinary hearing, the NDC took cognisance of the fact that this was the first time he was facing disciplinary action and consequently treated him as a first time offender.

Aggravating factors

116. The charged member showed no remorse.

117. The evidence of Mrs Wynand that her daughter suffered a change in personality is an aggravating factor in respect of charge 1.

118. The NDC is of the view that Louisa would have to receive further psychological treatment before her trust in men and her relationship with her own father and brothers is restored to normality.

119. The evidence that the charged member did not consider a request from comrade Zizi Kodwa to stop making disparaging and divisive public statements about the ANC and senior leaders and members in the organisation is an aggravating factor.

120. The charges were of a very serious nature.

Interest of charged member

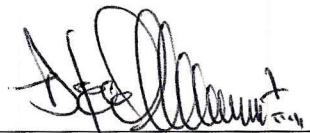
121. The charged member appears to have shown little interest in his own affairs. He made a conscious decision not to attend the disciplinary hearing and described the NDC in an interview with a major newspaper as 'Luthuli House's jungle law'. In his public utterances he impugned the integrity of the Secretary General and comrade Derek Hanekom, the Head of the NEC deployees in the Western Cape, and ANC stalwart and Integrity Commission member, comrade Frene Ginwala,
122. The charged member showed no political understanding of one of the fundamental objectives of the ANC viz. the support for and advancement of women's emancipation. As a provincial leader in the ANC he should have known about the triple oppression of South African women and the giant strides being made by the ANC to accord women their rights and help them to overcome their oppression.
123. The charged member damaged the reputation of the ANC by publicly projecting it as an unfair organisation. He deliberately misled the public when he said that he did not receive documents to enable him to prepare for his disciplinary hearing whereas in truth he was given all the relevant documents he needed to prepare his defence.
124. The ANC is a voluntary political organisation which is managed by and accountable to its members. Discipline is the glue that holds the organisation together. There is no room in the ANC for leaders and members, irrespective of position or seniority, who show scant regard for the values and objectives of the ANC and who consciously choose to define themselves outside the organisation in breach of their membership oath.
125. Having considered all the factors, the NDC is of the view that the charged member's membership should be suspended for an appropriate period to give him an opportunity to reflect on his conduct and correct his behaviour and to send a strong signal of deterrence to ANC members who disrespect the dignity of women and disregard their rights and who engage in ill-disciplined conduct which causes disunity in the ANC and brings the organisation into disrepute through reckless utterances.

126. During the period of suspension the ANC expects the charged member not to engage in any conduct which could contribute to disunity among members and create divisions in the ANC.
127. The NDC is of the view that if the charged member takes corrective steps to redeem himself, he is capable of being rehabilitated. For that reason, the ultimate sanction of expulsion called for by the ANC was not accepted.

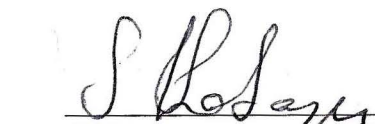
NDC Finding

128. The charged member is found guilty on charges 1 and 2.
129. The charged member is found not guilty on charge 3.
130. In terms of Rule 25.21.6 of the ANC Constitution, the charged member's membership of the ANC is suspended for a period of 5 (five) years.

Dated at Cape Town this 9th day of November 2016



EDNA MOLEWA
MEMBER
NDC



SUSAN SHABANGU
ACTING CHAIRPERSON
NDC



LINDIWE SISULU
MEMBER
NDC



JOE PHAAHLA
MEMBER
NDC

- NDC member comrade Fikile Xasa participated in the hearing on 3 and 4 but not on 8 and 9 November.