

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 27 NOVEMBER 2015 AT ST. GEORGE HOTEL, IRENE PRETORIA AND
ON 12 FEBRUARY 2016 AT ANC PROVINCIAL OFFICE IN CAPE TOWN**

Case No. 6/2015

In the review application of:-

JONTON SNYMAN

Applicant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 13 October 2015 the Western Cape PDC found the Applicant, the Secretary of the Boland Region, guilty of contravening Rule 25.17.17 and Rule 25.17.4 of the ANC Constitution.
2. The specific acts of misconduct were that the Applicant was convicted of fraud in October 2014 in the Worcester Magistrates Court and, secondly, he failed to disclose his criminal record at the regional conference in July 2015. With regard to the second act of misconduct, such non-disclosure, it was alleged, brought the ANC into disrepute.
3. In the court proceedings in October 2014 the Applicant pleaded guilty to one count of fraud and was sentenced to pay a fine of R3000,00 or to six

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months imprisonment, both of which were suspended for 5 years. He did not appeal his conviction and sentence.

4. In July 2015, the Applicant was nominated and subsequently elected as regional secretary at the RGC and did not disclose his fraud conviction.
5. Shortly after the RGC, the PEC was made aware of these acts of misconduct and the Applicant was subsequently disciplined and found guilty.
6. In terms of Rule 25.18 the PDC had no discretion in the case of a fraud conviction and had no option but to expel the Applicant from the ANC and request him to relinquish his position as regional secretary of the Boland Region.

Application of NDC Rules of Procedure

7. The NDC initially dealt with the review application in terms of Rule 11.1 of the NDC Rules of Procedure without the necessity of hearing oral evidence and convening a formal hearing.
8. However, the NDC decided at the conclusion of its adjudication meeting on 27 November 2015 to hear evidence on the following two aspects:-
 - 8.1 the charged member's allegation that he informed his branch of the fraud conviction; and
 - 8.2 whether the charged member informed the RGC of his conviction after he was nominated for election to office.

Evidence tendered on 12 February 2012

9. The Applicant called two witnesses to testify – comrades Lionel Saunders and Philip John Stryers.
10. Comrade Lionel testified that he was the BTT Co-ordinator of the Ward 12 branch of which the Applicant was a member. The Applicant informed him of his fraud conviction the day after the conclusion of the court case. He did not disclose this information to any other member of the Branch Task Team.
11. Comrade Stryers was the secretary of Ward 6 branch. He was also made aware of the Applicant's fraud conviction. The Applicant helped to establish this branch which was in a predominantly White area. The Applicant subsequently moved to this area.

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12. Both witnesses testified that they chose not to institute disciplinary proceedings against the Applicant.
13. The ANC intended to call new witnesses to testify in these review proceedings to prove that the Applicant did not disclose his fraud conviction to the RGC. Unfortunately they had to attend to other duties in the ANC at short notice and were not available.

Applicant's Grounds of Review

14. On 28 October 2015 the Applicant applied to the NDC to review and set aside the PDC Finding.
15. The Applicant advanced the following grounds of review:-
 - 15.1 The Respondent failed to adhere to the 3 month time limit set out in the Constitution;
 - 15.2 The Lead Presenter was improperly appointed by the Chief Provincial Presenter;
 - 15.3 The PDC Chairperson was conflicted because, as an office bearer, he was present at PWC meetings and the PEC meeting when the decision was taken to institute disciplinary action against the Applicant; and
 - 15.4 The PDC was not properly constituted.
16. These grounds were raised as points *in limine* at the disciplinary hearing and were dismissed by the PDC.

Evaluation by NDC

17. Disciplinary action in the ANC is premised on the principles of equity and fairness as set out in its Constitution.
18. With regard to the new witnesses that the ANC intended to call, the NDC's view was that the purpose of hearing oral evidence at this NDC sitting was to specifically hear evidence from the Applicant's witnesses whom the Applicant intended call at the PDC hearing but was denied the opportunity.
19. In the view of the NDC, this review application was not a re-hearing of the case. Insofar as fairness was concerned, the ANC was given the

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opportunity to cross-examine the two witnesses called by the Applicant at this sitting.

Applicant's argument that the PDC Chairperson was conflicted

20. The PDC Chairperson, cde Khaya Magaxa, is also the deputy chairperson of the Province. He was present at a PWC meeting on 11 August 2015 and at a PEC meeting on 14 August 2015 when the decision was taken to institute disciplinary action against the Applicant.
21. It was not denied that the PDC Chairperson was present at these meetings. However, the argument advanced by the Lead Presenter, which was accepted by the PDC, was that comrade Khaya Magaxa was only appointed as the Chairperson of the PDC on 14 August 2015 i.e. after these meetings had taken place and that the merits of the decision to discipline were not discussed at these meetings.

See: Paragraph 10.2 on P6 of PDC Finding

22. The PEC's appointment of cde Khaya Magaxa as Chairperson of the PDC was in terms of the ANC Constitution and was lawful.
23. However, in the view of the NDC, comrade Magaxa should not have presided over the disciplinary hearing of the Applicant because the PEC and PWC minutes would reflect that he was present and therefore a party to the PEC decision to institute disciplinary action against the Applicant.
24. The Respondent's argument advanced by the Lead Presenter in fact confirms that the PDC Chairperson was conflicted. He was a constituent member of the PEC that decided to institute disciplinary action against the Applicant (even if he did not say a word at the PEC meeting) **and** thereafter presided over the disciplinary hearing.
25. The NDC is of the view that by virtue of this procedural irregularity, the Applicant could not have been given a fair hearing as contemplated by the principles of natural justice set out in the ANC Constitution.

Applicant's argument that the Respondent failed to adhere to the 3 month time limit prescribed by the ANC Constitution

26. The second ground of review advanced by the Applicant was that the Respondent failed to adhere to the 3 month time limit prescribed by the ANC Constitution;

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27. Rule 25.49 of the Constitution, to which the Applicant is referring, provides that, "notice of the charge sheet shall be delivered to the charged member or his or her representative within 3 (three) months of the date when knowledge of a member's alleged act of misconduct or conviction in a court of law is brought to the attention of the ANC".
28. It is not in dispute that the Applicant was charged for fraud in January 2014 and convicted in October 2014 after he pleaded guilty.
29. Rule 25.17.17, read with Rule 25.18, provides that a disciplinary committee has no option but to expel a member who was convicted in a court of law for the offence of fraud.
30. To underscore the principle of fairness in the ANC Constitution, the NDCA has adopted a strict approach when interpreting the time limit imposed by Rule 25.49.

**See: ANC v Mphumezi Nkumbesi and 7 others (case number 7 of 2014 NDCA)
The Chairperson, PDC KwaZulu Natal: In Re ANC and Mxolisi Ndzibomvu (case number 3 of 2014 NDCA)**

31. In both cases the NDCA found that there was no justification for the ANC not to deliver the charge sheet for the institution of disciplinary proceedings within the 3 month limit specified in the Constitution. Notwithstanding the seriousness of the charges, relief was granted to the charged members in order to uphold the principle of procedural fairness.
32. However, in this case, the decision to institute disciplinary action against the Applicant was premised on the grounds that the first time the Applicant's misconduct was brought to the attention of the ANC was on 29 July 2015 when the Provincial Secretary received a written complaint from comrade Nkomfa Mkabile, an ANC member in good standing of Ward 12 in Drakenstein.
33. The NDC is of the view that cogent reasons would have to be provided to determine when an act of misconduct is brought to the attention of the ANC presumably for the first time in order to comply with Rule 25.49 of the ANC Constitution.
34. The NDC is also of the view that to accept the evidence of a single witness that the act of misconduct was first brought to the attention of the ANC some 10 months after the act of misconduct was actually committed would be a narrow interpretation of the words, 'is brought to the attention of the ANC' in Rule 25.49.

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35. In the view of the NDC no hard and fast universal rule can be applied and each case must be judged on its own circumstances.
36. In the present case, the NDC took into consideration the following evidence:-
- 36.1 The Applicant informed the witnesses, comrades Saunders and Stryers of his conviction;
- 36.2. Both comrades were part of ANC structures at branch level and both decided not to invoke the disciplinary procedures in the ANC Constitution.
- 36.3 Whilst the administrative functioning of the ANC in this region must be frowned upon, the shortcomings of comrades Saunders and Stryers does not detract from the fact that the Applicant discharged his obligation as a member and disclosed his conviction to the ANC structures where he was a member.
- 36.4 Under cross examination, comrade Mkabile, the sole witness for the ANC was not prepared to disclose his sources.
37. The NDC also took judicial notice, as it is entitled to do, of the following objective factors:-
- 37.1 The town of Worcester has only one Magistrates' Court;
- 37.2 The Applicant is a businessman in the town;
- 37.3 The Applicant featured in the Western Cape media during 2011 and 2012 when he stood for elections as a provincial office bearer in the ANC Youth League and publicly expressed sympathy for the position of cde Julius Malema during his spat with the ANC. In short, the Applicant was not unknown to the structures and members in the Province; and
- 37.4 The Applicant was charged in January 2014 and was only convicted in October 2014.
38. Against this backdrop, the prospect of the Applicant's travails with the law becoming public knowledge was very high.
39. After considering all the evidence before it and applying the test of reasonableness to the above facts, the NDC is not convinced, on a

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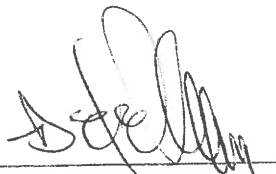
balance of probabilities, that the Applicant's conviction only became known to the ANC for the first time in July 2015.

40. Based on this finding, the balance of convenience between the competing versions favours that of the Applicant on a balance of probabilities.
41. The NDC also rejected the Respondent's argument that the Applicant was under a duty to disclose his criminal conviction to the regional conference in July 2015. The ANC admitted that the organisation did not have a screening policy.
42. In light of the above finding, the NDC did not consider it necessary to evaluate the other grounds of review raised by the Applicant.

NDC Finding

43. The application for review succeeds and the PDC Finding and sanction of expulsion is reviewed and set aside.
44. The Applicant is entitled to resume his position as Secretary of the Boland Region with immediate effect.

Dated at Cape Town this 12th day of February 2016



**EDNA MOLEWA
MEMBER
NDC**



**FIKILE XASA
ACTING CHAIRPERSON
NDC**



**LINDIWE SISULU
MEMBER
NDC**



**JOE PHAAHLA
MEMBER
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