

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 SATURDAY 22nd AND SUNDAY 23rd NOVEMBER 2014

CASE NUMBER: 7/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**MPHUMEZI NKUMBESI
BUSI MDINGARA
BHEKANI GCABA
THABISILE NCAYIYANE
REVEREND VH MABASO
THANDA MTHEMBU
LULU MTHEMBU
NOLUBABALO MTHEMBU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 20 May 2014 the Chairperson of the PDC in KwaZulu 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 to charges

2. The comrades were charged on 7 January 2014 for contravening Rules 25.17.4, 25.17.5, 25.17.6, 25.17.11, 25.17.15, 25.17.16.1, 25.17.16.2 and 25.17.16.3 of the ANC Constitution.
3. The specific allegation against all the charged members was that on or about 8 November 2012 at the Lamontville Community Hall, where the eThekweni Branch General Meeting was scheduled to be held, they acted in a threatening manner and uttered derogatory words as set out in the charge sheet which were targeted at comrade Stanley Moonsamy, the regional deployee to the BGM.
4. The charge sheet was served on 7 January 2014. The disciplinary hearing was set down for 9 February 2014 but was postponed.

Basis of PDC application

5. The Chairperson of the PDC sought an extension of time on the grounds that the members of the PDC and the Chief Provincial Presenter were PEC members and, as such, were fully involved in campaign activities for the General Election from about September 2013 and would only be able to continue with the disciplinary hearing in the first or second week of June 2014.

Evaluation by NDCA

6. The fact that the PDC members and the Chief Provincial Presenter were fully engaged in electioneering and therefore not available to proceed with the disciplinary hearing is not in dispute.
7. In terms of Rule 25.54 the NDCA, when considering an application for an extension of time, is obliged 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.

8. In the view of the NDCA, comrade Stanley Moonsamy, as a regional deployee to the BGM, would have reported his ordeal at the eThekweni BGM almost immediately to the REC.
9. The charges were instituted on 7 January 2014 - one year and two months after the date of the alleged act of misconduct and in clear contravention of Rule 25.49 of the ANC Constitution which require the charge sheet to be delivered within 3 months.
10. The PEC should investigate why the REC failed to institute disciplinary action at the time the act of misconduct was allegedly committed.
11. The PEC should also strengthen its disciplinary machinery to ensure that such a lapse does not occur again and that the general public and ANC membership is not left with the wrong impression that the ANC does not take discipline seriously.
12. Although the act of misconduct is very serious, the NDCA is mindful that procedural fairness is a cornerstone of the ANC's disciplinary machinery as set out in the Constitution.

NDCA Finding

13. Although the charges against the comrades are very serious, the NDCA finds that the continuation of disciplinary action would be grossly unfair and prejudicial to the charged members because the time limit of 3 months prescribed in Rule 25.49 was not adhered to.
14. For the sake of procedural fairness, the disciplinary proceedings should be stopped.
15. For the above reasons, the application for an extension of time is dismissed.
16. In the furtherance of the ANC's social cohesion campaign, the NDCA directs the PEC to reprimand the charged members for their conduct and educate them about the values, character and strategic objective of the ANC to form a South African nation, comprised of Africans, Coloureds, Indians and Whites.

Dated at IRENE, PRETORIA this 23rd day of November 2014

J. RaDeBe

JEFF RADEBE
CHAIRPERSON
NDCA

G.N.M. Pandor

NALEDI PANDOR
MEMBER
NDCA

Ngako Ramatlhodi

NGOAKO RAMATLHODI
MEMBER
NDCA

SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA