

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: 4/2015

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**MDU KHUZWAYO
MXOLISI 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 5 February 2015 the charged members allegedly 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 secretary.
3. They were subsequently charged for contravening the following provisions of Rule 25 of the ANC Constitution:-
 - 3.1 Rule 25.17.3 – failing, refusing or neglecting to execute any ANC policy;
 - 3.2 Rule 25.17. 4 - bringing the ANC into disrepute;
 - 3.3 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;
 - 3.4 Rule 25.17.9 - participating in organised factional activity;
 - 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. On 30 May 2015 the PDC withdrew the charges against comrade Mxolisi Ndzimbomvu.

Evaluation by NDCA

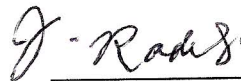
6. When considering an application for an extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
7. One 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.
8. In the present case, the charged members were not informed what were the words uttered by them against the provincial leadership or the provincial secretary in particular.

9. As such, the charges were vague and embarrassing, 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.
10. The NDCA is also of the view that the charges of factional activity (Rule 25.17.9) and causing disunity and division in the ANC (Rule 25.17.6) could not be sustained on the facts of the case.

NDCA Finding

11. The PDC should withdraw the charges against comrade Mdu Khuzwayo.
12. The PDC's application for an extension of time is refused.

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

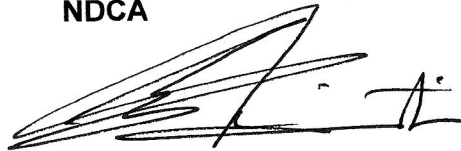


JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA



GUGILE NKWINTI
MEMBER
NDCA

NGOAKO RAMATHLODI
MEMBER
NDCA

SUE VAN DER MERWE
MEMBER
NDCA

PAM TSHWETE
MEMBER
NDCA