

# African National Congress



## National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

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**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL  
(NDCA)  
HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA  
ON MONDAY 25 JANUARY 2016**

**CASE NUMBER: 2/2016**

**In the application of**

**FAIEZ JACOBS**

**Applicant**

**In the matter of:**

**AFRICAN NATIONAL CONGRESS**

**Complainant**

**AND**

**FAIEZ JACOBS**

**Charged member**

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### **NDCA FINDING**

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#### ***Background***

1. The Applicant, the Provincial Secretary of the ANC in the Western Cape Province, allegedly assaulted a fellow employee on 30 November 2015 in the ANC Provincial Office.
2. On 2 December 2015 the PEC decided to place the Applicant on precautionary leave.

3. From the correspondence between the acting Provincial Secretary and the Applicant dated 13 January 2016, it seems that the Applicant was placed on leave in lieu of being suspended in terms of the ANC Constitution.
4. The PEC subsequently decided to institute disciplinary proceedings against the Applicant for the alleged assault and the matter is due to be heard by the Western Cape PDC shortly.
6. The Applicant has applied to the NDCA in terms of Rule 25.66 and 25.68 to set aside his "suspension".
7. The Applicant advanced the following arguments in support of his application:-
  - 7.1 The PEC's decision to place the Applicant on involuntary or precautionary forced leave was unlawful, irregular and contrary to the ANC Constitution; and
  - 7.2 The PEC did not follow the procedure set out in Rule 25.57 of the ANC Constitution.

#### ***Evaluation by NDCA***

8. At the outset, the NDCA wishes to point out that comrade Faiez Jacob's application to set aside his temporary suspension is separate from his disciplinary hearing and the NDCA decision does not in any way pronounce on the Applicant's guilt or innocence in the disciplinary hearing.
9. In the ANC Constitution there is no provision for involuntary or precautionary forced leave. Consequently, for the purpose of this application, the NDCA has assumed that the PEC suspended the Applicant temporarily in terms of Rules 25.56 to 25.69 of the ANC Constitution.
10. Furthermore, temporary suspension is not an automatic process after disciplinary proceedings are contemplated or are in fact instituted against a member.
11. Temporary suspension of a member is preceded by an inquiry as set out in the Constitution.
12. Rule 25.57 sets out the procedure to be followed by the relevant structure which has jurisdiction to suspend a member. A suspension can only follow after the relevant structure has complied with the provisions of Rule 25.57 and is satisfied that the conditions for temporary suspension exists before a decision is taken to suspend that

member.

13. In the exercise of its discretion to suspend the Applicant, the PEC was required to have put the accusation to the Applicant and given him an opportunity to respond as provided for in Rule 25.57.4 and 25.57.5.
14. There is no evidence before the NDCA that this was done. Instead the PEC engaged with the Applicant in a meeting on 2 December and this was followed by a meeting between the Applicant and the Provincial Chairperson on 6 December 2015.
15. An allegation of assault is a serious charge. Consequently, the provision of Rule 25.57.1 was met.
16. There was no evidence from the Applicant's past conduct or his conduct immediately after the alleged act of misconduct on 30 November 2015 to establish that the Applicant had the propensity to commit further acts of misconduct as stipulated by Rule 25.57.2.
17. The alleged assault would certainly have brought the ANC into disrepute as evidenced by the various newspaper articles attached to the Applicant's application. Consequently, part of the requirement in Rule 25.57.3 would have been satisfied.
18. From the above analysis, the NDCA is of the view that Rule 25.57 was complied with partially but not substantively.
19. The substantive element in Rule 25.57 requires compliance with the *audi alteram partem* rule (hear the other side).
20. Fairness and equity are the cornerstones of the ANC Constitution and the NDCA has made this pronouncement in many of its Findings.
21. The suspension of a member is a very invasive step to curtail a member's participation in the ANC and such a drastic decision should only be taken after all the steps outlined in Rule 25.57 have been followed and the conditions which exist in this sub-rule have been satisfied.
22. In the view of the NDCA, partial compliance with Rule 25.57 is insufficient to warrant the decision to suspend a member.
23. The NDCA has taken into consideration that the Applicant and the Complainant's witness would be working in the same environment should the suspension be set aside.
24. The NDCA has also taken into consideration that by virtue of the main allegation against the Applicant viz. assault, the evidence at the disciplinary hearing would be that of the comrade that was allegedly




assaulted, the charged member and witnesses, if any. As such, the issue of interfering with the investigations and tampering with evidence does not arise.


25. Moreover, if the Applicant had any intention of interfering with witnesses, that would have occurred by now since the disciplinary hearing is due to commence shortly.
26. The PEC may at any stage during the disciplinary hearing suspend the Applicant provided that it complies fully with the provisions of Rule 25.57 of the ANC Constitution.

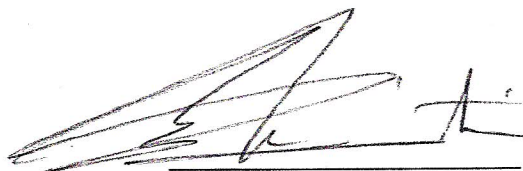
***NDCA Finding***


27. For the above reasons, the application succeeds and the temporary suspension is set aside subject to the condition that the Applicant does not interfere with comrade Wesley Seale, the Complainant's witness.

Dated at IRENE, PRETORIA on this 25<sup>th</sup> day of January 2016

  
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**JEFF RADEBE**  
**CHAIRPERSON**  
**NDCA**

  
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**NALEDI PANDOR**  
**MEMBER**  
**NDCA**

  
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**GUGILE NKWINTI**  
**MEMBER**  
**NDCA**

  
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**PAM TSHWETE**  
**MEMBER**  
**NDCA**