

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: 3/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

MXOLISI NDZIBOMVU

Charged Member

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 member.

Background to charges

2. Comrade Mxolisi was charged on 23 February 2014 on two counts for contravening Rules 25.17.4, 25.17.6, 25.17.11, 25.17.15 and 25.17.16.3 of the ANC Constitution.
3. The specific allegation on Count One was that on or about 15 August 2013, at a ANC Zonal meeting at the Verulam Parliamentary Constituency Office, he grabbed ANC door-to-door campaigning material and/or attendance register and tore them to shreds, threw the shreds at the face of the Zonal Chairperson (cde Sipho Mbotho), assaulted branch chairperson (cde Musa Nciki) and assaulted the branch secretary by slapping him.
4. The specific allegation on Count Two was that on or about 8 October 2013, at a local election team meeting held at the Verulam PCO, he made one or more or all the utterances set out in the charge sheet.

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 Elections 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. 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. The fact that the PDC members and the Chief Provincial Presenter were fully engaged in electioneering and therefore not available to continue with the disciplinary hearing is not in dispute.

8. In the view of the NDCA, both charges are very serious and would warrant, in the event of conviction, an effective sanction.
9. It is common cause that the acts of misconduct were allegedly committed during the electioneering period for the General Elections and senior comrades were present. Consequently, the misconduct would have been known or brought to the attention of the structures of the ANC almost immediately.
10. Rule 25.49 of the ANC Constitution provides that the notice of the charge shall be delivered to the charged member within 3 months.
11. The charge sheet itself is a three page document. Based on the allegations, it was simple to constitute and would not have been time-consuming.
12. In the case of Count One, the charge sheet was served six months after the date of the alleged offence and in the case of Count Two, more than four months after the date of the alleged offence.
13. The fact that the PEC was not able to prepare and deliver the charge within the prescribed time limit of 3 months points to administrative challenges within its disciplinary machinery which require immediate attention and action.
14. Disciplinary action in the ANC is premised on the principles of fairness and equity. If disciplinary action is to be instituted against any member, it is a pre-requisite that procedural justice must be seen to be done.
15. For this reason, the ANC Constitution sets out time limits within which charges must be instituted against charged members and within which disciplinary proceedings must be completed.
16. Rule 25.53 permits a disciplinary committee to apply for an extension of time under the circumstances set out in that rule but does not provide any basis to condone the failure of the ANC to serve the charge sheet within the 3 month time limit contained in Rule 25.49 of the ANC Constitution.
17. Notwithstanding the seriousness of the charges, dilatoriness on the part of the ANC cannot serve to prejudice a charged member. In the view of the NDCA, such conduct on the part of the ANC, if condoned,

would detract from the principles of a fair trial as entrenched in the ANC Constitution.

18. The failure by the ANC to serve the charge sheet timeously is fatal and would lead to gross procedural unfairness if the disciplinary hearing was allowed to continue.

NDCA Finding

19. In the interest of procedural fairness in compliance with the ANC Constitution, the PDC should not pursue the charges against the comrade and the application for an extension of time is dismissed.
20. However, the PEC is directed to send a strongly-worded letter to the charged members about their behaviour and conduct at ANC gatherings and to inform them that such conduct will not be tolerated in future.

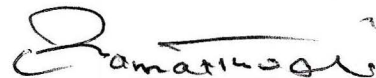
Dated at IRENE, PRETORIA this 23rd day of November 2014



**JEFF RADEBE
CHAIRPERSON
NDCA**



**NALEDI PANDOR
MEMBER
NDCA**



**NGOAKO RAMATLHODI
MEMBER
NDCA**

**SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA**