

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: 5/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

BONAKELE KLEINBOOI

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. The charged member is a Councillor in the Umzimkhulu Municipality.
3. He was charged on 25 September 2013 for contravening Rules 25.17.4, 25.17.8, 25.17.16.3 and 25.17.19 of the ANC Constitution.
4. The specific allegation was that during the period March/April 2013, at or near Riverside Farm, Umzimkhulu, he personally and/or in concert with others, directed and/or facilitated and/or assisted in the theft or attempted theft of material viz. steel, which was the lawful property of the Umzimkhulu Municipality, and/or the State, and/or the Riverside community.

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 have been able to continue with the disciplinary hearing in the first or second week of June 2014.

Evaluation by NDCA

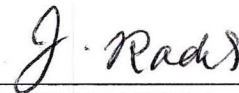
6. According to the representations made by the Chairperson of the PDC, the disciplinary hearing commenced on 13 October 2013 and resumed on 26 January 2014.
7. At a subsequent hearing on 12 February 2014, the charged member gave notice of his intention to bring an application for the withdrawal of the charges and the matter was postponed until after the General Elections.
8. 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.
9. 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.

10. The charged member is a local councillor and a public representative of the ANC. As such, he is expected to set a high moral standard for the general public and the ratepayers of his municipality to emulate.
11. He also has a duty to protect the good name and reputation of the ANC and not to engage in any conduct, in his capacity as a public representative, which could or would or have the likelihood to bring the ANC into disrepute.
12. Theft is a very serious criminal offence. The particular allegation against the charged member takes on a more serious proportion if one has regard to the fact that he was entrusted by the ANC and the public to take care of public property.
13. In the view of the NDCA, the PDC should have acted in a more forceful manner in upholding the good name and reputation of the ANC. The PEC itself should have laid criminal charges with the S.A. Police Service against the charged member to demonstrate to the general public and ANC members that the ANC is serious about routing out criminal conduct in the organization. If a criminal charge has not been opened, the PEC should do so without delay.
14. Had the PEC taken these steps, it would have been possible for the PEC to have invoked Rule 25.70 of the ANC Constitution to suspend the charged member and impose terms and conditions to regulate his participation and conduct in the ANC during the period of his suspension.
15. The fact that the PEC did not take these steps conveys the incorrect impression that the ANC is not serious about crime and that discipline is implemented selectively within the organization.
16. There is no specific provision in Rule 25.17 of the ANC Constitution which entitles the ANC or any of its structures to enforce organizational discipline by instituting disciplinary proceedings against any member for the alleged commission of a criminal act which was not committed during ANC meetings, assemblies, gatherings or associated with the orderly functioning of the ANC.
17. However, Rules 25.17.1, 25.17.2 and 25.17.17 of the ANC Constitution makes it permissible to discipline any member *after* he or she has been convicted in a court of law.

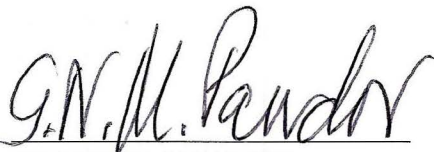
NDCA Finding

18. For the above reasons, the application for an extension of time is dismissed.
19. If the charged member is convicted in a court of law, the PEC should apply its discretion at that stage to consider disciplinary action against the charged member.

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



**JEFF RADEBE
CHAIRPERSON
NDCA**



**NALEDI PANDOR
MEMBER
NDCA**



**NGOAKO RAMATLHODI
MEMBER
NDCA**