

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: 6/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

BHEKI NTSHANGASE

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 the Regional Secretary of the eThekweni Region.
3. On 20 September 2013 he was for contravening Rules 25.17.4, 25.17.6, 25.17.15 and 25.17.16.3 of the ANC Constitution.
4. The specific allegation was that on or about 15 August 2013 at or near "G" Hall in Ward 79, eThekweni, he wrongly and unlawfully assaulted comrade Menzi Ngcobo by slapping him.
5. The disciplinary hearing commenced on 7 October 2013 and continued on various dates thereafter to consider procedural points raised by the charged member.
6. At the last hearing on 16 March 2014, the PDC considered it prudent to postpone the matter and continue after the General Elections, more especially since the charged member's representative indicated that he intended to call about a hundred witnesses.

Basis of PDC application

7. 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.

Objection by charged member

8. On 21 November 2014 the charged member's representative filed an objection to the application for an extension of time by the Chairperson of the PDC.
9. The grounds of the objection are that the charged member's constitutional right was violated because he was not given notice of the application for an extension of time and an unreasonable time has elapsed because the PDC had not communicated with the charged member since the last hearing in March.

10. In terms of Rule 25.53 the Chairperson is entitled to apply for an extension of time if one or more of the circumstances contained in that rule present themselves.
11. It is common cause that a General Election took place in May 2014 and that the PDC members, the Provincial Presenter and the charged member himself, as senior members in the organization, were involved in canvassing for the ANC.
12. Rule 25.53 specifically authorizes the Chairperson of the PDC to apply for an extension of time if one or more of the PDC members are not available.
13. Furthermore, no dilatory conduct can be attributed to the PDC members for their unavailability.
14. The delays occasioned in this case can be attributed substantially to the filibustering of the charged member.
15. In the NDCA's view, the objection has no foundation and is dismissed.

Evaluation by NDCA

16. When considering an application for extension of time in terms of Rule 25.54, the NDCA 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.
17. The fact that the PDC members and the Chief Provincial Presenter and even the charged member himself were fully engaged in electioneering and therefore unavailable to continue with the disciplinary hearing is not in dispute.
18. As the Regional Secretary, the charged member is the Chief Administrative Officer of the region and responsible for all the branches in that region.
19. Members of his region no doubt look up to this comrade for leadership and moral guidance. As such, he should use his position to reinforce the principle of the ANC Constitution that discipline is enforced without exception.
20. Although the disciplinary hearing commenced in October last year, not a single witness was called to testify. The charged member brought a series of applications to either stop or delay the proceedings.

21. Such filibustering on the part of the charged member, who is also an ANC leader, sends the erroneous message that discipline is not being taken seriously in the organization.
22. The alleged act of misconduct, although criminal in nature, was committed at an ANC gathering. As such it falls within the framework of organizational discipline contemplated in Rule 25.17 of the ANC Constitution, in particular Rule 25.17.15 which provides that it is an act of misconduct to assault another member at ANC meetings, assemblies or gatherings.

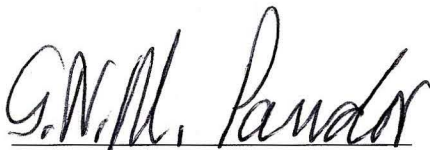
NDCA Finding

23. For the above reasons, the NDCA grants an extension of time as requested by the PDC.
24. In the interest of fairness and to avoid prejudice to the charged member, the PDC is directed to finalise the disciplinary hearing as soon as is practically possible.
25. The Chairperson of the PDC should exercise her discretion and only allow relevant witnesses to testify. For this purpose, the Chairperson of the PDC should direct the parties to convene a pre-hearing conference.

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



**JEFF RADEBE
CHAIRPERSON
NDCA**



**NALEDI PANDOR
MEMBER
NDCA**



**NGOAKO RAMATLHODI
MEMBER
NDCA**