

African National Congress



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National Disciplinary Committee (NDC)

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF THE AFRICAN
NATIONAL CONGRESS (SITTING AS A REVIEW COMMITTEE)**

Case Number: 4/2014

In the review applications of:-

| | |
|------------------------------------|----------------------------------|
| KGATEDI DAVID MALATJIE | 1st Applicant |
| PANYANA RAMADIMETJA EPHODIA | 2nd Applicant |
| RAESIBA PAULINA MADUBANA | 3rd Applicant |
| KOKONANA EVELYN MASHABA | 4th Applicant |
| FRANCINAH MMBENGWA MABUELA | 5th Applicant |
| ESTHER RAESIBE MOTHIBI | 6th Applicant |
| ISAAC MATSOBANE MOGOTLANE | 7th Applicant |
| DAHONEY RAMASELA RAMASOBANA | 8th Applicant |
| RAMASELA LINDAH KEKANA | 9th Applicant |
| DAICY MANHLE DABULA | 10th Applicant |
| RAESIBE MEELBA MABUSELA | 11th Applicant |
| GRACE SEBOLAISHI NGOBENI | 12th Applicant |
| MICHAEL MADIMETJA MOSEAMEDI | 13th Applicant |
| RASEMATE PIET MALULEKE | 14th Applicant |
| WILLIAM MALOSE MABUELA | 15th Applicant |

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|--------------------------------------|----------------------------------|
| ABRAM TLOU KGAPHOLA | 16th Applicant |
| PHUTI GILBERT PILA | 17th Applicant |
| ELISABETH MOKGAETJI RAMASHALA | 18th Applicant |
| SAUL PHAKANE MABE | 19th Applicant |
| KENNETH MATSOBANE KGALO | 20th Applicant |
| BETTY LEKGANCHA MABUSELA | 21st Applicant |
| MOKGADI MINUTE MASHILU | 22nd Applicant |

FINDING

Proceedings before the NDC previously

1. On 24 March 2014 the NDC, under case number 3/2014, considered an appeal by the above-named applicants and imposed an effective sanction of 12 months in the cases of the 1st, 2nd, 14th, 17th, 19th, 21st and 22nd applicants and a 2 year effective sanction in the cases of the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, 18th and 20th applicants.
2. The NDC also ordered that during the period of suspension:-
 - 2.1 The applicants were precluded from exercising any rights in terms of the ANC Constitution, were not able to participate in the affairs of the ANC in any manner and were not eligible for appointment to any office in the organisation;
 - 2.2 The names of the PR Councillors be removed from the list which entitled them to represent the ANC in local government and they vacate their positions as PR Councillors in the Mogalakwena Municipality; and
 - 2.3 The ward councillors resign their positions as councillors (under direction of the Secretary General of the ANC) as they could no longer purport to represent the ANC.

Proceedings before the PDC between 27 and 29 June 2014

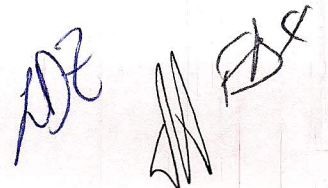
3. On 30 May 2014 the PEC In Limpopo instituted 3 (three) fresh charges against the applicants in terms of Rule 25 of the ANC Constitution and

the applicants were summoned to appear before the PDC between 27 and 29 June 2014.

4. Save for the 4th applicant, Evelyn Mashaba, who made a brief appearance before the PDC on the 27 June 2014 and left, the other applicants and their representative did not appear.
5. The PDC continued with the disciplinary hearing in the absence of the applicants and heard evidence from a number of witnesses.
6. On 7 July 2014 the PDC found the applicants guilty as charged and imposed a sanction of expulsion in respect of all the applicants. The finding was made public on 8th July 2014.
7. The applicants now seek to review the proceedings before the PDC.
8. The Chief National Presenter of the ANC has not filed any documents and decided to abide by the decision of the NDC.

Difference between appeal and review proceedings

9. Since this is the first review application brought in terms of the ANC Constitution after it was amended at the National Conference in 2012 at Mangaung, the NDC considers it necessary to explain the difference between an appeal and a review application.
10. In an appeal against the finding of guilt and/or the sanction imposed, the NDC considers the evidence tendered before the PDC and decides whether the causal connection or link between the actions or utterances of the charged member and the act of misconduct for which he or she was charged has been established on a balance of probabilities.
11. This means that the NDC must compare the evidence tendered by the ANC with the evidence tendered by the charged member and decide which evidence carries more weight or is more credible before making a finding.
12. In an appeal, the NDC also considers whether the sanction imposed by the PDC was appropriate in the circumstances.
13. In a review application the NDC does not consider the merit of the finding or whether the sanction imposed by the PDC was appropriate.
14. Instead, the NDC confines itself to the procedure followed by the PDC to inquire whether procedural fairness prevailed throughout the disciplinary hearing.



15. If the NDC finds that the PDC followed proper procedure, the review application will be dismissed and the Finding and sanction imposed by the PDC will be confirmed.
16. If the NDC finds that the PDC committed gross irregularities in the way it conducted the disciplinary hearing and was unfair to the charged member, it will uphold the application for review and either refer the matter back to the PDC for re-hearing or consider the merits of the case and impose an appropriate sanction.
17. In terms of Rule 25.35 of the ANC Constitution, a charged member found guilty by a disciplinary committee may either appeal against the finding and/or sanction imposed or apply for the review of the proceedings, but not both.
18. The applicants in this matter chose to review the proceedings of the PDC.

Application of the NDC and NDCA Rules of Procedure

19. The NDC was satisfied that the information before it was sufficient to make a Finding without the necessity of convening a formal review hearing and accordingly proceeded to deal with the applicants' application for review in terms of Rule 11.1 of the NDC and NDCA Rules of Procedure.

Applicants' Review Application

20. The 22 applicants filed applications for review on 28 July 2014 - the last day to apply for review in terms of the ANC Constitution.
21. Since the review applications are identical in every respect, the NDC has decided, for the sake of convenience, to issue a single Finding which would be applicable to all the applicants.

Applicants' Grounds of Review

22. The applicants advanced the following five grounds to review the proceedings of the PDC:-
 - 22.1 The Chief Provincial Presenter failed to provide further particulars to the charges and such failure rendered the PDC proceedings unjust and unfair;
 - 22.2 The impartiality and objectivity of the PDC was prejudiced by statements made by prominent leaders of the Respondent prior to the hearing, thereby rendering the PDC members biased and simultaneously raising an apprehension of bias on the part of the applicants;

- 22.3 The PDC failure to accept certain letters from the 4th applicant who made a brief appearance before the PDC constituted an irregularity;
- 22.4 The applicants, save for the 4th applicant, were forcibly prevented from attending the PDC hearing by security officials of the Respondent; and
- 22.5 The PDC unfairly proceeded with the disciplinary hearing in the absence of the applicants.

Evaluation by NDC

Applicants' argument that the Chief Provincial Presenter failed to provide further particulars to the charges and such failure rendered the PDC proceedings unjust and unfair

23. The charges were served on the applicants on 7 June 2014. In its 'Request for Further Particulars' dated 25th June 2014 i.e. 2 days before the hearing, the applicants sought, *inter alia*, to establish the circumstances under which the Chief Provincial Presenter and the members of the PDC were appointed; requested the names of the applicants who were full time councillors; the names of the chairpersons of the Council Committees of the Municipality; the agenda of the council meeting of the 17th April 2014 and wanted to know how the integrity and reputation of the ANC was prejudiced by their conduct.
24. Save for the 4th applicant who made a brief appearance before the PDC and left, the applicants and their representative did not attend the proceedings.
25. The NDC is of the view that the PDC was the appropriate forum for the applicants to have raised their concern about not having receiving further particulars to the charges.
26. After considering their argument, the PDC could have postponed the hearing for an adequate period and directed the Chief Provincial Presenter to provide such further particulars as may be necessary to enable the applicants to plead to the charges.
27. Furthermore, if the applicants were of the view that the charges did not disclose an offence, they could have appeared before the PDC and applied for the charges to be dismissed.
28. However, the NDC's view is that the applicants voluntarily gave up these opportunities when they deliberately decided not to participate in the PDC hearing.

29. Their representative, comrade Dinga Mkhwashu, confirmed their non-attendance in a letter intended to be handed in at the PDC hearing. It was attached to the review application as Annexure "C" dated 27 June 2014 and states, *"These charged comrades are convinced that the only structure that can be impartial is the NDC and that therefore this matter should be referred to that structure for adjudication. This letter will be submitted into [the] record at today's hearing and the comrades will not participate further"*.
30. The applicants had the benefit of a representative who is also a practising attorney. They should have known that in terms of the ANC Constitution the PDC could continue with the hearing in their absence and make an adverse finding against them.
31. Having considered the nature of the further particulars requested, the NDC finds that a substantial part of the request was not entirely relevant to enable the applicants to plead to the charges.
32. The NDC is also of the view that it is sufficient to allege in a charge that the integrity and reputation of the ANC would be prejudiced since it would be up to the Chief Provincial Presenter to lead cogent evidence to this effect at the hearing before a finding of guilt could be made by the PDC on a balance of probabilities.
33. In the view of the NDC there was no duty on the Chief Provincial Presenter to forward any evidence to the applicants about reputational damage or prejudice suffered by the ANC prior to the disciplinary hearing. Consequently, such a request was irrelevant.
34. For the above reasons, the NDC rejects this ground of review.

Applicants' argument that the impartiality and objectivity of the PDC was prejudiced by statements made by prominent leaders of the Respondent prior to the hearing, thereby rendering the PDC members biased and simultaneously raising an apprehension of bias on the part of the applicants

35. According to the record, the PDC made its Finding based on the evidence of 4 witnesses and concluded that the causal connection between the charges and the evidence was established on a balance of probabilities.
36. Three of the 4 witnesses are councillors in the Mogalakwena Municipality who were present in council on 17th April 2014 when the applicants allegedly committed the acts of misconduct for which they were charged. One of them, the Chief Whip, comrade David Langa, provided documentary evidence to support his testimony.
37. The fourth witness, comrade Elizabeth Lekalakala, deputy secretary

of the REC in the Waterberg Region, testified that the applicants acted without the authority of the Respondent in making the decisions they made on 17th April 2014 in the Mogalakwena Municipality and generally behaved in an un-cooperative and defiant manner towards the Respondent's public representatives.

38. The general rule about evidence is that direct evidence is the best evidence to enable a decision maker to arrive at a conclusion that is fair and unbiased.
39. Disciplinary proceedings in the ANC are premised on the principles of justice and fairness. Any other reason for disciplining a member is deemed to be for an ulterior motive.
40. For this reason, Rule 25.8 of the ANC Constitution affords charged members a clear right to bring to the attention of the Presenter and the Chairperson of the disciplinary committee, any information which smacks of bias or ulterior motive. This provision affords the discretion to the Chairperson to put an immediate stop to the proceedings.
41. The NDC is of the view that the applicants should have attended the PDC hearing and presented their evidence in that forum. If the PDC rejected their arguments without proper evaluation, the applicants would have had a basis for raising this argument on review.
42. A mere apprehension of bias is insufficient. The test for bias is to show that the extent of prejudice against the applicants was of such a nature that no reasonable person could have come to the conclusion that fairness prevailed in the proceedings. The onus was on the applicants to make out such a case.
43. In the absence of making any case for apprehension of bias to the PDC and affording the PDC an opportunity to examine such apprehension, the NDC has no basis to determine whether the apprehension of the applicants was real. The NDC is of the view that the applicants should have attended the PDC hearing and raised their concerns about bias. Non-attendance in fact prejudiced them.
44. The applicants appear to have made the assumption that the interviews of the Premier and Provincial Secretary weighed heavily in influencing the PDC. That could certainly have been the case if the PDC dispensed with the hearing in a matter of minutes and without hearing evidence. However, when one contrasts this scenario with the fact that the PDC heard the evidence of 4 witnesses, was presented with documentary evidence and argument by the Chief Provincial Presenter over a three day period, it is unlikely, in the view of the NDC, that any reasonable person could come to a rational conclusion that the PDC was biased or influenced as alleged by the applicants.

45. Consequently, the applicants' arguments that the PDC was influenced by statements made by third parties or that the applicants had an apprehension of bias are rejected.

Applicants argument that the failure of the PDC to accept certain letters from the 4th applicant who made a brief appearance before the PDC constituted an irregularity

46. It is common cause that the applicants' representative did not attend the PDC hearing nor provide any reason for his non-attendance. If the 4th applicant chose to attend the hearing without her representative, that was her prerogative. As such, she had a duty to remain in attendance and exercise her rights in terms of the ANC Constitution as if she was representing herself. The fact that she chose to leave the proceedings was also her decision.

47. Based on these facts which appear from the PDC record, the NDC is not able to find that the choices exercised by the 4th Applicant could render the hearing an irregularity since she was the author of her own conduct.

48. Moreover, it is not clear to the NDC how the failure to accept a letter from the 4th applicant could render the disciplinary hearing an irregularity in respect of all the other applicants who were not present.

49. Consequently, the NDC rejects the applicants' argument that the failure of the PDC to accept certain letters from the 4th applicant, who made a brief appearance before the PDC and voluntarily chose to leave, constituted an irregularity.

Applicants' argument that, save for the 4th applicant, they were forcibly prevented from attending the PDC hearing by security officials of the Respondent

50. This argument is in direct contrast to the contents of Annexure "C" where the representative intended to inform the PDC (the letter was not accepted by the PDC but provided to the NDC in this review application) that the applicants consciously decided not to participate in the proceedings before the PDC.

51. On the applicants' own evidence, the NDC rejects this argument.

Applicants argument that the PDC unfairly proceeded with the disciplinary hearing in the absence of the applicants

52. The charge sheet was served timeously on all the applicants by the

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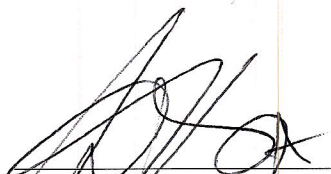
Deputy Sheriff of the High Court and returns of service were handed in as evidence to the PDC.

53. All 22 applicants were represented by comrade Dinga Mkhwashu.
54. Rule 25.72 entitles a disciplinary committee to proceed with a hearing in the absence of the charged member after satisfying itself that the charged member was properly notified.
55. Having considered the return of service of the Deputy Sheriff of the High Court in respect of all 22 applicants, the NDC is satisfied that the procedure followed by the PDC was correct and in accordance with the ANC Constitution.
56. Consequently this ground of review is rejected.


NDC Finding

57. For the above reasons the NDC finds that no procedural irregularities were committed by the PDC in the conduct of the disciplinary proceedings.
58. Consequently, the application for review by all 22 applicants is dismissed and the decision of the PDC that the applicants be expelled from the ANC is confirmed.

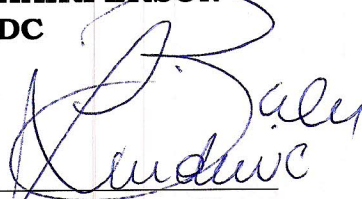
Signed at Luthuli House, Johannesburg this 4th day of August 2014



FIKILE XASA
MEMBER
NDC



DEREK HANEKOM
CHAIRPERSON
NDC



LINDIWE ZULU
MEMBER
NDC