

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 20 APRIL 2015 AT LUTHULI HOUSE, JOHANNESBURG AND ON 28
APRIL 2015 IN CAPE TOWN**

Case No. 1/2015

In the appeal of:-

**NTANDAZO QAMNGWANA
NTSIKELELO CWEBI
KEM JONGA
NOMBULELO YALIWE**

**1st Appellant
2nd Appellant
3rd Appellant
4th Appellant**

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 25 January 2015 the Eastern Cape PDC found the Appellants guilty of contravening:-
 - 1.1 Rule 25.17.3 (failure to comply with ANC policy);
 - 1.2 Rule 25.17.4 (bringing the ANC into disrepute);
 - 1.3 Rule 25.17.11 (undermined the respect for an ANC structure and

impeded its functioning); and

1.4 Rule 25.17.16.3 (undermined the effectiveness of the ANC as an organisation)

of the ANC Constitution and suspended them for 5 years.

2. The specific allegation was that they intentionally disrespected the directive of the ANC Caucus of the Inkwanca Local Municipality on 21 and 23 May 2014, given by the Provincial and Regional ANC Structures, to implement the Kabuso forensic report as ordered by the High Court on 12 May 2014.
3. The specific act of misconduct alleged and relied upon by the PDC in its Finding was that:-

“On 21 and 23 May 2014 in an ANC caucus of the Inkwanca Local Municipality they [the Appellants] were advised by comrade Gladys Mkhusele Lufele (the ANC Chief Whip in that municipality) and by members of the Chris Hani Regional Executive committee that the ANC had directed that the High Court Order under case no. 1246/164 (Eastern Cape Division, Grahamstown dated 12 May 2014) be complied with and the Respondents [Appellants in this appeal] defied, refused and intentionally disrespected the directive set out herein above.”

4. At the instance of the MEC for Local Government, Eastern Cape, the High Court ordered the Municipality and the 1st Appellant, in his capacity as the mayor, to convene a special council meeting on 23 May 2014 and to deliberate the findings and recommendations of the Kabuso report.
5. The Appellants lodged an appeal with the NDC on 18 February 2015 against the PDC's finding and sanction.

Application of NDC Rules of Procedure

6. The NDC was satisfied that the information before it was sufficient to determine the appeal without the necessity of convening a formal appeal hearing and accordingly proceeded to deal with the appeal in terms of Rule 11.1 of the NDC Rules of Procedure.

Appellants' grounds of appeal

7. Although the Appellants did not set out the grounds of appeal with any clarity as required by the NDC Rules of Procedure, the NDC was able to discern the following grounds relevant to this appeal:-

- 7.1 The instruction of an Official of the ANC is not necessarily an instruction of the ANC;
 - 7.2 The PDC erred in relying on the evidence of the Chief Whip as the basis for finding the Appellants guilty; and
 - 7.3 The PDC should have found that there cannot be a case for defiance of an instruction that has not been proven to exist.
8. In their Notice of Appeal, the Appellants also sought to review the Finding on the grounds that the PDC was biased.

Evaluation by NDC

Appellants' argument of bias

9. After perusing the record, the NDC was satisfied that the PDC conducted the proceedings in a fair and equitable manner with due regard for the principles of natural justice. Consequently, the Appellants' argument that the PDC was biased has no foundation and is dismissed.

Appellants' arguments on the conviction

10. Since the grounds of appeal are inter-related, the NDC has decided to deal with them together.
11. The ANC is a national organisation with structures at provincial, regional and branch levels throughout the country and it is dependent on these structures to execute the tasks and objectives of the organisation.
12. Regional secretaries are in fact the chief administrative officers and key decision makers at regional level. One of their main responsibilities is to communicate political decisions of the ANC to government structures such as caucuses in municipalities.
13. In the case of *Mbongeni Zondi and 6 others* (Case Number: 2/2014), the NDCA considered the role of the Caucus and referred to a circular published on the ANC website by the ANC Chief Whip in the National Parliament, comrade Stone Sizani, where the following was stated:

"The members of the ANC Caucus at all levels of their deployment derive their broad mandates from Caucus. At all material times such mandates will be consistent with resolutions of the ANC constitutional structures.

The principal tasks of caucuses of political parties are to keep MPs of each political formation informed about the parliamentary programme and to enable the MPs to discuss and agree on the approach of their parties to all matters on the parliamentary agenda.

Caucuses also serve as the organ within which those elected by caucus to parliamentary positions account to the organisation.

Caucuses also serve as the point of contact between MPs and the leadership of the organisation to which they belong.

Caucuses also manage the work of the study groups. The ANC Caucus carries out the above functions under the supervision of the political committee”.

14. The NDC supports the view of the NDCA that Caucuses exist for the purpose of furthering ANC policy and goals through strategies used in various *fora* (in this case a municipality) to achieve the political objectives of the ANC as set out in its Constitution. In such circumstances, there is very little opportunity for members of a Caucus not to obey the Caucus decision.
15. Each case must be considered independently to determine whether the Caucus members had wilfully disregarded the Caucus directive or whether the Caucus directive was unlawful or unreasonable so that there was sufficient justification for members not to obey it.
16. In the present appeal, the political directive of the ANC's Provincial and Regional structures to the Caucus of the Inkwanca Local Municipality to implement the High Court Order pertaining to the Kabuso Forensic Report was clear, reasonable and lawful.
17. Consequently, in the view of the NDC, it was not open for the Caucus members, including the Appellants, to take any other decision.
18. The NDC finds that the political directive in fact became the Caucus decision and the Appellants were obliged to follow that decision.
19. With regard to the Appellant's grounds of appeal set out in paragraph 7 above, the NDC finds that a lawful instruction of the organisation can be conveyed by one person on behalf of the organisation, be it the Provincial Secretary, Regional Secretary or Chief Whip.
20. According to the evidence, the Appellants did not dispute that the Chief Whip of the Inkwanca Municipality conveyed the directive of the ANC to the Caucus meeting.
21. Accordingly, the hearsay evidence rule has no application because the Chief Whip was conveying a directive as instructed by the Regional Secretary and not merely reporting in the third person what the Regional Secretary said.

22. In the view of the NDC, the act of misconduct committed by the Appellants undermined the respect for the ANC Caucus and impeded its functioning and undermined the effectiveness of the ANC as an organisation.
23. For these reasons the NDC finds that the PDC correctly found that the causal connection between the alleged act of misconduct as set out in Rules 25.17.11 and 25.17.16.3 with which the Appellants were charged was established and that the guilt of the Appellants on these two counts was proved on a balance of probabilities.
24. Insofar as a contravention of Rule 25.17.3 (failure to comply with ANC policy) and Rule 25.17.4 (bringing the ANC into disrepute) is concerned, the NDC finds that the Appellants were properly charged with contravention of these rules. However, in the view of the NDC, insufficient evidence was placed before the PDC to support a finding of guilt on a balance of probabilities.
25. For this reason the Appellants are found not guilty of contravening Rules 25.17.3 and 25.17.4 of the ANC Constitution.

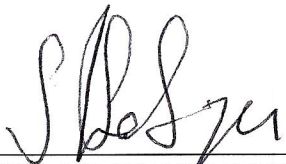
Appellants' argument on the sanction imposed

26. The Appellants argued that the sanctions imposed were severe and should be reduced.
27. The NDC is of the view that the act of misconduct committed by the Appellants was so severe that it warranted the urgent intervention of the MEC for Local Government using the High Court and at great cost to the taxpayer.
28. Local councillors that are selected by the ANC as public representatives play a key role in conveying the aspirations of the ANC and delivering goods and services to the public at a local level.
29. The Appellants' conduct not only breached the trust that the ANC placed in them but they also let down the community that was dependent on them for the provision of basic services.
30. The NDC is of the view that having regard to the nature and seriousness of the act of misconduct committed by the Appellants, a conviction under Rules 25.17.11 and 25.17.16.3 would have been sufficient to justify an expulsion of all 4 Appellants.
31. The NDC is of the view that the PDC was lenient by imposing a sanction of five years. However, since the ANC did not cross-appeal, argue for a more severe sanction or place evidence in aggravation of sanction before the NDC in this appeal, the NDC has decided not to interfere with the sanction imposed by the PDC.

NDC Finding

32. The PDC decision that the Appellants were guilty for contravening Rules 25.17.11 and 25.17.16.3 of the ANC Constitution is confirmed.
33. The Appellants are found not guilty of contravening Rule 25.17.3 and Rule 25.17.4 of the ANC Constitution.
34. The sanction of 5 years imposed by the PDC is confirmed.

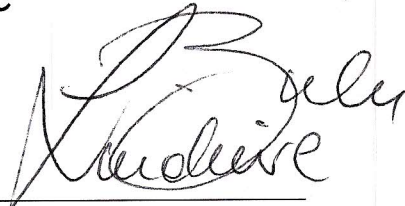
Dated at Cape Town this 7th day of May 2015



SUSAN SHABANGU
MEMBER
NDC



DEREK HANEKOM
CHAIRPERSON
NDC



LINDIWE ZULU
MEMBER
NDC