

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 11 OCTOBER 2015 IN MIDRAND, JOHANNESBURG**

Case No. 5/2015

In the appeal of:-

KHAYALETHU NQIQHI

Appellant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 31 May 2015 the Eastern Cape PDC found the Appellant, the mayor of the Tsolwana Local Municipality, guilty of the following 4 charges:-
 - 1.1 Contravention of Rule 25.17.3;
 - 1.2 Contravention of Rule 25.17.4;
 - 1.3 Contravention of Rule 25.17.11; and

- 1.4 Contravention of rule 25.17.16.3 of the ANC Constitution.
2. The Appellant was found guilty for refusing to obey a lawful directive of the PEC, through the caucus, that he resign as mayor of the Tsolwana municipality and for organising members of the community to disrupt meetings of the ANC in his constituency.
3. After hearing evidence in mitigation at a subsequent hearing on 31 May 2015, the PDC expelled him from the ANC.

Application of NDC Rules of Procedure

4. The NDC was satisfied that the information before it, including the notice of suspension, charge sheet, return of service, PDC record and PDC Finding, 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

5. On 26 June 2015 the Appellant appealed against the finding and sanction on the grounds that the charge sheet was not served on him and, consequently, he did not receive a fair hearing. He argued that the case should be heard again from the beginning.

Evaluation by NDC

6. Prior to finalising this appeal, the NDC gave the Appellant an opportunity to place additional written information before it in mitigation of the sanction of expulsion imposed by the PDC.
7. On 20 September 2015 the Appellant placed the following information before the NDC in mitigation of sanction:-
 - 7.1 He has been a member of the ANC for the past 15 years;
 - 7.2 He acted on the instructions of ANC branches when he committed the acts of misconduct;
 - 7.3 He was a victim of factionalism;
 - 7.4 He was not given a fair hearing; and

- 7.5 Somebody forged his signature and received the charge sheet on his behalf.
8. After examining the documents in the PDC record, the NDC is satisfied that the charge sheet was properly served on the Appellant by the Sheriff of the High Court and by facsimile transmission and that the Appellant was aware of the date when he had to appear for his disciplinary hearing. Consequently, the NDC finds that the PDC was entitled to proceed with the disciplinary hearing in the absence of the Appellant as provided for in the ANC Constitution.
9. The NDC is satisfied from the Appellant's answers to the questions put to him by the PDC members on the merits of the case that the guilty finding by the PDC was a proper decision.
10. In his evidence in mitigation, the Appellant said he was aware of the decision of the PEC that he should resign as mayor but decided to follow the advice of the branches in his region that he should not resign. He also testified that he was not remorseful of his actions not to follow the decision of the PEC. He repeated his defence in his email of 20 September 2015 to the NDC when he was given an opportunity to provide evidence in mitigation of sanction.
11. The PEC is the highest decision making structure in the Province and is responsible for the administration of all ANC activities in that Province.
12. The Appellant defied the PEC and enlisted the support of ANC branches to support him in his act of defiance. In doing so, the Appellant placed those ANC members at risk of also being disciplined by the organisation. Such actions brought the ANC into disrepute in the eyes of the community which the ANC, through the person of the Appellant as its public representative, vowed to serve.
13. The Appellant did not show any remorse when he testified before the PDC in mitigation of sanction and even when he was given an opportunity by the NDC to provide written evidence in mitigation of sanction.
14. By refusing to show remorse, the Appellant clearly demonstrated that he did not respect the authority of the PEC.
15. The NDC could find no compelling reason why the Appellant should continue to remain a member of the ANC which is a voluntary

organisation.

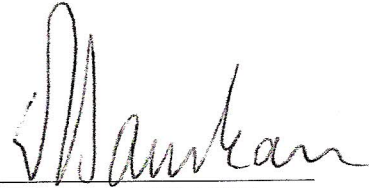
16. Furthermore, the NDC is satisfied that the sanction of expulsion imposed by the PDC is consistent with the seriousness of the acts of misconduct committed by the Appellant.

NDC Finding

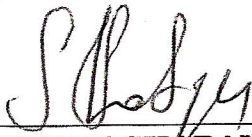
17. The appeal is dismissed and the expulsion of the Appellant from the ANC is confirmed.

18. The Appellant is required to vacate his position as mayor of the Tsohwana Local Municipality.

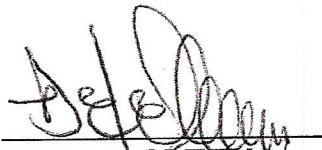
Dated at MIDRAND this 10th day of October 2015



**DEREK HANEKOM
CHAIRPERSON
NDC**



**SUSAN SHABANGU
MEMBER
NDC**



**EDNA MOLEWA
MEMBER
NDC**

**LINDIWE SISULU
MEMBER
NDC**