

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 19 AUGUST 2015 AT 120 PLEIN STREET, CAPE TOWN**

Case No. 4/2015

In the appeal of:-

ZOLILE MASIMINI

Appellant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 6 June 2015 the Appellant was suspended for three years pursuant to being found guilty on 4 counts of misconduct in terms of Rule 25 of the ANC Constitution, in particular:-

1.1 Rule 25.17.4 (bringing the ANC into disrepute);

1.2 Rule 25.17.10 (publishing or distributing any media publication without authorisation);

1.3 Rule 25.17.11 (undermining the respect for an ANC structure and

impeding its functioning); and

- 1.4 Rule 25.17.16.3 (undermined the effectiveness of the ANC as an organisation).
2. The specific allegation was that on 4 October 2014 the Appellant divulged to the Daily Dispatch newspaper aspects of a confidential meeting of the ANC's National Working Committee held at the Cala Indoor Sports Centre on 28 September 2014, which information was subsequently found to be false.
3. On 4 October 2014 the Daily Dispatch newspaper published an article entitled, "EC snub to Gwede's political ambitions".
4. The Appellant was quoted in the article as having said:-
 - 4.1 Mantashe even claimed that we carried placards to Calata House saying Mantashe cannot be president; and
 - 4.2 He [Appellant] was shocked when Mantashe mentioned other provincial leaders by name, saying they were receiving preferential treatment as opposed to Gauteng's Paul Mashatile.

Application of NDC Rules of Procedure

5. 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

6. The Appellant advanced, *inter alia*, the following grounds of appeal:-
 - 6.1 There is no evidence that the alleged statement was made by the Appellant;
 - 6.2 In the absence of any other evidence before the PDC, there is no reason why the testimony of the Appellant should be rejected;
 - 6.3 The PDC did not consider other forms of sanction; and

- 6.4 The sanction of three years suspension was disproportional to the nature of the offence and a warning would have been an appropriate sanction.

Evaluation by NDC

Appellants' argument that there is no evidence that the alleged statement was made by the Appellant

7. The Provincial Presenter submitted a copy of the newspaper article as evidence.
8. The Appellant testified that the newspaper contacted him telephonically and he believed that as a leader he had a responsibility to correct what was put to him by the journalist [see pages 16 and 18 of PDC record].
9. The Appellant did not deny that he spoke to the journalist of the Daily Dispatch newspaper.
10. Consequently, the Appellant's argument that there is no evidence that the alleged statement was made by him is rejected.

Appellant's argument that in the absence of any other evidence before the PDC, there is no reason why his testimony should be rejected

11. The Appellant argued that the newspaper article constituted hearsay evidence and was inadmissible because there was no evidence of corroboration [see pages 12 and 13 of PDC record].
12. With regard to the production of documents, video material and photographs, Rule 50 of Appendix 3 of the ANC Constitution provides that, "*it shall not be necessary for either the Presenter or the charged member to call any witness to confirm the authenticity of any document, video or photograph submitted in evidence.*"
13. Consequently the production of the newspaper article was sufficient to prove that the Appellant issued the statement. Consequently, the NDC rejects his argument that in the absence of other evidence his testimony should be accepted.

Merits of the appeal

14. The NDC is satisfied that the Appellant was guilty of contravening:-

- 14.1 Rule 25.17.4 (making an utterance which brought the ANC into disrepute);
- 14.2 Rule 25 17.11 (undermining the respect for the PEC of the ANC in the Eastern Cape); and
- 14.3 Rule 25.17.16.3 (undermining the ANC's effectiveness as an organisation through his utterance).
15. The NDC is not convinced that the Appellant should have been found guilty of contravening Rule 25.17.10 of the ANC Constitution.
16. Rule 25.17.10 makes it an act of misconduct if a member publishes or distributes any media publication without authorisation which purports to be the view of any organised grouping, faction or tendency, within the ANC.
17. In the view of the NDC, the above quoted Rule is intended to curtail the behaviour of members who pursue factional activity within the organisation by distributing media publications such as pamphlets. In the present case, there is no evidence to this effect.
18. Consequently, the Appellant is found not guilty of contravening Rule 25.17.10 of the ANC Constitution.

Sanction imposed by the PDC

Appellant's arguments that the PDC did not consider other forms of sanction and the sanction of three years suspension was disproportional to the nature of the offence and a warning would have been an appropriate sanction

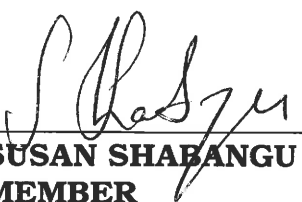
19. In the view of the NDC, divulging information to the media about the discussion at NWC meetings constitutes a serious breach of the trust relationship that is expected of all members when dealing with matters concerning the organisation in a closed meeting.
20. The Appellant's conduct not only brought the ANC into disrepute and publicly undermined the organisation but also served to fuel the perception that the ANC is a divided organisation.
21. Such conduct by the Appellant in the view of the NDC was serious. Consequently, a warning would not have been an appropriate sanction.

22. The NDC is of the view that an effective suspension of three years would have been appropriate if the Appellant was found guilty on all four charges.
23. However, as a consequence of the NDC's finding that the Appellant was not guilty of contravening Rule 25.17.10, the NDC believes it would be fair and equitable to reduce the sanction imposed by the PDC.


NDC Finding

24. The NDC confirms the PDC Finding that the Appellant was guilty of contravening Rules 25.17.4, 25.17.11 and 25.17 16.3 of the ANC Constitution.
25. The NDC finds the Appellant not guilty of contravening Rule 25.17.10 of the ANC Constitution.
26. The three year sanction imposed by the PDC is reduced to two years and shall terminate on 5 June 2017 (i.e. two years from the date the sanction was imposed by the PDC).

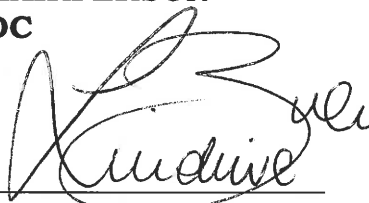
Dated at Cape Town this 19th day of August 2015



SUSAN SHABANGU
MEMBER
NDC



DEREK HANEKOM
CHAIRPERSON
NDC



LINDIWE ZULU
MEMBER
NDC