

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL

CASE NUMBER: 1 /2017

In the review application of

MARIUS LLEWELLYN FRANSMAN

Applicant

and

AFRICAN NATIONAL CONGRESS

Respondent

NDCA FINDING

Background

1. On 9 November 2016 the National Disciplinary Committee (NDC) found the applicant guilty on two counts of misconduct and suspended his ANC membership for a period of 5 (five) years.
2. On 1 December 2016 the Applicant applied to the NDCA to review the decision of the NDC and on 9 December 2016 submitted a supplementary submission.
3. The applicant's application to the NDCA was preceded by an urgent application to the Western Cape High Court to review and set aside the decision of the NDC. The first part of this two part application was dismissed with costs. The applicant has not as yet pursued the second part of his urgent application.

Application of NDCA Rules of Procedure

4. Having perused the bundle of documents submitted by the NDC, the NDCA is satisfied that the review application can be considered on the documentary evidence before it without the necessity of hearing any oral representation or argument by the parties.

Grounds of review

5. The applicant advanced a number of grounds for the decision of the NDC to be reviewed which, for the purpose of this Finding, need not be set out in detail.

Evaluation by NDCA

6. The NDCA has noted from media reports, subsequent to the announcement of the NDC Finding in November last year, that the Applicant has persisted with his claim that he was not afforded a procedurally fair hearing, more particularly in that the evidence of his two witnesses, submitted to the NDC by email, was not considered by the NDC.
7. In the view of the NDCA, the NDC provided cogent reasons for proceeding with the hearing in the absence of the Applicant and for not considering the evidence of his witnesses.
8. The ANC is a voluntary political organisation. As such, both the ANC and all its members, including the Applicant, have a positive duty to enhance and to protect the image and reputation of the organisation.
9. The Applicant's wilful refusal to attend the NDC hearing detracted from his positive duty to cure the negative public perception about the ANC which he created.
10. Consequently, the NDCA is of the view that preferring further charges of misconduct against the applicant would not cure the negative public perception about the ANC that has been created.
11. In order to protect the image and reputation of the ANC, the NDCA is of the view that the most equitable approach in the interest of the ANC would be for the matter to be referred back to the NDC with an appropriate directive as provided for in Rule 25.27.4 of the ANC Constitution.

NDCA Finding

12. The matter is referred back to the NDC with the following directive:-

- 12.1 That the applicant adduces evidence to support his allegation that the NDC was biased and a judge in its own cause and that he did not get a fair hearing;
- 12.2 That the two witnesses, which the applicant intended to call, adduce factual evidence to show cause why the finding of the NDC on Charge 1 should be reviewed and set aside.
- 12.3 That the NDC convenes the hearing within 21 calendar days; and
- 12.4 That the applicant, his representative and witnesses rearrange their schedules to make themselves available on the date set by the NDC for the hearing.

Dated at Luthuli House, Johannesburg on this 3rd day of April 2017

J. RaDebe

**JEFF RADEBE
CHAIRPERSON
NDCA**

G.N.M. Pandor

**NALEDI PANDOR
MEMBER
NDCA**

**GUGILE NKWINTI
MEMBER
NDCA**

Agreed (by telecon)

**NGOAKO RAMATHLODI
MEMBER
NDCA**

**PRAVIN GORDHAN
MEMBER
NDCA**

**SANKIE MTHEMBI MAHANYELE
MEMBER
NDCA**

**PAM TSHWETE
MEMBER
NDCA**