

# African National Congress



## National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

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**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL  
(NDCA)**

**HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA**

**ON FRIDAY 12 AUGUST 2016**

**CASE NUMBER: 3/2016**

**In the application of**

**TOKYO MATABOGE**

**Applicant**

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### **NDCA FINDING**

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#### ***Background***

1. On 7 July 2016 the Applicant applied in terms of Rule 25.68 of the ANC Constitution to set aside the temporary suspension imposed on him by the ANC North West Provincial Working Committee (PWC) on 8 June 2016.
2. According to the Applicant, he only received the letter of suspension on 28 June 2016.
3. Due to the commitment and engagement of NDCA members in the Local Government elections, it was not possible for the NDCA to meet to Consider this application earlier.
4. The Applicant is the regional secretary of the Bojanala Region.
5. From the Applicant's application, it appears that two sets of charges were

preferred against the Applicant- the first set in February 2016 and the second set in May 2016.

6. With regard to the first set of charges, the Secretary General directed that the disciplinary hearing be adjudicated by the National Disciplinary Committee (NDC) and not the Provincial Disciplinary Committee.
7. This matter is still to be heard by the NDC.
8. In the second set of charges, the Applicant is alleged to have defied the PEC, established and associated himself with parallel structures, refused to attend meetings with PEC Officials and tampered with nomination list packages for the Local Government elections.

### ***Evaluation by NDCA***

9. The Applicant has sought to defend himself in his application. In the view of the NDCA, these matters should be ventilated before the NDC in due course. This application is concerned solely with the issue whether the temporary suspension should be confirmed or be set aside.
10. It is not automatic that a charged member should be suspended. When deciding whether a charged member should be suspended, different considerations are taken into account such as the gravity of the offences, the risk of tampering with the investigation and intimidating witnesses.
11. Suspension of a public representative (in this case a regional secretary who is a full-time paid official) would have serious consequences for the ANC and should only be resorted to in cases where justifiable circumstances exist such as the likelihood of the Applicant:-
  - 11.1 Engaging in further conduct which would or could bring the ANC into disrepute;
  - 11.2 Tampering with or destroying evidence held by him in his capacity as the custodian of files, records and correspondence of the Bojanala region; and
  - 11.3 Intimidating witnesses and/or staff members in his office.
12. In terms of Rule 25.64 of the ANC Constitution, the PWC, after it decided to suspend the Applicant, was obliged to *"immediately forward a report of such suspension and the reasons for it to the NDCA and the NDCA may, in its discretion, at any stage set aside such suspension"*.
13. The reason for the constitutional requirement that a report be sent to the NDCA is for the NDCA to make an independent assessment whether the temporary suspension was justified.

14. The ANC Constitution empowers the NDCA to review temporary suspensions on its own volition without any application to be made to it. The NDCA can only exercise this power if it is informed by the structure which has decided to suspend a member.
15. In making this determination, the NDCA would not only be persuaded by the seriousness of the allegations. The factors referred to in paragraph 11 above should also be taken into consideration.
16. In this case, the PWC has failed to comply with Rule 25.64 of the ANC Constitution – to make available to the NDCA the necessary information as it was required to do. As such, the NDCA has no information before it to determine whether the temporary suspension of the Applicant was justified or not.
17. Procedural fairness is a cornerstone of organisational discipline in the ANC. In the view of the NDCA, the failure of the PWC to comply with Rule 25.64 of the ANC Constitution is materially defective.
18. In the view of the NDCA, the charges preferred against the Applicant are of a very serious nature.
19. The NDCA wishes to stress that should the Applicant in the future exhibit conduct which warrants that he be suspended pending the finalisation of his disciplinary hearing, the PWC is not precluded by this ruling from doing so.
20. The only requirement is that the PWC comply with the ANC Constitution pertaining to temporary suspension by setting out cogent reasons why the member should be suspended and how the reputation of the ANC would or could be prejudiced, giving the member an opportunity to respond and providing full information to the NDCA after a decision of temporary suspension is taken.
21. In the NDCA's view, an overriding consideration when suspending a member pending disciplinary action is to protect the interest and reputation of the ANC.

#### ***NDCA Finding***

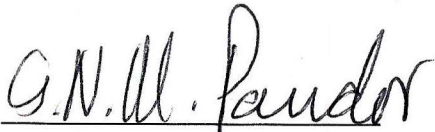
22. The temporary suspension imposed by the PWC is reviewed and set aside.
23. The North West Provincial Disciplinary Committee is required to urgently submit the file to the Chief National Presenter so that the NDC could commence with the disciplinary hearing of comrade Mataboge.

Dated at IRENE, PRETORIA on this 13<sup>th</sup> day of August 2016



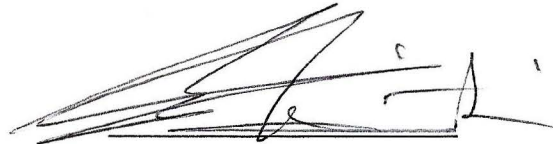
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**JEFF RADEBE**  
**CHAIRPERSON**  
**NDCA**



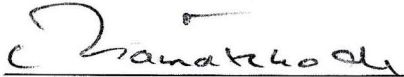
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**NALEDI PANDOR**  
**MEMBER**  
**NDCA**



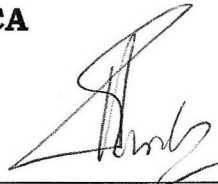
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**GUGILE NKWINTI**  
**MEMBER**  
**NDCA**



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**NGOAKO RAMATHLODI**  
**MEMBER**  
**NDCA**



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**PRAVIN GORDHAN**  
**MEMBER**  
**NDCA**



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**SUE VAN DER MERWE**  
**MEMBER**  
**NDCA**



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**PAM TSHWETE**  
**MEMBER**  
**NDCA**