

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

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

CASE NUMBER: 4/2016

In the application of

MARIUS FRANSMAN

Applicant

NDCA FINDING

Background

1. On 8 January 2016 a complaint of sexual assault was lodged against the applicant at a police station in Rustenburg by a female companion who travelled with the applicant from Cape Town to Rustenburg.
2. The ANC subsequently directed the Integrity Commission to investigate the allegation.
3. The Integrity Commission is comprised of respected elders in the ANC who are empowered to protect the good name and reputation of the ANC and to safeguard and promote its character and values.
4. From time to time the Integrity Commission is called upon to interrogate allegations levelled against senior leaders in the organisation which border on ethical, financial or moral impropriety or which brings or could bring or have the potential to bring the ANC into disrepute.

5. On 27 January 2016 the Applicant, the Provincial Chairperson of the ANC in the Western Cape, was directed by the National Working Committee (NWC) to step aside as the Provincial Chairperson until the South African Police Service has taken a final decision on the criminal charge preferred against him on 8 January 2016 at Rustenburg AND the Integrity Commission has investigated the case against him and made its Findings.

6. The preamble to the NWC decision was set out in a letter to the Applicant in the following terms:-

“The National Officials, who are seized with the overall supervision of the ANC, considered representations made to it by structures of the ANC and decided to refer your matter to the NWC”.

7. The NWC also stated in the preamble to its resolution that the decision was taken in the best interest of the organisation.

8. The NWC resolution was signed by the majority of members in the NWC and the decision was sent to the applicant by electronic transmission on 28 January 2016 and a copy was sent to the ANC Deputy Provincial Secretary.

Applicant’s arguments raised in his correspondence

9. The Applicant seeks to set aside his suspension on the grounds that Rule 25.65 of the ANC Constitution provides that a temporary suspension shall lapse if a notice of a charge relating to such suspension is not delivered to the member within 30 (thirty) days from the date of commencement of the temporary suspension.

10. His argument is that his current suspension is invalid because the ANC only charged him in August 2016.

11. The applicant also raised his defences on the 3 charges preferred against him by the NDC and called on the NDCA to quash the charges.

Evaluation by NDCA

12. The ANC is a voluntary political organisation and is managed by its members.

13. For the purpose of this ruling, reference will be made to 3 structures of the organisation - the National Conference, NEC and the NWC.

13.1 The National Conference is the supreme ruling and controlling body of the ANC and is convened at least once every 5 years.

- 13.2 The NEC meets at least once every quarter; and
- 13.3 The NWC meets at least once every fortnight.
14. All 3 structures, together with the Officials, make decisions which are within the aims and objectives of the organisation; are encompassed by the character and value system of the organisation and which are in the best interest of the organisation.
15. The Officials and NWC make decisions on a regular basis, all of which are considered by the NEC at its quarterly meeting and are either ratified, amended or rejected.
16. In terms of the ANC Constitution, the President is the political head and chief directing officer of the ANC. He is empowered to make pronouncements for and on behalf of the NEC outlining and explaining the policy or attitude of the ANC on any question and to direct and orient the activities of the ANC.
17. The Secretary General is the Chief Administrative Officer of the ANC.
18. The other Officials enjoy similar authority which they exercise collectively.
19. On 27 January 2016 the Officials considered representations made by ANC structures regarding the Provincial Chairperson in the Western Cape and subsequently called on the NWC to take appropriate steps in respect of the applicant.
20. The practical effect of the NWC decision that the applicant be directed to step aside is that the applicant would not be permitted to exercise his powers and duties and not obliged to discharge his obligations to the organisation until the conditions set out in the NWC resolution were fulfilled.
21. In the view of the NDCA, a decision to step aside or step down is distinguishable from a temporary suspension imposed on a member in terms of Rules 25.56 to 25.70 of the ANC Constitution.
22. The temporary suspension provisions in the ANC Constitution (Rules 25.56 to 25.70) can only be invoked if a decision has been taken to charge a member for misconduct in terms of Rule 25 and the charge sheet has not been served or where the charge sheet was served but disciplinary proceedings have not as yet commenced or if a member has been charged in a court of law on any charge.
23. The applicant was not facing any disciplinary action for misconduct nor was he indicted to appear in a court of law on any charge as at the relevant time (27 January 2016). As such, the NWC could not

invoke the temporary suspension provisions of the ANC Constitution.

24. In the view of the NDCA, the NWC would have acted unlawfully if it suspended the applicant in terms of the temporary suspension provisions of the ANC Constitution.
25. The NWC directed the applicant to step aside and not exercise his rights, duties and obligations until two conditions were fulfilled – finalisation of the criminal charges and finalisation of the Integrity Commission report. No reference was made in the NWC resolution to the temporary suspension provisions in the ANC Constitution.
26. At the time the NWC decision was conveyed to him (28 January 2016), the applicant tacitly and by his conduct accepted that the NWC and the Officials had the necessary authority to direct him to step aside and he did not question such decision.
27. In the view of the NDCA, every voluntary association has the inherent power to protect its interests and consequently to make decisions and take actions which are in the best interest of the organisation.
28. In the ANC Constitution, the powers of the Officials, NWC and NEC are framed in sufficiently wide terms to enable these structures to act in the best interest of the organisation and make decisions that are rational and within the lawful parameters of the Constitution.
29. Hence, the NWC's decision to direct the applicant to step aside was **not** taken in terms of the temporary suspension provisions of the ANC Constitution in contemplation of disciplinary proceedings but was taken by decision-making structures (Officials and NWC) which had the necessary authority to make such a decision in the best interest of the organisation and for the purpose of protecting the organisation and upholding its character and value system.
30. In the view of the NDCA, the overriding factor when the ANC makes such decisions is whether it is made in good faith and in the best interest of the organisation.
31. Having regard to the facts of this case, the NDCA is satisfied that the Officials and the NWC acted in the best interest of the ANC; acted in good faith and within the legal parameters of the ANC Constitution and not for any arbitrary purpose.
32. In light of the above, the applicant's argument that his suspension lapsed by virtue of the provisions of Rule 25.65 of the ANC Constitution is misplaced.

NDCA Finding

- 33. The applicant's application is dismissed.
- 34. The applicant's argument that the NDCA should quash the charges preferred against him for the reasons set out in his correspondence to the NDCA cannot be considered. The NDCA directs that these arguments should be placed before the NDC as the appropriate forum to consider and finalise them.

Decision taken by round robin on 15 September 2016

**JEFF RADEBE
NALEDI PANDOR
GUGILE NKWINTI
NGOAKO RAMATHLODI
PRAVIN GORDHAN
PAM TSHWETE
SUE VAN DER MERWE**

**CHAIRPERSON NDCA
MEMBER NDCA
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