

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON
SATURDAY 28 MAY 2016 AT ST. GEORGE HOTEL**

Case No. 3/2016

In the review application of-

GEORGE MATJILA

Applicant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 20th July 2015 the Provincial Office bearers in the Gauteng Province received a report that six comrades (Samuel Rabohlale, Jackie Mawela, Jeffrey Mohodi, Jacob Manganye, David Matsheni and Lazarus Nkuna) allegedly committed acts of misconduct, on the instruction of comrade George Matjila at the Grootvlei Conference Centre in Tshwane during the ANC Youth League regional conference on 8 and 9 August 2014.
2. The matter was referred to the PDC on 11 August 2015 and after investigation, the PDC charged comrade George Matjila
3. The Applicant was charged with 6 counts of misconduct for contravening Rules 25.17.6; 25.17.9; 25.17.11; 25.17.16.1; 25.17.16.2 and 25.17.16.3 of

the ANC Constitution.

4. In March 2016, the PDC found the Applicant guilty on all 6 counts and expelled him from the ANC.
5. The Applicant subsequently applied to the NDC to review the decision of the PDC on the grounds that the ANC failed to comply with the provisions of Rule 25.49 of the Constitution.

Evaluation by the NDC

6. What was apparent to the NDC from the record and PDC Finding was the time lapse between the date of the alleged offence and the date on which the Applicant was charged.
7. Consequently, on 3 May 2016 the NDC sought an explanation from the Gauteng PDC.
8. In response, the Provincial Secretary of Gauteng confirmed:-
 - 8.1 that the act of misconduct was allegedly committed on 8 and 9 August 2014 at the Grootvlei Conference Centre in Tshwane;
 - 8.2 that the acts of misconduct were allegedly committed by the 6 comrades named in paragraph 1 above;
 - 8.3 that they allegedly acted on the instruction of the Applicant;
 - 8.4 that the case was referred to the PDC on 11 August 2015;
 - 8.5 that the notice of the charges was served on the Applicant on 13 October 2015; and
 - 8.6 that the matter was first set down for hearing on 4 November 2015.
9. In short, the Provincial Secretary did not explain the time lapse between the date of the alleged commission of the misconduct and the date the charge sheet was served on the Applicant – more than 14 months. Instead, he sought to answer the query about prescription on the basis that the acts of misconduct were first brought to the attention of the Provincial Office Bearers on 20 July 2015 and the charges were served on the Applicant on 13 October 2015 which was within the 3 month period stipulated in Rule 25.49 of the ANC Constitution.

10. Rule 25.49 provides that, *"notice of the charge shall be delivered to the charged member or his or her representative within 3 months of the date when knowledge of a member's alleged act of misconduct or conviction in a court of law is brought to the attention of the ANC."*

11. On 27 March 2015 all six witnesses deposed to affidavits at the Johannesburg Central Police Station.

12. The essence of their affidavits was the same and made the point that they were instructed by the Applicant, George Matjila, to disrupt the registration for the ANC Youth League conference on 8 and 9 August 2014 in Pretoria.

13. These comrades testified on behalf of the ANC at the PDC hearing and were questioned extensively on the affidavits made to the police which the Provincial Presenter handed in as evidence.

See: Page 148 A-F of Applicant's bundle of documents

14. Some of them were asked why they decided to make the affidavits and their responses were the following:-

14.1 Comrade Lazarus Nkuna testified that he realised that disrupting the ANC conference was a mistake and his actions were not right.

See: Page 205 of Applicant's bundle of documents and Page 54 of PDC Record

14.2 Witness Jackie Mawela testified that he was instructed by the Applicant to lodge his concern with the regional secretary in Tshwane. However, he realised that things could get worse if he lodged a complaint with the regional secretary because one of the things the Applicant wanted to do was to get them to fight with the regional secretary. So he, together with the others, [implied from the use of the word, 'we'] went to the ANC Provincial Office.

See: Page 250 of Applicant's bundle of documents and Page 99 of PDC Record

14.3 Witness Madiba Rabohlale testified that "we" went to the Provincial Office. "We found comrade Khabazela then we explained that we had a situation. Comrade Khabazela said to us there is nothing he can do but he can give another comrade we can talk to. Because it was word of mouth, he could not take our explanation. He wanted

something in writing. It is then we decided to make it in writing”.

See: Page 290/1 of Applicant’s bundle of documents and Page 140 of PDC Record

14.4 Witness Jacob Manganye testified that “when we were asked to confront comrade Mojapelo we started to have a problem. For this reason we decided to approach the provincial officer for advice”.

See: Page 304 of Applicant’s bundle and Page 153 of PDC Record

15. Procedural fairness is a cornerstone of the ANC Constitution.
16. There is a line of cases in the NDCA and NDC which stress the importance of procedural fairness and to which the Applicant referred in his review application.
17. ‘Khabazela’ is the *nom de guerre* of comrade Sipho Mkhize. He is employed by the ANC as the professional assistant to the Provincial Secretary and is based at the ANC Provincial headquarters at Walter Sisulu House in Johannesburg. He is also a member of the Provincial Presenter’s team.
18. Based on the evidence of the ANC’s own witnesses, the NDC concludes that the ANC became aware of the acts of misconduct for the first time on 27 March 2015 when the Provincial Office advised the witnesses to depose to affidavits which they did at the police station nearby.
19. It follows from the provisions of Rule 25.49, that by virtue of this knowledge of the acts of misconduct, the ANC had 3 months (until 26 June 2015) to deliver the charge sheet to the Applicant and it is common cause that the ANC did not do so.
20. Prescription set in as from 27 June 2015 and, according to the evidence, the ANC only considered the acts of misconduct against the Applicant on 20 July 2015.
21. Consequently, the ANC’s argument that it complied with the 3 month prescriptive period by serving the charge sheet on 13 October 2015 is misplaced.
22. In the absence of any explanation for the delay, the failure to comply with Rule 25.49 of the ANC Constitution is fatal.

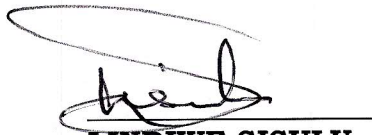
NDC Finding

23. The review application succeeds and the sanction of expulsion imposed by the PDC is reviewed and set aside.

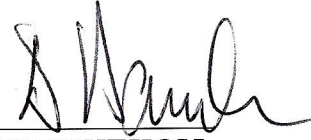
Dated at Irene, Pretoria this 28th day of May 2016



**EDNA MOLEWA
MEMBER
NDC**



**LINDIWE SISULU
MEMBER
NDC**



**DEREK HANEKOM
CHAIRPERSON
NDC**



**FIKILE XASA
MEMBER
NDC**