**AFRICAN NATIONAL CONGRESS**

**NATIONAL DISCIPLINARY COMMITTEE Case No: /2011**

In the matter of:

**AFRICAN NATIONAL CONGRESS Complainant**

**NATIONAL OFFICIALS**

and

**JULIUS MALEMA 1st Respondent**

**RONALD LAMOLA**  **2nd** **Respondent**

**PULE MABE 3rd Respondent**

**SINDISO MAGAQA 4th Respondent**

**KENETSWE MOSENOGI 5th Respondent**

**FINDING**

The respondents were individually charged for the undermentioned acts of misconduct.

For the sake of convenience, the NDC approved a procedural agreement between the parties, in terms of which the respondents would be joined in one hearing. The matter was heard on 2 September 2011 and closing argument was presented on 13 September 2011.

**A. The charge**

The charge against the respondents was that they were guilty of:

1. contravening Rule 25.5(q) of the ANC Constitution by deliberately

disrupting a meeting of and interfering with the orderly functioning of the

organisation; and

2. undermining the respect for or impeding the functioning of the structures

of the organisation as well as prejudicing the integrity and repute of the

organisation, or its operational capacity in contravention of Rule 25.5(o):

In that

1. On Monday 8 August 2011, you barged uninvited into a formal and

scheduled meeting of the Officials of the NEC of the ANC, thus displaying

an absolute lack of respect for the Officials of the ANC and impeding its

functions.

2. You refused, on Monday 8 August 2011, to accept the directive issued by

the Officials and conveyed to you by the Secretary General of the ANC, to

the effect that the Officials had decided not to engage the Youth League

NEC on that day; and

3. You sought actively to undermine the authority, integrity and repute of

the Secretary General of the ANC, and thus the organisation, by refusing

to accept his explanation as to why the Officials of the ANC had refused to

meet with the ANC Youth League.

For the sake of clarity, the respondents will, at times, be referred to by

name.

The respondents were charged in their capacity as members of the ANC.

**B. Plea**

All the respondents pleaded not guilty and elected not to offer an

explanation for their plea of not guilty.

**C. Evidence on behalf of the complainants**

The only witness called by the complainant was comrade Gwede Mantashe,

the Secretary General of the ANC (SG).

1. A summary of his evidence is as follows:-

1.1 The National Officials met at Luthuli House at 09h00 on 8 August 2011.

1.2 During the course of the meeting the National Officials decided that a

meeting with the NEC of the ANC Youth League, scheduled to take

place later that day, should be postponed. The reason was that the

meeting would not be fruitful because the Officials had taken a decision

to institute disciplinary charges against some of the National Executive

Committee members of the Youth League.

1.3 The SG was instructed to convey that decision to the ANC Youth League.

1.4 The SG went personally to the offices of the ANC Youth League and

conveyed the message to the respondents.

1.5 The respondents were not pleased with the message from the SG and,

after debating the issue with the SG, informed him that they would go to

the meeting of the National Officials anyway.

1.6 The SG returned to the meeting and informed the National Officials of

the reaction of the respondents and the meeting continued.

1.7 After conclusion of an item involving the Minister of Social

Development, the respondents entered the meeting uninvited.

1.8 Comrade Magaqa, the Secretary General of the ANC Youth League,

began to explain why it was important for the meeting with the

respondents to proceed.

1.9 The respondents were informed that the decision not to meet them was a

decision of the National Officials.

1.10 Comrade Magaqa did not want to budge and President Zuma

intervened.

1.11 Following the intervention of the President, comrade Malema, President

of the ANC Youth League, apologised and the respondents left the

meeting.

1.12 The Officials decided that the action of the respondents was a

continuation of their ill-discipline and the SG was instructed to

communicate the displeasure of the National Officials to the Youth

League in writing. This was done and a written apology was

subsequently received from comrade Magaqa in his capacity as SG of

the ANC Youth League.

1.13 The National Officials did not accept the letter of apology but said it

could be used as mitigation at the disciplinary hearing because the

decision to charge the respondents had already been taken.

2. Under cross-examination it was put to the SG that:-

2.1 The respondents would testify that the SG had told the respondents that

he could not stop them from attending the meeting but that it was his

job to convey the decision of the National Officials. The SG responded

that he did not say that explicitly. It was an attempt by the respondents

to soften the case and that he could not in fact stop them from

approaching the National Officials.

2.2 The respondents would testify that the SG met them in the waiting area

on the 10th Floor where the meeting was taking place, informed them

that the National Officials were busy with an item involving the Minister

of Social Development and instructed them to wait. The SG responded

that he had not given any instructions to the respondents but that they

had decided to wait.

2.3 The respondents would testify that they knocked and were invited to

enter by the Deputy President. The SG responded that the respondents

knocked and entered and that he did not hear the Deputy President

invite them to enter.

2.4 The respondents would testify that after they had greeted the National

Officials, the Deputy President said to them, “to what do we owe this

visit”. The SG confirmed this.

2.5 The respondents would testify that comrade Magaqa explained to the

National Officials that they would like the meeting with the National

Officials to be held notwithstanding the fact that they had been told by

the SG that the meeting had been postponed. The SG confirmed this.

2.6 The respondents would testify that on a previous occasion the National

Working Committee (NWC) of the ANC had taken a decision to postpone

a meeting between the NWC and the Youth League and that on that

occasion the Youth League went to the NWC to try to persuade them to

change their decision to not hold the meeting. The SG responded that in

the course of interaction, meetings are scheduled and postponed.

2.7 The respondents would testify that there was an office culture at Luthuli

House of people knocking on doors and then entering. Usually if a

person was busy he or she would say “Not now, Com” which was

interpreted to mean “I am busy, see me later.” The SG responded that he

was not aware of this culture.

2.8 The respondents would testify that the National Officials were not

unanimous in the decision to discipline the respondents. The SG’s

response was that the National Officials decided on 8th August to

institute disciplinary action against the respondents for their

misconduct on that day and the decision was confirmed on 15th August

when all the National Officials were present.

3. The SG was asked to confirm whether the reason for not having the

meeting was because of something relating to discipline. The SG

responded that on the 1st of August the National Officials of the ANC

decided that disciplinary action should be instituted against the officials

of the Youth League and that this decision was reaffirmed on the 8th and

discussed again on 15th August. In postponing the meeting, the SG

informed the respondents that the reason for postponing the meeting was

that there was a possibility of disciplinary proceedings being instituted

against them.

On re-examination

1. The SG made the point that there had been no incident of persons

entering a meeting of the National Officials uninvited since his election as

SG in 2007.

**D. Evidence of the respondents**

**D1.** **Comrade Malema**

Comrade Julius Malema was the first respondent to testify. A summary of his evidence is as follows:-

1. A meeting was scheduled to take place between the National Officials and

the NEC of the ANC Youth League on 1st August. On that day the

National Officials decided to postpone the meeting to 8th August and the

respondents were subsequently informed of the change.

2. On 8th of August the SG informed the respondents that the meeting

scheduled for that day was postponed given the atmosphere of “public

disagreements”.

3. Comrade Malema told the SG that he could not do that because it would

be happening for a second time.

4. Comrade Malema stated that the SG “created a very serious problem ‘by

having a journalist know information before all of us as comrade Magaqa

had been contacted by a journalist about 30 minutes earlier and informed

that the National Officials had postponed the scheduled meeting.

5. Comrade Malema told the SG that the respondents would like to address

the National Officials to persuade them to proceed with the scheduled

meeting.

6. A few minutes after the SG left, the respondents went to the 10th Floor

where the meeting was taking place. The SG told the respondents to wait

as there was an item which the National Officials were to discuss with the

Minister of Social Development.

7. Comrade Malema’s response to the SG was ‘no, we want to go first

because it was eleven o’ clock and it was us’ to go in. They, nevertheless,

waited.

8. After the Minister of Social Development left, the door to the meeting

room was not completely closed. The respondents knocked and the

Deputy President said “come in”. They entered and greeted the National

Officials before sitting down.

9. Comrade Magaqa explained why the respondents had come to the

meeting.

10. The President was very disturbed that the respondents had come to the

meeting after the SG had explained why the meeting could not proceed

and said that the respondents should have respected the SG.

11. Comrade Malema explained that the respondents had insisted on

coming to the meeting as they had seen how angry the National Officials

were and they wanted to express themselves. The President responded

that they should have informed the SG how they felt so that the SG

could report back and for the National Officials to indicate through the

SG if they were ready to let the respondents come and speak.

12. Comrade Malema apologised and the respondents left the meeting.

13. Comrade Malema further testified that in late 2010 the Deputy SG of the

ANC had informed the Youth League that a meeting between the NWC of

the ANC and the NWC of the Youth League was postponed for the fourth

time. On that occasion they went with the Deputy SG to the meeting and

the Deputy SG announced at the door of the meeting that the NWC of

the Youth League was following her. In the meeting the NWC of the

Youth League was informed that the issues they wished to discuss were

political issues that required preparation.

Under cross-examination

1. Comrade Malema testified that the SG made reference to “public

disagreements” and not to “discipline” when he informed the respondents

that the meeting was postponed.

2. He also confirmed that the respondents entered the meeting room after

the Minister of Social Development left and without being called.

**D2. Comrade Magaqa**

Comrade Sindiso Magaqa was the second respondent to testify. He aligned himself with the version of events presented by comrade Malema.

Under cross-examination, comrade Magaqa confirmed that when the SG informed the respondents that the meeting was postponed, the SG referred to issues of discipline.

**D3. Comrade Lamola**

Comrade Ronald Lamola was the third respondent to testify. He aligned

himself with the version of events presented by comrade Malema.

Comrade Lamola was asked, in his evidence in chief, if he heard anything as one of his colleagues had spoken about discipline and the other said he did not hear anything. The response of comrade Lamola was that he had not heard anything about discipline.

**D4. Comrade Mabe**

Comrade Pule Mabe was the fourth respondent to testify. He aligned himself with the version of events presented by comrade Malema.

Comrade Mabe was asked if he heard anything, as one of his colleagues had spoken about discipline and the other said he did not hear anything about discipline. Comrade Mabe’s response was that he heard references to “public disagreements” and that he could not remember if anything was said about discipline.

Under cross-examination

1. Comrade Mabe, who is serving his second term as Deputy President of the

ANC Youth League, confirmed that he could not recall any previous

occasion where a meeting of the ANC Officials and the officials of the

Youth League had been postponed.

2. He had some difficulty in remembering details of some of the issues

canvassed with him.

**D5. Comrade Mosenogi**

Comrade Kenetswe Mosenogi was the fifth respondent to testify. She aligned herself with the version of events presented by comrade Malema.

Comrade Mosenogi was asked if she heard anything as one of her colleagues had spoken about discipline and the other said he did not hear anything about discipline. Comrade Mosenogi’s response was that the SG made reference to “public disagreements”.

Under cross-examination, comrade Mosenogi said that during the NWC Conference in 2010 the Deputy Secretary General of the ANC informed the NWC of the Youth League that a meeting scheduled with the Youth League was postponed. She said that the NWC of the Youth League insisted on the meeting and the DSG responded that she would advise her comrades of this. Shortly thereafter she advised the NWC of the Youth League that they could come and meet with the NWC.

**E. Application to call comrade Kgalema Motlanthe as a witness**

After the presentation of evidence and cross-examination, the respondents requested the NDC to exercise its powers and call comrade Kgalema Motlanthe as a witness because it would not be politically correct for them to do so.

After deliberation, the NDC ruled that the respondents were free to call any witness who could give relevant evidence, but the duty lay with the respondents to do so.

The respondents closed their case.

**F. Onus**

1. The respondents did not dispute the occurrence of the events as

described. Consequently, the respondents had a duty to offer an

explanation for their conduct, as they have done.

2. The complainant had the onus to prove the commission of the acts of

misconduct on a balance of probabilities.

**G. Evaluation of arguments raised in the Heads of Argument**

**G1.** On 13 September 2011 both parties presented oral argument and

submitted written Heads of Argument.

1. In its Heads of Argument, the complainant dealt with the following

issues:

1.1 Existence of the Rule

1.2. Knowledge of the Rule

1.3. Legitimacy of the Rule

2. These issues were not contested by the respondents during the

proceedings. Consequently, the NDC accepts that the respondents were

aware of the existence of the ANC Constitution and Code of Conduct and

considered them to be legitimate.

3. The respondents, in their Heads of Argument, raised the following two

special defences:

3.1 The charged members were acting in a representative capacity for an

autonomous structure; and

3.2 The doctrine of common purpose was applicable.

4. The respondents were initially charged in their personal capacities. At the

request of the respondents, this charge was removed from the charge

sheet of the individual members and consolidated, for purposes of

convenience, in a single charge sheet and a procedural agreement was

concluded between the parties to that effect. In consequence of the

procedural agreement, the NDC rules that the defences of common

purpose and representivity of an autonomous structure are misplaced

and have no application to this hearing.

5. The respondents’ arguments pertaining to the cautionary rule and the

need for corroboration equally have no application in the present inquiry

for the following reasons:-

5.1 The cautionary rule of evidence is usually applied in those instances

where one is dealing with the evidence of young children and

accomplices.

5.2 The need for corroboration in the rules of evidence is usually

required in criminal cases where a presiding officer is doubtful about

convicting a person on the evidence of a single witness.

5.3 The witnesses and the respondents in this case are all adults.

Although they share membership of the ANC, they are not

accomplices.

6. The present inquiry is not a criminal or a civil trial in a court of law. It is

an internal disciplinary hearing of a voluntary organisation to determine

whether the conduct of the respondents constitutes misconduct within

the meaning of Rule 25.5 of the ANC Constitution. The proceedings are

quasi-judicial in nature and the principles of equity and fairness are

applied.

7. The argument pertaining to the autonomy of the Youth League and

the representative capacity of the respondents have been considered in

the disciplinary inquiry of comrade Julius Malema. The findings in that

ruling, where the arguments were rejected, are incorporated herein.

8. On 6th November 2011 the respondent’s representative specifically

requested the NDC to decide whether the disciplinary proceedings

were validly instituted in accordance with the ANC Constitution.

9. The argument was considered in the disciplinary inquiry of comrade

Julius Malema and the finding in that case viz. “the respondent’s

argument that the “National Officials” does not exist and that, if it

existed, it could only refer and not institute disciplinary proceedings is

rejected” is incorporated in this finding.

10. The balance of the arguments presented by both parties in the Heads of

Argument have been considered and dealt with below.

***H. Evaluation by NDC***

1. Rule 25.5 (q) of the ANC Constitution provides that the deliberate

disruption of meetings and interference with the orderly functioning of the

organisation constitute misconduct.

2. Rule 25.5 (o) (cc) provides that the doing of any act which undermines the

effectiveness of the ANC as an organisation constitutes misconduct.

3. It is common cause that:-

3.1 The National Officials were meeting on 8 August 2011.

3.2 A meeting was scheduled to take place on 8 August 2011 between the

National Officials and the NEC of the ANC Youth League.

3.3 The National Officials decided to postpone the meeting and instructed

the SG to inform the respondents.

3.4 The SG personally informed the respondents that the National

Officials had decided to postpone the meeting.

3.5 Notwithstanding this directive, the respondents chose to go to the

National Officials’ meeting to try and persuade them otherwise.

3.6. The National Officials were not pleased with the conduct of the

respondents.

3.7 The National Officials had decided to initiate disciplinary proceedings

against the respondents.

4. The respondents’ argument that the National Officials were not

unanimous in the decision to institute disciplinary action against

the respondents - suggesting that these charges were invalid - was not

supported by evidence. The only evidence available on the matter was

that of the SG which the NDC accepts.

5. Rule 25.5 (q) and Rule 25.5 (o)(cc) of the ANC’s Code of Conduct expressly

deem deliberate disruption of meetings and acts which undermine the

effectiveness of the organisation to be acts of misconduct.

6. The evidence of the SG was not challenged in any material respect by the

respondents.

7. The evidence of the respondents focused on collateral issues such as:-

7.1 that the SG referred to public disagreements and not to discipline;

7.2 that the door to the meeting room was not completely closed;

7.3 that the Deputy President said they should enter after he heard a

knock on the door;

7.4 that they were given about 5 minutes to explain themselves; and

7.5 that, save for being rebuked by the President, they were treated

cordially.

8. In the view of the NDC, these issues speak more to the courtesy of the

National Officials and do not offer any defence to the charges preferred

against the respondents to which they pleaded not guilty.

9. The respondents, on their own version, had defied the SG and took a

deliberate decision to approach the National Officials ***after*** being

informed that the National Officials had decided to postpone the schedule

meeting with them. The act of defying the SG, who is the person

responsible for managing the administration of the ANC, undermines the

effectiveness of the ANC and impedes its activities.

10. On their own evidence, the respondents took their cue to enter the

meeting room of the National Officials, without being invited, following

the departure of the Minister of Social Development.

11. In the view of the NDC, the fact that one of the National Officials may

have asked the respondents to enter after they knocked, does not and

cannot constitute an invitation or acceptance to meet with the

respondents. After the directive to postpone the meeting was

communicated to the respondents, they were not invited and not

entitled to be near or in the meeting room of the National Officials ***in***

***the first place.***

12. On the version of both the complainant and the respondents, the facts of

this case speak for themselves.

**J. Finding of the NDC**

1. It is unprecedented, and untenable for obvious reasons, for a person or

persons to enter a meeting of the National Officials, which included the

President and Deputy President of both the ANC and the Republic of

South Africa, without prior invitation and permission.

2. The charges against the respondents were properly instituted by the

National Officials in terms of the ANC Constitution. Details are set out in

the disciplinary inquiry of comrade Julius Malema which is incorporated

as part of this finding.

3. The NDC accepts that the respondents may have harboured feelings of

frustration, that they could have held perceptions and that they

were not being taken seriously by the National Officials. But the NDC

finds that ill-discipline is not a cure for frustration.

4. The respondents’ act of disobeying the directive of the National

Officials, as conveyed to them by the SG, constitutes a breach of

Rule 25.5 (o) (cc) of the ANC Constitution because such disobedience

undermined the effectiveness of the ANC as an organisation as

contemplated in that sub rule.

5. The act of going to the meeting of the National Officials, uninvited,

constitutes a breach of Rule 25.5 (q) on the ground that such action was

deliberate, disrupted the meeting of the National Officials and interfered

with the orderly functioning of the ANC as contemplated in that rule.

6. The NDC is satisfied that the complainant has proved its case on a

balance of probabilities and that the causal link between the misconduct

of the respondents and the acts of misconduct contemplated in Rules

25.5 (q) and Rule 25.5 (o)(cc) of the ANC’s Code of Conduct has been

established.

7. Accordingly, the NDC finds the respondents guilty as charged.

**K. Impact of the ANC disciplinary proceedings on membership of the**

**ANC Youth League**

1. Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC

Youth League, this ruling is applicable to the respondents’

membership of the ANC Youth League.

**L. Sanction**

***L1. Factors taken into account for the purpose of sanctioning***

1. the seriousness of the charge;

2. the presence of aggravating factors;

3. any previous findings against the respondents;

4. the presence of mitigating factors;

5. the concept that the sanction must take into consideration the interest

of the ANC, the respondents and society at large;

6. the concept of a graduated approach to sanctioning; and

7. the sanction must fit the offence.

***L2. Consideration of an appropriate sanction***

1. Like any other organisation, there is an unwritten culture of respect in

the ANC. One sees it in practice every day. For instance, older members of

the ANC are shown respect in the organisation, irrespective of their

positions in the organisation. It is unfortunate that the respondents did

not respect this culture.

2. Cabinet Ministers and other key officials of government are generally

afforded security protection, because any serious physical injury to them,

or even death, could have a destabilising effect on the country and on

government’s ability to discharge its mandate. The respondents, as senior

leaders of the ANC Youth League, should have realised the security risk

their action posed. In this regard the misconduct of the respondents is

regarded as a serious offence.

3. The ANC, as a liberation movement and the ruling party of a sovereign

state governing the lives of about 50 million people, is expected to

conduct its business in a professional manner. Discipline is necessary for

the ANC to function optimally. South African society and the international

community society expect no less.

4. The NDC took the view that the respondents, as ANC members and senior

leaders of the ANC Youth League, are expected to shine as beacons of

moral rectitude, and set an example to the millions of young people in

South Africa, both Black and White.

5. It is the responsibility of the Youth League leaders to represent the hopes

and aspirations of the youth of South Africa. The starting point on this

journey is to acknowledge discipline as the foundation for any intended

programme of action.

6. As potential future leaders of South Africa, the respondents have the

responsibility of sending a strong signal of maturity and respect for

authority. In the view of the NDC, this would be an appropriate moment

for the respondents to reflect and stop their ill-discipline.

7. The letter of apology from the respondents was accepted as a mitigating

factor.

8. Having considered these factors, the NDC imposes the following

sanction:-

8.1 The membership of comrades Julius Malema, Ronald Lamola, Pule

Mabe, Sindiso Magaqa and Kenetswe Mosenogi is suspended for

2 (two) years;

8.2 The sanction in 8.1 above is suspended for a period of three years

and will be implemented if the respondents are found guilty of any

contravention of Rule 25.5 of the ANC’s Code of Conduct within the

said period.

8.3 Pursuant to the provisions of Article 11.2 of Schedule A of the

Constitution of the ANC Youth League, this ruling is applicable to the

respondents’ membership of the ANC Youth League.

8.4 The NDC calls on the leadership of the ANC to ensure the mentorship

and nurturing of the ANC Youth League leadership as part of remedial action.

The respondents have the right to appeal to the NDCA within 14 days.

Dated at Johannesburg this 10th day of November 2011