**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