

MR GWEDE MANTASHE
THE SECRETARY GENERAL OF THE AFRICAN NATIONAL CONGRESS (“ANC”)
CHIEF ALBERT LUTHULI HOUSE
CNR SAUER AND PRESIDENT STREETS
JOHANNESBURG

(Page 1 of 11)

E-MAIL: nmtyelwa@anc.org.za; nbleki@anc.org.za; mmavata@anc.org.za

Your reference

Our reference

Date

Mr Kwinana

16 December 2012

Dear Mr Mantashe,

RE: CONTEMPT OF COURT IN RESECT OF:-

- (A) COURT ORDER OF 14 DECEMBER 2012 DELIVERED IN THE CONSTITUTIONAL COURT: CASE NO CCT 109/12
- (B) COURT ORDER OF 14 DECEMBER DELVERED IN THE NORTH WEST HIGH COURT: CASE NO 1786/12
- (C) DECISION OF THE ANC NEC ANNOUNCED ON 15 DECEMBER 2012

1. We act on behalf of both sets of Applicants in the matter of Mpho Ramakatsa and others (“**Case No CCT 109/12**”) and the matter of Kabelo Nonyana and others (“**Case No 1786/12**”) referred to above (“**our Clients**”). Those two cases involve more than 5200 applicants.
2. It has come to our attention that, on 14 December 2012, and shortly after the Constitutional Court pronounced its decision, you, in your capacity as the Secretary General of the African National Congress (“**the ANC**”), made certain public pronouncements pertaining to the order of the Constitutional court referred to above.



3. On 15 December 2012, acting as aforesaid, you announced an NEC decision which resonated with your aforementioned utterances, essentially to the effect that firstly, the delegates of the Free State Province, and not the members of the PEC will be allowed to attend and participate normally in the national conference scheduled to start shortly in Mangaung.
4. Secondly, it appears that the NEC and some of the ANC structures have also failed, and/or are likely to fail, to give effect to and to comply with the clear order and directive of the North West High Court.
5. Thirdly, the NEC as it is entitled to do, has decided and purported to appoint an interim provincial structure but in doing so, it has returned Mr Ace Magashule, who was the “Chairperson” of the unlawful PEC.
6. We are instructed to inform you, and all those to whom this letter is addressed, as we hereby do, that abovementioned conduct amounts to at least three counts of contempt of court. We now proceed to deal briefly with the reasons for that legal conclusion.

A: The Constitutional Court Order.

7. The decision to allow the Free State conference delegation to participate and to vote in the national conference is wrongful and unlawful in that:-
 - 7.1 That delegation is a direct product of and inextricably linked to both the provincial conference and PEC both of which have been nullified.
 - 7.2 There is ample reason to show that the members of the unlawful PEC presided over the provincial nominations conference held on 29 November 2012 held in Sasolburg as well as all the preparatory processes, including some branch nominations meetings, which culminated in the said nominations conference. The figure prints are therefore all over the Free State delegation.
 - 7.3 In any event, the regional structures which also run the branch meetings were themselves “elected” in terms of the very same flawed membership audit process and credentials which formed the basis of our client’s claims of unlawfulness and which have been upheld by the court. It is indeed so that the reasons for the



declaration of unlawfulness will only be handed down within the next 48 hours, i.e at 10h00 on Tuesday 18 December 2012. However what is known is that the declaration of the unlawfulness is based on at least one or more of the grounds raised in the founding affidavit, more especially paragraph 85 thereof.

7.4 The fact of the matter, however, is that the ANC and the allegedly independent legal advisors are also equally ignorant of which ground(s) have been upheld. It is accordingly perplexing how the conclusion that the national conference is “not affected” could conceivably be validly made. It is doubtful if the person who advised the ANC had the opportunity to study the court papers.

7.5 In the founding affidavit, the following was stated:-

“182 ***to further illustrate the intersection between the conduct of the ANC, the outcomes of its conferences with the broader public interest, the following factors must be taken into account namely:-***

183 ***currently the First Respondent is the Premier of the Free State Province;***

184 ***by the same token, the person who will get elected as the president of the ANC (in Mangaung) will most certainly become the President of the Republic of South Africa after the next general elections.***

185 ***in this way, the public nature and impact of the decisions under consideration in this matter are undeniable.”***

.....

195 ***the conduct of the respondents has a direct bearing on the parties representation at the upcoming five-year party elective conference in Mangaung. Should the currently unlawfully imposed leadership be allowed to continue, then they will most certainly use their incumbency further to manipulate and frustrate the democratic process, such that the real views of the members will continue to be suppressed.***



203 ***The next few months leading up to the national conference will also have a bearing on the democratic rights of the applicants and other class action participants in that provincial executive committees will oversee the preparations for the national conference to be held in Bloemfontein, including:***

203.1 the selection of branch and other delegates;

203.2 the audit of memberships;

203.2 the nomination of candidates for the new national executive committee and officials of the ANC;

203.4 the articulation of provincial policy positions; and

203.5 the holding of provincial general council's leading up to the national conference".

7.6 We have quoted so extensively so as to assist and remind your good selves that the issues raised in the constitutional court case are symbiotically linked to the national conference.

7.7 To crown it all, most of the above allegations were admitted by the respondents, including Magashule, who even went further to say at paragraph 98.2 of their own answering affidavit.

“if this application succeeds, it would imply that those elections by branches in the Free State of delegates to the National Conference which had taken place, would be void and that those which had not taken place will grind to a halt” .

7.8 In the circumstances, it cannot lie in the same mouth of the ANC to claim that the constitutional court case has no direct relationship with the Mangaung conference. This claim, to everyone's knowledge is deliberate falsehood.

7.9 Finally in this regard it needs to be pointed out that the ANC's 53rd National Conference NEC Nominations Process document states clearly that:-



- 7.9.1 ***“the nomination process is to take place at all three levels of the ANC, through a process of nomination from branch to nominees shall be rectified prior to the conference and sent to national for the consolidation”*** Paragraph 4 of the guidelines
- 7.9.2 ***“Provinces will hold Provincial Nominations Conferences to finalise and consolidate nominations. This process will not take place at a quorate Provincial Nominations Conference. The Provincial nominations process will be based on a democratic process that uses the branch nominations as a basis”*** clause 4.2; and
- 7.9.3 ***“The nominations form shall be completed and signed by both the Provincial Chairperson and (Provincial) Secretary on the prescribed Nomination Forms. A member of the Electoral Commission shall be in attendance as an observer to ratify the process.”***
- 7.9.4 In respect of the Provincial Nominations Process:
- “Step 8. The consolidated report is printed out by the Provincial Monitors (two PEC members and one representative per region).....”***
- 7.10 The credentials of nominations conference are made up of the total number of voting delegates who are constituted by
- Number of branch delegates;
 - Number of PEC members;
 - Number of three additional REC members who are officials and would not be expected to attend the National Conference
- 7.11 These passages should also demonstrate beyond any doubt that no provincial delegation cannot be possibly recognised without simultaneously recognised the embedded activities of the unlawful PEC in the construction compilation and constitution of that provincial delegation. In the circumstances, the interpretation you place on the ConCourt order is plainly wrong and a result of deliberately strained logic.



B: North West High Court Order

8. From some of the utterances made at your media briefing yesterday, it is also clear that there is another deliberate effort to ignore another court order which may similarly have a negative effect on the national conference and our rights and all ANC members and citizens, to insist on a lawful conference and outcomes.
9. While it is indeed so that the court dismisses (incorrectly in our Clients' view which is shared by the North West Applicants) the application to invalidate the proceedings of the North West provincial nominations conference, the court obviously believed that the national conference presented an opportunity to resolve the issues internally. (It is a well-known principle that the courts should generally be approached as forums of last resort).
10. This view is demonstrated by the following decree handed down by the Judge President when she specifically ordered:-

“THAT:- The National Conference of the ANC is directed to consider the issues raised by the applicants in this application by exercising its powers in terms of Rule 11.3 of the African National Congress Constitution”.

11. Simply put, the issues raised in the court application must be put on the agenda of the National Conference, so that the conference can decide whether or not the North West delegation can properly participate and vote in the national conference. If this is not done the ANC will be in contempt of court and the relevant officials may be imprisoned.
12. The issues raised in the North West applications have been summarised in paragraph 37 of the founding affidavit, and deal with:

12.1 “Delegates who were duly elected at properly constituted branch general meetings but who were excluded thus disfranchising thousands of members;

12.2 Instances of criminal behaviour associated with illegal vote-buying , bribery and corruption intended to steal branch nomination conferences;



12.3 The abuse and disregard of the clear anti- corruption strategy of depositing nominations document in clearly marked and secured boxes as set out in the applicable guidelines; and

12.4 The practice of supplying both or all parallel structures with ostensibly official branch registers from the Secretary General's office and thereafter arbitrarily choosing which parallel structure to recognise as the legitimate branch”.

13. We are instructed to demand that you ensure compliance with this court order as well, failing which the organisation will be in contempt.

Appointment of the First Respondent Elias (“Ace”) Magashule into the interim structure/ task team

14. It is our client's view that the appointment by the NEC of Magashule into the task team is fraught with unlawfulness, in that:-

14.1 He was allowed to participate in the NEC meeting dealing with the Free State issue in which he has a direct interest. The excuse that he is (also) a directly elected NEC member cannot remove the fact that he may be wearing and/or had a clear conflict of interest.

14.2 In the court papers it was made clear that he was at the centre of the factionalism which is at the root of the problems in the Free State ANC. The following was stated in the founding affidavit (and was, ironically, admitted by Magashule and other Respondents), in describing the events leading up to the ill-fated provincial conference.

“74. It soon became clear that there would be contestation for the leadership of the PEC because, among other things, there was a view which was openly articulated by some members, including myself, that the 1st Respondent, who is by far the longest – serving ANC provincial chairperson in South Africa, having already served three previous terms since 1994, ought to be replaced in a process of organisational renewal and revitalisation. There were of course other members of the ANC who genuinely



held the contrary view that he should be re-elected into the position. Both groups are perfectly entitled to hold their opinions. Which view must prevail can only be determined through a genuinely democratic process. This is normal in the ANC, which is founded upon the principle of democracy”.

- 14.3 Magashule directly played a role in the disruption of certain branch activities in the build-up to the June provincial conference;
- 14.4 It could never have been contemplated in the ANC Constitution that an unlawful PEC can be disbanded and replaced by an interim structure including the very same people who have played a leading role in the reasons for the disbandment. Logically speaking, this could lead to the absurdity that the PEC could be replaced by the same individuals who may simply be re-labelled as an “interim PEC”.
- 14.5 This amounts to nothing but surreptitious move aimed at, *inter alia*, subverting the clear intention of the court in granting its order which is, in its own right, in contempt of the court.

Synopsis

- 15 In the post-apartheid South Africa, no person or organisation is above the law.
- 16 Section 165 (5) of the Constitution of the Republic of South Africa states clearly that:-

“An order or decision issued by a court binds all persons to whom and organs of state to which it applies”

Demands

- 17 In view of the foregoing, we are instructed to demand that we be furnished with the following:-
- 17.1 An undertaking that the entire Free State delegation will be excluded from any or further participation and voting in the national conference, with immediate effect after receipt of this letter;



- 17.2 An undertaking that the issues raised in the North West court application as well as the decisions of the NEC in respect of the Free State court application will be placed on the national conference agenda with immediate effect.
 - 17.3 Further that you will inform us in writing as soon as a resolution is taken, one way or the other, as to the participation of the North West delegation; and
 - 17.4 An undertaking that the ANC as effected the removal of Magashule and any other member of the unlawful PEC from the interim provincial task team.
- 18 The aforesaid undertakings must be furnished as soon as possible but no later than 12h00 on Tuesday 18 December 2012.
 - 19 Failing compliance with the above demands, our clients will be left with no other option but to approach the appropriate court of law to obtain inter alia, the following relief (which in all probability will include interdictory relief);
 - 19.1 A declaration that the respondents are in contempt of court together with the consequences thereof;
 - 19.2 A declaration that the proceedings and outcome of the national conference be declared invalid, void and of no legal force and effect.
 - 19.3 The exclusion of the entire Free State and North West delegation (this will of course exclude the members of the North West PEC).
 - 19.4 The cessation of any other business of the National Conference until and unless the above has been complied with.
 - 19.5 A punitive cost order.
 - 20 Please feel free to contact the writer at the above addresses should you still require any further clarification. In your aforesated capacity as Secretary General kindly ensure that all the addressees listed below are placed in possession of this letter.
 - 21 We await your urgent response.



Yours faithfully

T.S. Kwinana.

KWINANA & PARTNERS INC.

per: THABO KWINANA

AND TO

**THE NATIONAL OFFICIALS OF THE ANC
c/o. THE ANC SECRETARY GENERAL**

AND TO:-

**MEMBERS OF THE NATIONAL EXECUTIVE COMMITTEE (“NEC”) OF
THE ANC
c/o. THE ANC SECRETARY GENERAL**

AND TO:-

**THE NATIONAL CONFERENCE STEERING COMMITTEE
c/o. THE ANC SECRETARY GENERAL**

AND TO:-

**THE ELECTORAL COMMISSION
c/o. THE ANC SECRETARY GENERAL**

AND TO:-

**VOTING DELEGATES TO THE NATIONAL CONFERENCE OF THE AFRICAN NATIONAL
CONGRESS
c/o. THE ANC SECRETARY GENERAL**

ALSO EMAILED TO:

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