

Winnie Nomination A Case For Court: Expert

Written by Rudi Prinsloo
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The ANC has left itself wide open to a legal challenge by keeping Winnie Madikizela-Mandela on its list of candidates for the National Assembly despite her criminal record, a constitutional law expert said on Thursday.

Shadrack Gutto from Unisa said in terms of the Constitution, the ex-wife of former president Nelson Mandela could not become an MP as she still had a suspended sentence for fraud hanging over her head.

In July 2004, the popular ANC veteran had a five-year sentence for fraud and theft reduced on appeal to three-and-a-half years for 43 convictions for fraud.

The sentence was suspended for five years and she never went to prison.

Her place at number five on the ANC's electoral list has raised controversy because the Constitution bars a person sentenced to more than 12 months in jail without the option of a fine from Parliament, and from the provincial legislatures until five years after the sentence had been "completed".

Gutto said the fact that Madikizela-Mandela never actually served jail time -- a point advanced by ANC secretary-general Gwede Mantashe -- was immaterial.

"During the existence of that suspension you are somebody who is considered to be a criminal. You are free, but not from a criminal point of view, you are simply not incarcerated," he said.

"She is not eligible to become a member of Parliament until that period has expired. My understanding is that that interpretation of the Constitution is in line with the letter and the spirit of the law."

He said the ANC was trying to take advantage of what could arguably be called a grey area in the law.

"One can argue that there is room for ambiguity which the courts have to clarify. The ambiguity the ANC is dealing with is that she was not incarcerated. I think they are hoping that the courts will give a generous interpretation of the law."

Gutto criticised the ruling party for opting to interpret the law in its favour and leaving the Independent Electoral Commission to resolve a thorny issue, since it has to vet all party nominations.

"The ANC is putting itself in such a place that the IEC now has to take the decision," he said.

"If the IEC were to bend backwards to allow the ANC's interpretation, which in my view is suspect, the IEC will be open to a challenge by anybody acting in the public interest. It could be

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a political party or a member of the public."

He said the Constitutional Court would then have to rule on Madikizela-Mandela's case as a matter of urgency, before the country goes to the polls on April 22.

Several other legal experts have in recent weeks warned that the ANC would fall foul of the Constitution if it nominated Madikizela-Mandela.

Political analyst Stephen Friedman said from a moral point of view the ruling party erred in leaving her name on the list.

"It seems to be highly inappropriate. I would have assumed that she is ineligible because she was sentenced to more than one year. "If in fact by law she is eligible, the law should be changed."

The Democratic Alliance deplored Madikizela-Mandela's nomination, calling her "an ethically-tainted individual".

"Her suspended sentence has not yet elapsed, it will lapse at the end of 2009, which means that she has not completed her sentence, and this is seemingly enough to challenge her suitability for serving as a Member of Parliament," DA chief whip Ian Davidson said in a statement.

The party also criticised the ANC's nomination of MPs implicated in the Travelgate scandal, among them NEC member Bathabile Dlamini who is at number 16 on the party's list.

It said they did not deserve another term in Parliament after abusing taxpayers' money in the travel voucher scam.

"These individuals betrayed the public yet the ANC sees fit to 'deploy' them to the same institution which they defrauded."

The party would ask Parliament's Constitution Review Committee to amend the Constitution to ensure that nobody found guilty of corruption could serve in the legislature.

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