



NCOP

National Council of Provinces

RULINGS OF PRESIDING OFFICERS: 2nd Edition





TABLE OF CONTENT

1. UNPARLIAMENTARY LANGAUGE	3 — 7
2. USE OF MOTHER TONGUE DURING DEBATES	7
3. MOTIONS, AMENDMENTS AND WITHDRAWALS	7 — 8
4. AMENDMENTS TO MINUTES OF THE HOUSE	8 — 9
5. SUB JUDICE	9
6. REFLECTING UPON THE COMPETENCE OR HONOUR OF JUDGES	10
7. CASTING ASPERSIONS ON THE PRESIDING OFFICERS	10 — 11
8. STATEMENT THAT A MEMBER IS MISLEADING THE HOUSE	11 — 12
9. PARTICIPATION OF SPECIAL DELEGATES IN THE COUNCIL	12

UNPARLIAMENTARY LANGUAGE

FACTS:

A member who was on the podium addressing the House, accused a previous speaker that she was speaking “non-sense”. Another member rose on a point of order to object that it is unparliamentary for a member to say another member is speaking “non-sense”.

QUESTION TO BE CONSIDERED:

Whether or not the use of the word “non-sense” is permissible or not? As the utterances were not immediately heard, the Presiding Officer reserved his ruling in order to enable him to check the hansard records and ascertain the context in which the word was used.

RULING:

It was ruled that the use of the word “non-sense” per se does not amount to unparliamentary language, however, the context and the tone in which the word was used should be taken into account when making a ruling. Therefore, the context the word was used was deemed unparliamentary as it was meant to demean a member’s integrity.

UNPARLIAMENTARY LANGUAGE

FACTS:

A member objected to a statement that he has been called a “coward” and requested the Presiding Officer to rule whether it is parliamentary for a member to call another member a “coward”.

QUESTION TO BE CONSIDERED:

Whether or not it is permissible to call a

member a “coward”? However, since the member who used the word could not recall using it, the Presiding Officer undertook to check the hansard records in order to make a ruling.

RULING:

It was ruled that in terms of rule 33 of the Council rules, a member addressing the Chair may only be interrupted to call attention to a question of privilege, which should be about the content of a members’ speech. Further, the Presiding Officer cautioned members to be tolerant to each other when debating and warned them not to interject each other without a valid point. He therefore, ruled that calling a member a “coward” is unparliamentary as it is not in keeping with the decorum of the House.

UNPARLIAMENTARY LANGUAGE

FACTS:

A member stood up to object to a statement made by a member who was addressing the House, when he said . . . “if all the Ministers could be so honest, it would be a better country”

QUESTION TO BE CONSIDERED:

Whether or not it is permissible for a member to say the following . . . “if all the Ministers could be so honest, it would be a better country”.

RULING:

The Presiding Officer ruled that in terms of rule 30 a member of the Council has freedom of speech in the Council and its committees, however, it is subject to rule 46(a) which

stipulates that “no member may use offensive or unbecoming language in the Council.

He further said that it is the function of the presiding officer to determine whether a particular remark made in the debate is offensive and contrary to the Rules or not. In arriving at the decision, the presiding officer will be guided by any precedent Parliament has set for itself. Since the inception of the Council, presiding officers have ruled in a number of occasions that members may not impute improper motives or cast personal reflections on the integrity of other members or members of the national executives nor verbally abuse them in any other way.

If such accusations, whether made directly or by inference, were to be generally allowed in debates in the House, they would not only seriously undermine delegates or members of the executives in their performance of their duties, but also undermine the image and effectiveness of Parliament itself to function as the Constitution intends. This approach is also in keeping with the practice in other parliamentary jurisdictions.

As accusations are equally offensive and damaging whether they are made indirectly by inference or put forward by way of a question, He appealed members not to abuse their freedom of speech and to refrain from making remarks which could be regarded as offensive, since such remarks are neither worthy of the dignity of the House nor conducive for orderly and effective debate.

He therefore, ruled that the remarks cast a negative aspersion on the other members of the executive by implying that they are not honest, and as such were said to be

unparliamentary and the member was asked to withdraw the statement.

UNPARLIAMENTARY LANGUAGE

FACTS:

A member stood up to object to a statement made by a member who was addressing the House, when he said . . . “other members of the Council are deceitful”. However, since either the table staff or the Presiding Officer heard the remark, a ruling was reserved to enable the Presiding Officer to check the unrevised hansard records.

QUESTION TO BE CONSIDERED:

After perusal of the hansard records it was found that the member said . . . “Chairman, allow me the opportunity to address some of the accusation leveled against the ANC during the so called dramatic event of the 27 November 2012, when the opposition parties walked out of the meeting. . . . contrary to what the deceitful members said to the public, . . .” The Presiding Officer had to rule whether it is parliamentary to refer to Members as “deceitful Members”?

RULING:

The Presiding Officer ruled that section 71 of the Constitution, read with rule 30 of the Council’s rules, guarantees every member of the Council the right to freedom of speech during the debates, committees and subcommittees. However, the right to freedom of speech is not an absolute right but has limitations. He urged members to guard against making insinuation which are offensive to other members, unbecoming of honourable members, not in keeping with

the decorum of the House or not conducive to orderly debate. He ruled that the remark was unparliamentary and ordered the member to withdraw the remark.

UNPARLIAMENTARY LANGUAGE

FACTS

A member rose on a point of order on whether it was parliamentary to “imply that the Democratic Alliance was behind the third force”.

QUESTION TO BE CONSIDERED

Whether or not it was parliamentary to imply that the Democratic Alliance was behind the third force?

RULING

The Presiding Officer pointed out that unparliamentary language means different things in different jurisdictions and to different persons and members. In some jurisdictions the list runs to several pages, but it would not be helpful for the Council to adopt such an approach. She indicated that sometimes it strikes members as odd that some words and phrases are deemed unparliamentary while others are permitted as being part of the cut and thrust of the debates. The context in which particular words are used can affect their meaning, making them more or less acceptable to the person at whom they are directed.

She acknowledged that at times members will wish to express their views forcefully and to engage in robust debate. That is acceptable. However, that is not acceptable where the tone or the nature of the remarks becomes

so ill-tempered and bad-mannered that it is close to discourtesy and disorder rather than to civil debate representing constituencies.

The guiding principles as to whether the words used in a debate are out of order is the motive attributed to the member accused of using the words and whether something dishonourable is being attributed to another member. Words or phrases used in a debate which do not impugn on the honour of the member will not be ruled out of order.

She ruled that expressions by the honourable member were directed at the party. As per previous rulings, expressions directed at a party are not unparliamentary, as they do not reflect on the integrity of another member. However, she emphasised the point that if such reference were meant to refer to the members of the House who are associated with a particular political party, such reference would be unparliamentary.

She cautioned members to be very circumspect because in the true sense of whether or not something is parliamentary or not, it would not be unparliamentary. However, due to the fact that there are members sitting in the House who are affiliated to the party which is accused of being the third force, it should not be allowed; that is unparliamentary. Therefore she ruled that the honourable member should desist from making such remarks.

UNPARLIAMENTARY LANGUAGE

FACTS

A member rose on a point of order in reaction to another honourable member’s speech,

wherein the honourable member said “yiva ke lawundini ndikubalisele”. This is a Xhosa proverb which could be loosely translated as saying ‘Behold and let me tell you’.

QUESTION TO BE CONSIDERED

Whether or not it was parliamentary for an honourable member to refer to another member as “lawundini”? Owing to the fact the Presiding Officer did not understand the term “lawundini,” she undertook to conduct research and study the unrevised Hansard to ascertain the meaning of the term and also to determine the context within which the term was used.

RULING

The Presiding Officer acknowledged that members have the right to freedom of speech in the house. She also noted that this right is circumscribed by the constitutional provisions and that the Rules of Procedure are very clear on this matter.

She pointed out that through the research conducted, it was discovered that the honourable member was not misleading the House in saying that in rural Eastern Cape you can use it interchangeably. When one looks at the writings of Ndungana and Majamba, one of them said: “He he, ndiyeva lawundini.” This is interpreted as, “I say so” or “if you say so, mfondini.” She ruled that the word used by the honourable member was not meant to offend and therefore would not be unparliamentary. However, she indicated that members should be aware that, for instance, if you use the same word in the North West Province, people of the coloured origin would fight very hard because they would feel that they are denigrated. Members were once

more cautioned to be mindful of how they use words or phrases which might mean one thing in their own constituencies but mean something very different to other members.

UNPARLIAMENTARY LANGUAGE

FACTS

A member rose on a point of order on whether it was parliamentary for honourable member to refer to another Member as a “waste”.

QUESTION TO BE CONSIDERED

Whether or not a member was permitted to refer to another member as a waste?

RULING

The Presiding Officer reminded members that she had pointed out in the previous sitting that it would be unparliamentary to refer to a member as a waste, but it would not be unparliamentary to refer to wasted talent.

The Presiding Officer indicated that having looked at the unrevised Hansard, no reference was made to the honourable member as a waste. In the light of this, she ruled that the statement made by the honourable member was not unparliamentary and therefore the point of order could not be upheld.

UNPARLIAMENTARY LANGUAGE

FACTS

A point of order was raised following a statement made by the Minister of Human Settlements, in particular when she said: “Now that the madam has found another hired native in the form of the honourable member, he will forever be grateful to the

ANC for having fought in the struggle so that today a black man is such a sought-after commodity that he is hand-picked to do the bidding of somebody else”.

QUESTION TO BE CONSIDERED

Whether or not the statement made by the Minister was parliamentary?

RULING

The Presiding Officer indicated that there is nothing unparliamentary about the “native” being a native and being referred to as a native. She further noted that there is nothing unparliamentary about a native being hired by anybody and that when used separately, there is nothing untoward or unparliamentary about these. However, she concluded that the context that is created by using these words in one sentence, such as in the sentence used by the Minister, is offensive and may perpetuate the stereotype that the “natives” are always for hire. In view thereof, the Minister was requested to withdraw the remarks she made, which she did.

USE OF MOTHER TONGUE DURING DEBATES

FACTS:

A member stood up to object to a statement made by another member, which it was alleged that a member said. . . “members use their mother tongues in order for other members not to hear what they are saying”. The member was asked whether she made the statement, which she denied. The Presiding Officer undertook to check the unrevised hansard records.

QUESTION TO BE CONSIDERED:

After checking the hansard records it was found that the member said the following, “Chairperson, Hon Minister, Hon members, usually when the ANC wants to say something that not everybody will understand properly, it is done in the speaker’s mother tongue”

RULING:

The Presiding Officer ruled that section 30 of the Constitution, stipulates that everyone has the right to use the language of their choice, but no one exercising those rights may do so inconsistent with the Bill of Rights. Further, the Use of Official Languages Act (Act No 23 of 2011) seeks to promote the parity of esteem and equitable treatment of official languages of the Republic. Parliament has translation services to cater for members who do not understand certain languages.

He urged members to refrain from making statements which imply that members use their mother tongue in order for others not to understand. He encouraged members to use their mother tongue languages as this shows the identity and enhances social cohesion among South Africans and ruled that the member should withdraw the remark, which she did.

MOTIONS, AMENDMENTS AND WITHDRAWALS

FACTS:

A member while giving a notice of a motion alleged that the absence of the Minister who was scheduled to respond to questions was as a result of her taking extended holiday in Europe at the expense of tax payers. Another member objected on grounds that the Minister was on official business abroad.

QUESTION TO BE CONSIDERED:

Presiding Officer requested that the information be verified in order to enable him to make a ruling on the matter. The information received was that the Minister was attending the International Labour Organisation (ILO) governing body meeting in Geneva, Switzerland from 12-16 November 2012. The meeting was followed by an International Symposium on Challenges of Social Protection held in Paris, France on 19 November 2012. Thereafter, the Minister attended a panel discussion of BRICS members on “Technical Cooperation and Social Protection Floors Implementation” held in India.

RULING:

Based on the information received it was ruled that while members have freedom of speech in the House, such freedom is subject to the rules of the Council. In particular rule 46 which provides that “no member may deliberately make a statement in the Council which the member knows is false”. Therefore it was ruled that the motion will not be proceeded with.

MOTIONS, AMENDMENTS AND WITHDRAWALS

FACTS:

A member moved a motion in which part of it called on the Speaker of the National Assembly to clarify issues relating to the loan on the President private residence in Nkandla.

QUESTION TO BE CONSIDERED

Whether or not a member was in breach of rule 80 of the Council, which provides that “A notice of motion which offends against practice, the Council Rules or Joint Rules, may

be amended or otherwise dealt with as the Chairperson of the Council may decide.”

RULING:

It was ruled that in terms of practice the Council may not direct or order a Presiding Officer of another House (National Assembly). However, any action required to be taken by the Presiding Officer(s) of the National Assembly should be raised in the Assembly. Therefore, the offending part of the motion was severed from the rest of the text and excluded from the next Order Paper.

AMENDMENTS TO MINUTES OF THE HOUSE

FACTS

During the Joint Sitting on 17 February 2015, a member rose on a point of order, questioning the quality of the minutes of Thursday, 12 February 2015, claiming that the minutes were not complete and moreover were not a true reflection of what happened in the house on the day.

The member referred to section 20 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 which recognizes minutes as evidence which might be required by the Court of Law. The member indicated that the proceedings of Thursday evening may very well lead to legal action, and members are all aware of the fact that there have perhaps already been legal proceedings instigated.

QUESTION TO BE CONSIDERED

Whether or not the minutes of Thursday, 12 February 2015 are a true reflection of what happened on that day (12 February 2015) in the House?

RULING

The Presiding Officer indicated that the minutes of proceedings is the official record of business transacted in the House and the decisions taken by the House during a plenary session. All decisions are recorded but with the exception of the State of the Nation Address by the President. The minutes are a concise record of business transacted in the House. In general, the minutes of the Houses or a Joint House do not reflect individual points of orders, the decision of a political party, or individual members who voluntarily leave the House.

The minutes would, however, reflect on decisions, major or unusual occurrences, and rulings from which a particular action resulted, for example, when the presiding officer give a considered ruling with the consequences that a member is ordered to withdraw remarks. Where proceedings are suspended, this would also be reflected. The minutes together with the Hansard transcript form the official record of proceedings and should be read together. Should there be an instance where these records are required by a court, both the minutes of proceedings and the Hansard would be provided to the court.

In view thereof, the minutes of proceedings of 12 February 2015 have been reprinted to reflect the matter of the cellular signal. This decision was made in view of the uniqueness of that situation. The Chairperson encouraged members that if they think that the minutes of the House or both Houses should follow a different format, the matter should be submitted to the Rules Committees including the Joint Rules for consideration.

SUB JUDICE RULE

FACTS:

A member moved a motion without notice that the House notes the plight of residents of Lenasia whose houses were demolished following their failure to get authority to build houses on a land owned by the municipality. Another member objected to the motion on grounds that the matter was before court and as such sub judice.

QUESTION TO BE CONSIDERED:

Presiding Officer reserved his ruling in order to enable him to check whether the matter is indeed before court.

RULING:

The Presiding Officer ruled that indeed the matter was before the Gauteng High Court and as such in contravention of rule 57, which provides that . . . “No delegate may reflect on the merits of any matter on which a judicial decision is pending”. He therefore, ruled that the motion will not be proceeded with.

MATTERS BEFORE COURTS

FACTS

A member objected to the notice of a motion made by another member on grounds that it contravenes Rule 48 of the Council, which reads as follows “[no] member, while addressing the Council may reflect on the merits of any matter on which a judicial decision is pending”.

QUESTION TO BE CONSIDERED

Whether or not the notice of a motion was in contravention of Rule 48 of the National Council of Provinces?

RULING

The Presiding Officer ruled that at the time the motion was moved the matter was still under investigation and, as such, no formal charges had been laid yet. Therefore, the notice of motion does not contravene rule 48. However, paragraph 4 of the motion calls on the committee of the Council to investigate the matter. This aspect falls outside the constitutional mandate of the Council, as the motion relates to a personal and private matter. He ruled that, in accordance with rule 80, paragraph 4 of the motion be expunged from the next Order Paper.

REFLECTING UPON THE COMPETENCE OR HONOUR OF JUDGES

FACTS

A member rose on a point of order in reaction to a statement made by the Minister of Human Settlements when she said, referring to the Western Cape, "In this province there is a scam readily available, day in, day out. Right now, we sit with a scam that has been covered up with the complicity of the media. Millions were spent by the City of Cape Town on a scam called 'World Design Capital'. And what has happened here is that the judges were paid to judge in favour of the City of Cape Town".

QUESTION TO BE CONSIDERED

Whether or not the Minister's statement is in conflict with Rule 14 of the Joint Rules, which prohibits members from reflecting upon competence or honour of the judges?

RULING

It was ruled that the purpose of Rule 14 of the Joint Rules is to protect the integrity and the independence of the judiciary and not individuals sitting as a procurement or a competition panel. The judges referred to in Joint Rule 14 refer to members of the judiciary. The judges that the Minister referred to in her statement are not members of the judiciary. The point of order was dismissed.

CASTING ASPERSIONS ON THE PRESIDING OFFICER

FACTS

A member suggested to the Council that consideration be given to putting in place a system where retired judges from the Constitutional Court and other High Courts are appointed to be presiding officers of the House. An honourable member rose on a point of order against this proposal and requested the Presiding Officer to make a ruling as to whether "it was parliamentary for a member to cast aspersions on the presiding officer by saying that we have to have judges presiding?"

QUESTION TO BE CONSIDERED

Whether or not it was parliamentary for a member to cast aspersions on the Presiding Officer by saying that the Council has to have judges presiding?

RULING

The Presiding Officer ruled that the statement made by the honourable member was a mere suggestion to the House of the possibility of having retired judges appointed as Presiding Officers. He cautioned members

that they should be mindful of the fact that, as honourable members, they are supposed to conduct themselves in a manner befitting the decorum of the House. He indicated that points of order were being raised as a response to what the speaker was saying or when members held a different view to the speaker.

Practice of this House, and parliaments in general, is that if a member holds a different view or differs from the speaker either on party or policy matters, they should use the opportunity allocated to them when debating to raise those matters, instead of rising on a point of order. This is what debates are about. He advised members that in the event that a member feels aggrieved by a statement made by another, the aggrieved member should respond to the statement as part of his or her debate.

He urged members not to rise on frivolous points of order and so-doing interrupt speakers on the floor. Instead members should raise genuine points of orders and rules guide members on what constitutes a point of order. Members were advised to familiarise themselves with the rules of the House.

STATEMENT THAT A MEMBER IS MISLEADING THE HOUSE

FACTS:

During the debate several members rose on points of order making allegations and counter allegations that members debating were “misleading the House” without any substantive proof.

QUESTION TO BE CONSIDERED:

Presiding Officer had to rule on when members could rise on a point of order and in particular alleging that a member is “misleading the House”.

RULING:

Presiding Officer ruled that members should be mindful that as honourable members they are supposed to conduct themselves in a manner befitting the decorum of the House. He noted that points of order are raised as a respond to what the speaker is saying or when members hold a different view with the speaker. Practice of the House and parliaments in general is that if a member holds a different view or differ with the speaker either on party policy matters, they should use the opportunity allocated to them when debating to raise those matters, instead of rising on a point of order.

He further noted that allegation that a member is “misleading the House” is a serious one, therefore it should not be treated lightly. Neither should it be a matter that can just be raised without any substantive proof. As members are aware that Presiding Officers are not privileged to their statements prior to debate, therefore, it would be impossible that they could from the Chair know whether a member is “misleading the House” or not.

He advised members to desist from making statements which they know is not true. However, in the event that a member feels that another member has made a statement knowingly that it is not true, such a member should submit it in a form of a “substantive motion” with facts to back-up his/her claim.

This he said would be investigated and indeed if found that a member is misleading the House knowing that his statements or remarks are not true this might lead to an inquiry.

He urge members not to rise on frivolous points of order and as such interrupt speakers on the floor, instead members should raise genuine points of order and the rules guide members on what is a point of order.

PARTICIPATION OF SPECIAL DELEGATES IN THE COUNCIL

FACTS

Two members raised points of orders and objected to the input which was made by the MEC of the Western Cape Province on the grounds that the honourable MEC should have tabled the budget of her department and should have been debating the Minister's speech rather than raising a broad range of national issues.

QUESTION TO BE CONSIDERED

Whether or not special delegates can engage with the Ministers on the budget allocations and interrogate the Minister's plans for the financial year?


RULING

The Presiding Officer pointed out that the participation of the special delegates in the National Council of Provinces is critically important, as it ensures that the NCOP's mandate to ensure that provincial interest is taken into account at the national sphere of government is realised.

Provinces have the prerogative to delegate any member to attend the plenaries of the NCOP as special delegates. Such members may range from members of the executive to members of the provincial legislatures. Therefore, their inputs into Council debates will always be determined by what they want to bring to the House and to that debate. It would be very difficult for the NCOP to prescribe to these members what to say and what not to say.

In view of this, the Presiding Officer ruled that the MEC from the Western Cape Province was within her rights to debate in the House.

A series of 20 horizontal green lines spaced evenly down the page, intended for writing.



PO Box 15 • Cape Town 8001 • Republic of South Africa
www.parliament.co.za

