



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 26 MAY 2025

CASE NO: 489/2024

LICENSING AND COMPLIANCE DIVISIONS OF ICASA

COMPLAINANT

V

CAPRICORN FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Ntombiza PN Sithole - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

Meera Lalla – Acting CCC Coordinator
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Busisiwe Mashigo

For the Respondent - Mr James Shikwambana
Assisted by Ms Prudence Mabasa

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is an election complaint referred to the CCC for investigations against the Respondent in terms of section 17B(a) of the Independent Communications Authority of South Africa ("ICASA") Act No. 13 of 2000.

THE PARTIES

- [2] The Complainant is the Licensing and Compliance Divisions of ICASA (LCD) established in terms of the ICASA Act.
- [3] The Respondent is Capricorn FM, a sound commercial broadcasting service licensee. It shall be referred to as the Respondent/Licensee/Capricorn FM. It was granted and issued an INDIVIDUAL BROADCASTING SERVICE LICENCE No.:014/RE/Commercial/R/Aug/19 FOR THE PROVISION OF A COMMERCIAL SOUND BROADCASTING SERVICE, effective from 01 October 2017.

COMPLAINT

- [4] The Charge Sheet states the Contravention as:

"Breach of regulation 6(11) of the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024, ("the Regulations").

- [5] The Complainant detailed the non compliance as follows:

- 5.1. The Licensee has, during the elections period, contravened regulation 6(11) of the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024, as published in the

government gazette, no 50204 dated 26 February 2024 as follows:

5.1.1 Failure to comply with the above-mentioned Regulation which provides that:

"(11) A BSL must not broadcast a PA immediately before or after another PA or PEB."

SUMMARY OF COMPLAINT

[6] During its compliance monitoring duties, in respect of the 2024 National and Provincial Elections coverage, the Licensing and Compliance Division noted that Capricorn FM transmitted Political Adverts (PAs) in contravention of regulation 6(11) of the Regulations as per **Table 1**

[7] **Table 1** sets out the following:

- 7.1 On 25 May 2024, at 22:19:54 and at 22:20:17, Capricorn FM broadcast an **African National Congress** PA after a **Democratic Alliance** PA.
- 7.2 On 25 May 2024 at 22:45:22, Capricorn FM broadcast an **African National Congress** PA after another PA.
- 7.2 On the same day, that is, 25 May 2024, at 22:59, 23:00, Capricorn FM broadcast an **African National Congress** PA after another PA from the **African National Congress**.
- 7.3 On 26 May 2024 at 07:30:07, Capricorn FM broadcast an **African National Congress PA** after a **Democratic Alliance** PA.
- 7.4 On 26 May 2024 at 09:41:09, Capricorn broadcast a **Democratic Alliance** PA after an **African National Congress** PA.
- 7.5 On 26 May 2024 at 12:20:12, Capricorn FM broadcast a **Democratic Alliance** PA after an African National Congress PA.

7.6 On 26 May 2024 at 20:22, Capricorn FM broadcast an **African National Congress** PA after another PA for the same party.

RELIEF SOUGHT

[8] That an appropriate sanction be imposed after a finding of non compliance.

THE RESPONDENT'S RESPONSE

[9] In a letter dated 20 November 2024, James Shikwambana, the managing director of Capricorn, acknowledged the receipt of the complaint and essentially admitted the allegations.

[10] Part of the letter read as follows:

"3 Upon thorough review of the broadcast records for the 25 and 26 May 2024, it has been confirmed that seven (7) PEBs and four (4) PAs of the African National Congress and the Democratic Alliance, respectively, were indeed flighted back to back.

4 In over 17 years of providing broadcasting services, including during various local, provincial, and national elections, Capricorn FM has consistently ensured adherence to all applicable regulations.

5 We regret that on the 25 and 26 May 2024, an error occurred due to negligence on the part of the employee responsible for scheduling the advertisements.

6 As a remedial measure, disciplinary action has been taken against the employee. The employee has been found guilty of negligence and has received a final written warning, which will remain on record for eight months.

*7 We reaffirm our commitment to compliance and **will apply improved checks and balances measures to avoid future contraventions.***

8 *We unreservedly apologise to the Authority for this oversight and respectfully plead for leniency in considering the matter.”*

DISCUSSION AND ANALYSIS

- [11] The CCC noted that the Respondent admitted the allegations and expressed regret at the failure to comply with the regulations.
- [12] In addition, the CCC considered the nature and seriousness of the non compliances, the circumstances under which the non compliances occurred, consequences of the non compliance, steps taken by the Respondent to remedy the problem, and steps taken by the Respondent to ensure that a similar contravention was not repeated in future.
- [13] Before I proceed to discuss each in turn it is necessary to say something about the regret that the Respondent expressed.
- [14] An expression of regret by an offender may not necessarily be genuinely a show of remorse. In some cases regret may be nothing more than lip service. It is, therefore, important to examine the circumstances of the case thoroughly, before deciding whether the offender is truly remorseful. The CCC shall embark on such an exercise when considering aggravating and mitigating circumstances.

Circumstances Under Which the Contravention Occurred

- [15] In the present case, the circumstances under which the contravention occurred were, initially, not clear.
- [16] Apart from the conclusion made by the Respondent that one of its employees was negligent, the CCC was given no other information.
- [17] To remedy these shortcomings, the CCC requested the Respondent to make further written submissions which would give the CCC a better picture of what could have gone wrong on the days the non compliances took place.

- [17] This is of vital importance since the Respondent has had an impressive record for 17 years. The CCC needed to know how many employees were involved, at the time, in scheduling the advertisements and what role was played by each employee. In addition, the CCC was and is still of the view that it needed to know if the Respondent had any monitoring measures in place, at the time, their nature and usefulness as well as whether they were used at the time of the contraventions. Another important question was how long such measures had been in place and their effectiveness in the past.
- [18] In the Respondent's submission, it was confirmed, more than once, that the employee responsible for scheduling political advertisements had conceded that she was negligent. She was then found to have been negligent and was subsequently suspended. All that is commendable, but not enough.
- [19] More information regarding the number of staff involved in the task and whether or not there were any checks and balances, would have been more helpful than mere information that the employee responsible for scheduling the advertisements had admitted being negligent and had been suspended.
- [20] There was concern that the employee who allegedly was negligent in scheduling the advertisements may have been used as a scape goat. I say this because there was evidence that the employee had been allocated more Political Advertisements than time would allow. When she pointed that out to her senior, she was ignored and received no assistance, or advice. She then proceeded to use her own discretion by flighting the PAs back to back, thereby contravening the law.
- [21] From the above, the conclusion is inevitable that the team, handling the allocation, scheduling and the flighting processes, should have shared the blame for the mishap, but that did not happen. Instead blame was placed on one person against whom disciplinary action was taken. It is not for the CCC to interfere with internal affairs of a Licensee. However, to do justice in a case, the CCC must enquire and verify all the information that is placed before it, for it to make a fair and just decision.
- [22] The above shortcomings, however, do no detract from the fact that the

Respondent promptly took the initiative to specifically apologise to the Authority for the “oversight”, long before the date of the hearing. This, alone is an indication that the apology was not an afterthought. It was made long before the Respondent had an opportunity to make any excuses.

- [23] We are here also dealing with a Respondent who has maintained a clean record for 17 years. That is something which cannot be ignored, and should count in the favour of the Respondent as a strong mitigating factor.

The Nature and Gravity of the Non Compliance

- [24] Every non compliance is serious. To determine the seriousness of a specific non compliance, in a particular matter it is necessary to take all facts and circumstances into consideration.

- [25] As stated earlier, the Respondent has had a clean record for 17 years. In addition, we are here dealing with non compliance in respect of one regulation only. That should also make this particular contravention less serious than a case where there are multiple transgressions. It was also noted that the non compliance happened over two days only. This was far less serious than several cases the CCC heard where transgressions by one Licensee occurred throughout the whole election period.

Consequences of the Non compliance

- [26] The CCC is not in a position to say what the consequences of the non compliance are as it has no resources to investigate or tools to measure such consequences, if any. In general, however, failure to comply with election regulations may be so serious that it may have a negative impact on the integrity of the electoral process.

Steps Taken To Remedy The Non Compliance

- [27] The Respondent took steps immediately it was made aware that a complaint of non compliance had been filed against it. It made its own investigations and then held a disciplinary enquiry. That fact alone is an indication that the Licensee takes

matters of compliance seriously.

Steps Taken by the Respondent To Ensure That a Similar Contravention Does Not Occur in the Future

- [28] Having insight into the root cause of an incident is always an advantage that ought to be commended.
- [29] In the present case, the Licensee submitted that it "*will apply improved check and balances*" to prevent a repeat of the same contravention in the future. This implies that the existing checks and balances were found lacking.
- [30] However, the challenge with the above statement is that no submission was made with regard to whether, at the time of the non compliances, there were any checks and balances in place, their nature as well as why they failed. This information would have assisted the CCC to understand why improved checks and balances were necessary and in what way the existing measures needed to be improved, and whether what is proposed by the Respondent would remedy the problem.

FINDING

- [31] On the totality of the facts, the CCC makes a finding that the Respondent "*breached regulation 6(11) of the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024, ("the Regulations")* in that on the 25 May 2024 and on the 26 May 2024 the Respondent broadcast a PA after another PA. On the 25th this occurred three times while on the 26th, this occurred four times.

RECOMMENDATIONS IN TERMS OF SECTION 17E(2) OF THE ICASA ACT NO 13 OF 2000

ORDER

- [32] In terms of 17E(2) of the ICASA Act, the CCC recommends to the Authority the following order to be issued:

- 32.1 direct the Licensee to desist from further contravention of the Regulation.
- 32.2 direct the Licensee to take the following remedial measures:
- 32.2.1 Within 90 Calendar days from the date of the issue of this order, Capricorn FM is to submit to the LCD of ICASA a report, setting out, among others, a brief technology readiness report, articulating the technology operations plans, systems preventative maintenance and how they would be implemented during the next election period.
 - 32.2.2 That the radio station upgrade its hardware and software. This must be followed by a dry run on the system's operation well before the commencement of the next election period to ensure that it is foolproof.
 - 32.2.3 Direct the Licensee to deploy a team of five(5) people who would individually check the PAs before they are flighted.
 - 32.2.4 In addition the CCC recommends to the Authority that Capricorn FM broadcasts a public apology during the first week after this order is issued.
 - 32.2.5 The apology is to be broadcast in English once per day for five consecutive days as its first item on its news service between 7h00 and 20:10. On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the LCD of ICASA at the latest 48 hours before the broadcast
 - 32.2.6 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her representative who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

32.2.7 The apology must be phrased thus:

"The Independent Communications Authority of South Africa has found that this station was negligent in not having abided by the National and Provincial Elections Regulations 2024. This station broadcast Political Advertisements (PAs) one after the other.

This is in conflict with the ICASA Election Regulations which require that a Political Advertisement should not be flighted immediately after the other. This station further extends its apology to ICASA and to its listeners for having committed the contravention".

- [33] An electronic copy of each broadcast stating the date and the time of the broadcast, must be sent to the LCD at ICASA by email within 48 hours from the last broadcast in the said five days.
- [34] A fine of R50000 (Fifty Thousand Rand) of which R20000 (Twenty Thousand Rand) is suspended until after the next National and Provincial Elections is recommended. An amount of R30000.00 (Thirty Thousand Rand) must be paid to ICASA within 90 calendar days from when this judgment is issued.
- [35] The CEO of ICASA or his nominee must be copied with proof of payment within 24 hours from when the payment was made.


Judge Thokozile Masipa
Chairperson of the CCC

Date: 3 September 2025