



COMPLAINTS AND COMPLIANCE COMMITTEE

**DATE OF HEARING: 30/03/2023
14/04/2023**

CASE NO: 451/2022

RADIO TEEMANENG MANAGEMENT

COMPLAINANT

V

**RADIO TEEMANENG
BOARD OF DIRECTORS**

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Catherine Mushi - Member
Mr Monde Mbanga - Member
Mr Peter Hlapolosa - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

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

LEGAL REPRESENTATION FOR PARTIES

The parties were not legally represented. However, senior officials from the Complainant and the Respondent availed themselves and made submissions.

For the Complainant:

Mr Winston Mosimanyana,
Mr Obakeng Matshidiso and Ms Sylvia Funeka Louw.

For the Respondent:

Reverend D Fransman and Mr William Steenkamp.

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is a Complaint against the Board of Directors of Radio Teemaneng concerning the alleged non-compliance of Radio Teemaneng, with its Constitution, its licence terms and conditions as well as the applicable law and regulations.
- [2] The Licensee is a community sound broadcasting service licensee based in Kimberley.
- [3] The Complainant is Radio Teemaneng Management, the unit responsible for the management of the day-to-day activities of Radio Teemaneng.
- [4] The Respondent is the Board of Directors (BoD) of Radio Teemaneng. Though unusual, the citation of the Respondent is not off the mark. After all, it is the Board of Directors that is the custodian of the license and has the overall responsibility to ensure that the Licensee is fully compliant with the applicable laws and regulations.
- [5] The Complainant shall be referred to as the Complainant or Management. The Respondent shall be referred to interchangeably as the Board, (BoD), or the Respondent. Similarly, Radio Teemaneng shall be referred to as the Licensee, Radio Teemaneng or the station.

THE COMPLAINT

[6] The Complainant alleged the following:

6.1 That the Respondent contravened Clause 7.1 of the Constitution of Radio Teemaneng. ("the Constitution ").

Clause 7.1 states:

"The AGM, as a report back to the community will be arranged to take place annually within a period not exceeding two (2) calendar months during each year".

It is alleged that the Respondent failed to organise an AGM since 2016.

6.2 That the Respondent contravened clause 4.2 of the Licence Terms and Conditions of Radio Teemaneng ("the Licensee ").

Clause 4.2 states:

"The Licensee shall provide for the participation of the community members in the affairs of the station in the following ways..."

It is alleged that the Respondent failed to organise an AGM for community participation as advised by the Compliance Division of ICASA.

6.3 That the Respondent contravened clause 4.1 of the Constitution of the Licensee ("the Constitution").

Clause 4.1 states:

"A new Board of Directors shall be elected at the AGM (at the end of the Board's term) and shall comprise of eight (8) members, democratically elected from communities permanently resident in the catchment areas of Radio Teemaneng Broadcasting Radio Station ".

It is alleged that the Respondent failed to organise an elective AGM after the expiry of its term in office.

6.4 That the Respondent contravened Regulation 5(8) of the Community Broadcasting Services Regulations of 2019. Regulation 5(8) states:

"The Board must not interfere in the daily operations of a licensee".

It is alleged that the Respondent is interfering in the daily operations of the Licensee.

6.5 That the Respondent contravened clause 4.8.1 of the Constitution.

Clause 4.8.1 states:

"The Chairperson, Secretary, Treasurer and Station Manager form the Secretariat of RTS".

It is alleged that there are some meetings which are held in the absence of the ex-officio (Station Manager).

6.6 That the Respondent contravened clause 3.3 of the Constitution.

Clause 3.3 states:

"The assets of RTS shall remain the property of the Radio Station and cannot be shared or otherwise distributed among BoD, members of presenters."

It is alleged that the Chairperson of the Board received a cellphone from the Licensee, for personal use.

THE RESPONDENT'S RESPONSE

[7] The Respondent denied most allegations above, and indirectly conceded others. It also used the opportunity to counter the allegations with its own list of grievances against the Management of Radio Teemaneng.

[8] A number of these grievances appear inextricably linked to the Complaint that is before the CCC.

- [9] For instance, failure by the BoD to properly organise an AGM drew a response from the Respondent that the cause for this failure was that Management failed to cooperate or give the Board the necessary support for a successful AGM.
- [10] A perusal of the concessions shows that they were properly made. After all, it is common cause that no AGM has been held since 2016. Also common cause was that the current Board, whose term of office expired a while back, is comprised of less than the required eight (8) members.
- [11] It is proper at this stage to mention that there are charges that are inexplicably linked such as failure to hold an AGM and lack of community involvement in the affairs of the Licensee. For convenience and fairness these shall be treated as one charge.

THE HISTORY OF THE CHALLENGES AT RADIO TEEMANENG

- [12] Since its inception, Radio Teemaneng has had to contend with a number of challenges including the loss of its station manager, Mr Damerrel. It appears that it was after the passing on of the Station Manager, that the already simmering discontent between the parties was brought to the surface.
- [13] Not all the issues or disputes, however, were brought to the table by the parties for resolution. So, these remained unresolved and continued unabated like a festering sore.
- [14] For instance, Management took offence each time the station manager (as the **ex officio**) was excluded in some Board meetings. At the hearing, the Board sought to explain this by submitting that the Station Manager was asked to leave meetings only where it was felt that there was a potential conflict of interest. [It must be mentioned that this explanation was not countered during the hearing, and sounds like a reasonable explanation].
- [15] Had this issue been discussed between the parties, it could easily have been resolved without the need to lodge a complaint. It is this failure by the parties to communicate that led to more serious problems.

- [16] After the passing on of the station manager, the Board appointed an Acting Station Manager who was soon replaced by an Administrator, a "night presenter" at the station. The Administrator was allegedly given full powers of the Station Manager, thereby exacerbating the tension between the parties.
- [17] This conduct did not sit well with Management as it was viewed as interference by the Board in the day to day operations of the radio station.
- [18] Again this could have been resolved had the parties taken the trouble to consult and communicate their plans and decisions. This would have ensured that they were all aware of what was happening and why.

ACCUSATIONS AND COUNTER ACCUSATIONS

- [19] The accusations and counter accusations above, paint a picture of a floundering organisation where the proverbial right hand does not know what the left hand is doing. It appears, therefore, that the Complaint, as framed in the Charge Sheet, is only the tip of the iceberg. Below the surface there seem to be more serious issues which need to be addressed by both parties before a lasting solution can be found.
- [20] None of the parties led evidence under oath, concerning the issues in dispute. This made it impossible for the CCC to verify the truthfulness of allegations which were denied. However, from the concessions made by the parties, it can be safely assumed that there is an element of truth in some of the allegations.
- [21] Management and the Board have different roles to play. However, they have a common goal which is to ensure, among other things, that the Licensee remains not only afloat, but also compliant with the relevant statutes and regulations. More importantly, for the station to run smoothly and efficiently, each party should know what the other is doing.
- [22] As alluded to earlier, in the present case, lack of communication between the parties has stood in the way of the smooth functioning of Radio Teemaneng.

And this has obviously led to problems which, if ignored, might cause the demise of Radio Teemaneng.

- [23] The main problem seems to be that instead of working together as a team, Management and the BoD have each been working in isolation. No organisation, no matter how efficient its workforce, can survive if the right hand does not know what the left hand is doing and vice versa. In the present case lack of mutual trust and suspicions among the parties is not a secret.
- [24] In fact, the lack of trust by Management for the Board and **vice versa** was expressed more than once by both sides. This is disturbing. As long as the parties are at loggerheads, there is little chance of resolving the issues faced by the station.
- [25] On 8 March 2022, in an effort to resolve some of the issues, a Compliance Officer from ICASA intervened to assist the parties. Whether that meeting had any lasting benefits is doubtful. I say this because the matter was ultimately handed over to the CCC for this hearing.

THE MEETING OF THE PARTIES WITH THE COMPLIANCE OFFICER

- [26] To understand the history of this matter, it is important at this stage to briefly say something about the meeting of the 8 March 2022.
- [27] The meeting was attended by Tebogo Malefane, (TM), Compliance Officer from ICASA, as well as the manager, Busisiwe Mashigo, (BM). From management Winston Mosimanyana (WM), and Obakeng Matshediso, (OM), formed part of the delegation, while Rev Dez Fransman, (DF), the Chairperson of the Board and his deputy, William Steenkamp, (WS) attended on behalf of the BoD.
- [28] From the notes, provided at the hearing, it appears that the purpose of the meeting was to iron out the differences between the parties as "*there seems to be no communication*" between them.

[29] The parties had an opportunity to discuss and explore possible solutions to the challenges faced by the Licensee, but seemingly a permanent solution eluded them.

[30] For the sake of completeness it is necessary to set out some of the grievances that beset the parties.

[31] The Respondent was concerned that it could not get access to what it considered crucial information needed especially for a successful AGM.

31.1 This was expressed thus:

'The Board "could not get access to documents it needed to attend meetings, especially financial documents."

[32] The Board further bemoaned the fact that this lack of access to the relevant documents kept it in the dark about the state of affairs at the station.

[33] What saddened the Board the most was that there seemed to be *"unhappiness from Management towards the Board, which had never been raised before."*

[34] There were more allegations. The Board allegedly was not aware of and was not involved in the preparations for the most recent AGM.

[35] The station's management allegedly called for membership registration without the Board's inputs or approval.

[36] Another major concern was that the Chairperson of the Board was not even aware that there was bad blood between the Board and Management until he discovered this accidentally when management failed to respond to various requests by the Board.

[37] Management had its own concerns some of which are summarised hereunder.

- [38] Management alleged that between April and October of 2019, an amount of approximately R200 000 went missing from the station's bank account. This allegedly happened through cheques that were signed by the then station manager. To Management's knowledge, these were approved by the Board in numerous financial meetings between the station manager and the Chairperson of the Board.
- [39] A further allegation was that the former Station Manager's personal vehicle was insured on Radio Teemaneng's insurance.
- [40] In addition, internet services at the station manager's personal residence were also paid by Radio Teemaneng.
- [41] Management believed that the Board knew about the matters mentioned above and DF was made aware of these concerns when he paid a visit to the station. [I pause to state that the basis of this belief was not clear].
- [42] Management voiced its confusion about whether the current Board is for Radio Teemaneng or RTS FM.
- [43] A further concern by Management was to the effect that ICASA, through TM, was aware of the existence of RTS FM as its registration documents were previously submitted to the Authority and the Authority was informed of Radio Teemaneng's deregistration.
- [44] Management voiced its difficulty at accepting that the late station manager, Mr Damerell, acted alone on the matter. There was a suspicion that the Board was part of the decision to deregister Radio Teemaneng.
- [45] TM informed Management that the Authority does not recognise RTS FM as a licensee. It only recognises Radio Teemaneng.
- [46] According to Management, the confusion about whether the Board is for Radio Teemaneng or RTS FM was the reason Management had not been forthcoming

with information requested by the Board. This was because Management did not want to be seen as recognising an entity that the Authority did not license.

- [47] According to Management, the former Station Manager had informed Management that DF knew everything. This piece of information caused management to distrust DF. MK re-iterated that Management did not honour DF's meeting request due to this lack of trust.
- [48] DF was invited to a meeting for the 17th January, together with SN. SN informed Management that DF confirmed attendance but he did not attend the meeting and no apology was received from him. The purpose of the meeting was to iron out the issues raised in this meeting.
- [49] An EXCO member, who is also a former station manager, informed the current management that RTS FM was formed with the Board's approval.

The purpose was to close Radio Teemaneng and RTS to take over the licence.

- [50] These many concerns that the parties raised at the meeting, merely serve to illustrate that the station has bigger problems that threaten its very existence as a genuine community radio station.
- [51] It is important to note that some of the allegations are a result of unconfirmed hearsay information. Therefore, they ought to be viewed with caution.

ANALYSIS

- [52] The accusations and counter accusations certainly make for disturbing reading, but it will not assist the CCC to focus on them as they are likely to serve as a distraction from the real issues.
- [53] This, however, does not mean that they ought to be ignored as they help to place the complaint in its context. Some of these challenges faced by Radio Teemaneng, such as stolen funds and other alleged criminal activities, fall outside the jurisdiction of the CCC and cannot be entertained in this forum.

- [54] The rest falls squarely within the jurisdiction of the CCC. It is so that issues such as the disputed validity of the Constitution of the Licensee were not part of the Original Complaint. However, they cannot be disregarded as they are inextricably linked to the fact that no AGM has been held for a number of years.
- [55] One of the suggestions by the BoD was that the "Constitution" that was adopted at the meeting of 18 March 2023 be reduced to a draft for input before it can be adopted at the AGM.
- [56] Because the "Constitution", as it stands, is a contentious document, going the way suggested might not be prudent. The CCC has no intention to meddle in the internal affairs of a Licensee. At the same time it would be dereliction of duty not to assist a floundering Licensee by pointing it in the right direction.
- [57] In our view, the matter of how to proceed with the Constitution might be best handled by the members themselves. Going back to the drawing board would mean involving everyone who should be involved every step of the way. This would include the process of drafting a proper and legally acceptable Constitution. Of course, we would strongly recommend that the Compliance Officer from ICASA be involved to guide the parties.
- [58] As a creature of statute, the powers of the CCC are limited to those set out in the Act. In the present case we are dealing with a Community Radio Station, which by law, is owned by the community. Our focus, therefore, should be on what is in the public interest insofar as community broadcasting is concerned.
- [58] Whatever the nature of the challenges faced by the Licensee, our duty is to ensure that the solution includes assisting the radio station back on its feet and placing it under the control of its rightful owners, the community.
- [59] This is not going to be easy because the rift that exists between the Management and the Board is wide. What is clear is that it is this rift that is

interfering with the smooth running of Radio Teemaneng. It, therefore, needs to be addressed promptly to avoid the station's demise.

- [60] A strong message should be sent out to the public that non compliance is not acceptable. Simultaneously, an attempt should be made to avoid punishing the community for something over which they have no control.

FINDING

- [61] Accordingly, the CCC finds that the Licensee contravened the terms and conditions of its Licence in that it has not held an AGM since 2016. The allegation that the BoD has exceeded the duration of its tenure is interlinked to this failure to hold an AGM.

- [62] On the other hand, there is no reliable evidence that supports the allegation that the BoD interfered with the day to day running of the affairs of the Licensee.

SOLUTION

- [63] No one can benefit from the current situation. Various stakeholder, such as the workers at the station, are probably waiting with bated breath wondering what the future holds for them if the licence were to be revoked. The community is likewise concerned. It is a fact that if Radio Teemaneng were to close its doors, it would ultimately be the members of the community who would suffer. And that must be avoided, whenever possible.

- [64] Interestingly, and to their credit, both parties implored the CCC not to revoke the licence of Radio Teemaneng, as that would have a negative impact on the community it serves. This is a strong indication that despite the shortcomings in carrying out their responsibilities, both parties realise that the interests of the community should be a priority.

- [65] Both role players have a common goal, which is to serve the community through the radio station. So, the inability and/or unwillingness to work together as a team must be corrected.
- [66] It is obvious from the above analysis that whatever ails the Licensee is viewed in a serious light. However, to make a finding of a contravention and propose a sanction, without further ado, is less likely to resolve the issues as it would be like papering over the cracks.
- [67] A lasting solution is to be found in avoiding a "one size fits all" approach as each case is different.
- [68] With that in mind, the CCC requested each party to suggest a solution, as the way forward for the radio station.
- [69] These suggestions made it possible for the CCC to come up with a creative solution. The CCC is indebted to both parties for their assistance.
- [70] The ICASA Act and the underlying statutes enjoin the CCC to provide a solution which is in the public interest. In the present case the interests of the community of Kimberley are of paramount importance. These are the interests that shall continue to suffer if an appropriate solution is not found.
- [71] One of the most worrisome features of this case is that the last AGM for the radio station was held in 2016. And even that could not be said to have been a successful meeting. Several attempts, thereafter, to call the next AGM, failed.
- [72] In essence, this means there has been no community involvement in the affairs of this station in 7 years. The seriousness of this issue cannot be overstated as no community broadcaster can legally operate without community participation.
- [73] The cause of the repeated failure to hold a successful AGM was not fully canvassed. What is clear, however, is that both parties are equally responsible for the present state of affairs.

[75] It would, therefore, take a concerted effort by both parties to ensure that Radio Teemaneng is set back on its feet and starts functioning as it should. The starting point is a properly constituted AGM. So, ensuring that a successful AGM is held should be a priority.

[76] It bears repetition that meaningful participation by the community in the affairs of a community broadcaster is what gives the latter the right to exist. So, the sooner the community starts participating in the affairs of the radio station the better.

Interim Committee

[77] Both the Management and the Board suggested that an interim structure be put in place to ensure that Radio Teemaneng prepares properly for an elective AGM. They could not, however, agree on the composition of this interim body.

[78] Considering what seems like the great divide between the parties, that is not surprising. It's unlikely that they would be in a position to work together in the long term. But a short term, arrangement might work as long as trusted members of the community are also part of the interim structure.

[79] A community radio station exists to serve the needs of the community. It, therefore, makes sense that the majority of those who serve on the interim committee should be members of the community nominated by both Management and the Board. In addition, the interim committee should consist of one person from the Management and one person from the Board.

ORDER

[80] Accordingly, the CCC recommends the following orders to be issued by the Authority, namely—

80.1 direct the Licensee to desist from any further contravention;

80.2 direct the Licensee to take remedial steps as follows:

80.2.1 dissolve the current Board of Directors (BoD) and replace it with an Interim Committee of six members as set out below, within seven (7) days from the date of the issue of this Order.

80.2.2 the Interim Committee to consist of one representative from Management and one representative from the BoD. In addition, each party must choose two community representatives. Such members must preferably be from the latest members list.

80.2.3 The Interim Committee is to ensure that steps are taken to remedy anything that is in conflict with the Act or underlying statutes. Such steps to include:

80.2.3.1 preparing the Licensee for an elective AGM which is to take place soon.

80.2.3.2 ensuring that an elective AGM is held no later than the 26 August 2023.

8.2.3.3 the Interim Committee to approach the Compliance Officer at ICASA who will guide the process and assist in the smooth running of the AGM referred to above.



Judge Thokozile Masipa
Chairperson of the CCC

Date: 02 August 2023