



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 30 MAY 2025

CASE NO: 476/2024

BROADCASTING AND COMPLIANCE UNIT (BCU)

COMPLAINANT

V

LUISTER 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

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 – Ashwin Fairbairn-Steward
Busisiwe Mashigo

For the Respondent - Willie Spies

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

[1] On 29 July 2024, the Broadcasting Compliance Division of ICASA (the Complainant) referred the above matter to the CCC for investigation in terms of section 17B(a) of the ICASA Act.

1.1 It is common cause that the initial complaint was filed by two individuals who shall be referred to as *initial Complainants*. After the Broadcasting and Compliance Unit had done its investigation, it took over and referred the matter to the CCC.

[2] The Complainant, ("BCU"), alleged that the Respondent contravened the following:

Schedule 1 - Part A of the Memorandum of Incorporation of the Respondent which states that:

"The company shall not be entitled to:

1. *Conduct any trading or profit making activities other than are required to maintain the running expenses of the company,*
2. *Participate in any business ventures carried on by its members, and*
3. *Provide any Financial Assistance; premises; continuous service or facilities".*

[3] The Complainant alleged that the Respondent's financial statements indicated that it had been doing business with companies that are linked to some of the directors namely Plan B Wireless, Swans Hardware and BDLA Attorneys.

[4] Clause 4.2 of the Service Licence which states that:

"the Licensee shall provide for the participation of community members in the

affairs of the station..."

- [5] The Complainant alleges that the Respondent does not adequately advertise its AGM and selects "*venues that are not conducive to meetings of this nature*". It is further alleged that such conduct results in the AGMs of the Respondent being attended by persons related to the directors.

- [6] Regulation 11(1) of the Community Broadcasting Service Regulations of 2019 ("Regulations") which states that:

"The CBSL must, in the event of surplus, utilise and/or invest the funds in the community served for the purpose of community development."

- [7] According to the Directors Report of 2018, the directors resolved not to declare a dividend for financial year ended 28 February 2018.

- [8] The Complainant contends that, based on financial statements, filed by the Respondent, it could not conclusively determine if the Licensee made a surplus and how it was utilised. The CCC was not given details to enable it to determine

- (1) whether any surplus was made at all
- (2) and, if yes, how it was spent.

- [9] Regulation 5(3)(a) of the Regulations which states that:

"the role of the Board includes, but not limited to (a) ensuring compliance with all relevant laws, regulations and codes of good practice."

- [10] The Complainant alleges that the Respondent failed to update the status of directors at the CIPC and elected a new chairperson of the board, without bringing this change to the attention of the CIPC to enable it to reflect the change on its records.

- [11] Regulation 10A (7) (a) of Schedule 1 of the Standard Terms and Conditions for Class Licences of 2010, as amended, read with Regulation 13 of the Regulations.

Regulation 10A (7)(a) states that:

"A Licensee must be owned by the community members with the Board of Directors as the custodians of the Licence. Regulation 13 states that a Licensee must ensure that ownership of the community broadcasting licensee remains with the community ..."

[12] The Complainant alleges that the directors of the Respondent do not reside within the coverage area of the Licensee as prescribed in its licence.

SUMMARY OF CONTRAVENTIONS

The Charge Sheet

[13] The Charge Sheet sets out the following contraventions:

1. Clause 4.2 of Licence Terms and Conditions;
2. Schedule 1, Part A of Memorandum of Incorporation;
3. Regulation 10A 7(a) of Terms and Conditions for Class Licenses regulations and;
4. Regulation 11(1) of the Community Broadcasting Services Regulations 2019;
5. Regulation 5(3)(a) of the Community Broadcasting Services Regulations 2019.

THE RESPONDENT'S RESPONSE

[14] In a letter, dated 28 August 2024, the Respondent gave the CCC some background to the complaint as follows:

14.1 Both initial Complainants, who initiated the complaint, were previous directors of Luister FM. They are, currently, both in the service of competing broadcasters and, therefore, a conflict of interest exists. Both have been driving a personal vendetta against Luister FM on various platforms such as social media and complaints to ICASA for many years.

14.2 The Complainants' intention was to mislead the Authority and to destroy the Respondent.

[15] According to the Respondent there was no foundation to any of the complaints against it.

[16] In addition, the Respondent specifically stated that:

- *"Luister FM does not conduct any profit-making activities as it is a non-profit company.*
- *It does not and has never participated in any business ventures of its members or directors.*
- *It does not and has never provided any financial assistance to anyone.*
- *It does not and has never provided any premises, continuous services or facilities required to its members or directors for any purpose.*

THE ISSUES

[17] The issues to be decided, therefore, are the following:

1. Whether the Respondent failed to comply with Clause 4.2 of its licence terms and conditions
2. Whether the Respondent contravened its Memorandum of Incorporation and how?
3. Whether the Respondent failed to comply with Regulation 10A, 7(a) of Terms and Conditions for Class Licences Regulations and;
4. Whether the Respondent failed to comply with Regulation 11(1) of the Community Broadcasting Services Regulations 2019.
5. Whether the Respondent failed to comply with Regulation 5(3)(a) of the Community Broadcasting Services Regulations 2019.

[18] A thorough analysis of the facts and the evidence is provided below.

DISCUSSION AND ANALYSIS

Whether The Respondent Failed To Comply With Clause 4.2 of the Licence Terms and Conditions

[19] The clause provides:

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

[20] There is nothing complicated in the requirement that there must be

"Participation of community members in the affairs of the station ..."

[21] For that reason, it should have been easy to raise a defence and provide proof in respect of such a defence, if there was any. In the present case, despite a lengthy argument on behalf of the Respondent, CCC members were left none the wiser.

[22] The Complainant's submission was that the Respondent did not adequately advertise its AGMs. The result was that the AGMs were, as was to be expected, poorly attended.

[23] The Complainant did not have to prove the inadequacy of the means of advertising the AGMs, as advertising is only a means to an end, which is to ensure that a wider community is aware of the AGM. If the AGM is adequately advertised there will be adequate representation and the AGM will be able to take valid decisions.

[24] The issue to determine, in the present case, therefore, was whether AGMs, which are one of the means of ensuring community participation, were held or not. The answer to this question was a resounding no.

[25] In support of the allegations, the Complainant, as an example, presented corroborating evidence in the form of an attendance register of an AGM, held, virtually, on 15 March 2023. In that AGM, eighteen people attended. Thirteen of the attendees included directors of the Respondent. Only five were members of the community.

- [26] The poor attendance, as shown by the breakdown of the attendees, was not denied. In my view, the poor attendance should have been a cause for concern for the Respondent, and it, therefore, should have done something about it. Surprisingly, the Respondent did not appear to have been perturbed by this turn of events. I say this because there was no evidence that the Respondent made any attempts to call off the AGM on the day and re advertise it in a bid to get better attendance.
- [27] This apparent indifference, on the part of the Respondent, is worrisome. More worrisome, however, was that counsel for the Respondent failed to concede that there was something wrong with such low attendance for an AGM.
- [28] In his submission, counsel for the Respondent took time to explain that the Respondent was a non profit making company. Members of the community may become members of the company by making an application for membership. The directors meet to consider the application and make a decision to accept the application or reject it. The two initial Complainants applied for membership, but their applications were declined on the basis that they were working for RSG and Bay FM respectively. In any event, there was no legal requirement for a specific number of attendees, for an AGM to be valid, it was argued.
- [29] A further submission was that the two initial Complainants had filed a vexatious complaint. According to the Respondent, the present complaint, by the two individuals, was nothing but an attempt to discredit and destroy Luister FM, as it is a competitor of both RSG and Bay FM.
- [30] That the individuals who initiated the complaint, may have had ulterior motives for lodging complaints against the Respondent, is not relevant for purposes of adjudicating this matter. Our role, as the CCC, is to ensure that complaints that come before us are genuine complaints supported by credible evidence. It is not for the CCC to probe into the motives of Complainants.
- [31] Rather, the focus of the CCC is always on the complaint, the response to the complaint and the defence, if any. Thereafter, a thorough analysis of the evidence follows and a decision is then taken without fear, favour or prejudice.

[32] Similarly, how the Complainants' membership applications were declined and the reasons thereof, is also not relevant.

[33] What is relevant is whether there is adequate credible evidence that the allegations of non compliance are true.

[34] In the present case, the submissions, on behalf of the Respondent, focused on the workings of a non profit company and the Company Act. Hardly anything of substance was submitted regarding the workings of a community radio station and the role of the community in the affairs of the station.

[35] This is a strong indication that the Respondent is a Community Radio Station in name only. Accordingly, in the absence of any credible evidence to the contrary, allegations that there is lack of community participation, in the affairs of the station, have been established.

Whether Or Not The Respondent Contravened Its Memorandum of Incorporation

[36] The Complainants alleged that the Respondent contravened its memorandum of incorporation in that it, *inter alia*, did business with companies linked to the directors. No credible supporting documentation was provided in support of this allegation.

[37] Although the Respondent conceded that it had business relationships with some of the listed companies, and gave plausible reasons, there was still not enough information to make a determination that there was indeed failure to comply with the memorandum of incorporation. Accordingly, this allegation was not proven.

Whether the Respondent Failed To Comply With Regulation 10(A), 7(a) of Terms And Conditions For Class Licences Regulations

[38] The allegation that members of the board of directors did not reside in the coverage area of the Respondent, was met with an elaborate lengthy response from the

Respondent. Among other things, a submission was made to the effect that the directors concerned kept two residencies.

[39] Counsel for the Respondent submitted that having more than one residence was nothing new in the work environment. He then spent time comparing the station's board of directors' situation to that of the State President and some members of Parliament.

[40] The argument was that although such members work in Gauteng, it was accepted that they have family homes elsewhere, to which they have to return every month. Similarly, directors of the Respondent work in the coverage area of the station and regularly travel to their second homes.

[41] The submissions above, lack substance. Having regard to the nature of the present matter, and the facts before the CCC, the analogy, drawn by counsel for the Respondent, may be interesting, but hardly befitting, in the circumstances.

[42] A reminder is necessary that we are here dealing with a community radio station, which, by its very nature, has unique and special characteristics. More importantly, it has requirements interlinked with responsibilities towards the community in which the station operates. One such requirement is that the staff, management, as well as the board, must be part of the community.

[43] There are sound reasons why there is a requirement that members of the board must reside in the coverage area of the station.

[44] Among other things, it is to ensure that the station's programming, content and overall direction align with the needs and interests of the local community.

[45] In the present case, there was a serious allegation that the directors of Luister FM resided outside the coverage area of the station.

[46] This allegation was denied and a submission made that some directors kept more than one residence namely, where the director worked and where the director lived with his/her family. As alluded to, earlier, the interesting analogy about the

former State President working in Gauteng and residing in Inkandla and examples of many Parliamentarians, was of no assistance at all to the CCC.

- [47] What could have assisted, would have been evidence demonstrating a proportion of the time spent by the said directors in the coverage area of the station, compared to time spent in the family home. Such information, would have given the CCC an opportunity to apply its mind on whether evidence by the Respondent was sufficient to meet the case brought by the Complainant. Sadly there was no such evidence.
- [48] Instead, in addition, counsel for the Respondent, sought to provide proof of residence in a strange format. He shared information concerning one member of the board, Professor Brink Botha. The document he shared, was clearly no proof of residence. Instead, all it showed was that Prof Brink Botha was a professor at the Nelson Mandela University. Counsel then spent quite some time comparing Professor Botha's situation with that of our State President, who works in Pretoria but resides in another province.
- [49] This submission loses sight of the fact that, as stated earlier, there is a good reason why directors of a community radio station must stay in the station's coverage area.
- [50] It bears repeating that, unlike an outsider, a director who resides in the coverage area of the community radio station, would be better equipped to ensure that the needs and interests of the local community are understood and met accordingly.
- [51] Coupled with an allegation that the community played no role in the affairs of the Respondent, the allegation of non-resident directors, triggered a serious concern among members of the CCC. Sadly, none of the submissions, by counsel for the Respondent, could allay the concerns raised by the allegations. On the contrary, those concerns were exacerbated by submissions that missed the point and took the matter no further.
- [52] All that the CCC needed, to allay such concerns, was proof of residence. This should have been easy to provide, since the Respondent voluntarily claimed dual

residence. So, proof of such dual residence and of how much time was spent in each location, might have been helpful.

[53] Certainly, that would have been more helpful than the comparisons that took the better part of the day.

[54] Having regard to the above, the probabilities point to the fact that the directors of the Respondent reside outside the coverage area of the Respondent. I say this because, despite hours of submissions and argument, in rebuttal, the substance of the allegation remained unchallenged and therefore, proven.

Mitigating and Aggravating Factors

[55] In discussing the facts and evidence in this matter, the CCC considered the nature and seriousness of the contraventions, the circumstances under which the non compliances took place, the consequences of the non compliances, steps taken by the Respondent to remedy the non compliances, and steps taken by the Respondent to ensure that similar non compliances would not occur in the future.

The Nature and Seriousness of the Non Compliances

[56] All the non compliances, as set out in the Charge Sheet, are serious. But what made them even more serious was that the Respondent failed to concede that it contravened any law. This is usually an indication that the Respondent lacks insight into its conduct and might, in the future, find itself in exactly the same position as the present.

[57] And, as if the indifference by the Respondent, regarding its conduct was not enough, the Respondent made contradictory statements when answering some charges. For example, after denying that it did business with any of the companies listed, it boldly declared that there was no prohibition in any law or licence requirements that prohibits Luister FM from doing business with any of the entities mentioned by the Complainants.

[58] According to the Respondent, the businesses referred to, were, unlike other would-

be creditors, willing to have their debts sub-ordinated.

[59] One wonders why the Respondent first denied having any dealings with the said companies only to admit, later, the existence of business relationships between these entities and the Respondent and proffer an apparently innocuous explanation for the now admitted business relationships. Such equivocation in the language of the Respondent only served to weaken its case.

Consequences of the Non Compliances

[60] The CCC is unable to determine, with certainty, what the consequences or impact of the non compliances are. This is because it has neither the resources nor the expertise to determine, assess or measure the consequences of the non compliances.

The Circumstances Under Which The Non Compliances Occurred

[61] It is not clear how the non compliances by the Respondent came to be the norm. One can only assume that the Respondent continues to flout the regulations because of ignorance on its part. If that is so, the Respondent cannot hide behind ignorance of the law as an excuse. I say this because every entity has a responsibility to familiarize itself with the laws and regulations that govern the industry in which it intends to operate. Failure to do so is irresponsible and highly unacceptable.

The Steps Taken By The Respondent To Remedy The Problem

[62] No steps were taken by the Respondent to remedy the situation save for a belated gesture, in the form of resignation, as a member of the board by Professor Brink Botha. The resignation letter cites relocation as the reason for the resignation and states that this would give another person residing in the coverage area of the station, to serve on board.

[63] As commendable as such a gesture is, it is belated and can hardly count as a mitigating factor. The Respondent had an opportunity to correct the situation as

soon as it received the complaint but it did nothing about it. That was its undoing. The result is that Professor Botha's resignation cannot have any impact on the present proceedings or on the outcome of the hearing.

Steps Taken By The Respondent To Prevent The Similar Contraventions From Occurring In The Future

[64] The Respondent made no submissions in the above regard. This does not bode well for the future of the Respondent as it may easily find itself in the same position that led to this hearing.

CONCLUSION

[65] There is overwhelming evidence that the Respondent is a community radio station in name only.

65.1 As broadcasters, Community radio stations are not only unique, but purposefully targeted at specific audiences that are usually neglected or overlooked by commercial and public broadcasting. For that reason, the community itself must play a meaningful role in making the radio station viable and accessible to the community in its entirety.

65.2 As community radio stations should be operated, owned and influenced by the communities they serve, it is important not to confine the role of a community to attending an AGM only.

65.3 In particular, a community radio station provides a mechanism for enabling members of communities to tell their own stories, and to share experiences. We are here referring to ordinary people, that commercial and public broadcasters would not give time of day. Here, they are, ***inter alia***, afforded opportunities, to become creators and contributors of media.

65.4 Ideally, community radio stations do a lot more than broadcasting. I say this because their mandate is non profit as the interests of the communities in which they operate are paramount. Instead of a profit motive, they have a

genuine interest in the development of communities. Thus they act as vehicles for the communities and voluntary sectors, and local people at grassroots level to work as partners in furthering community development aims.

65.5 In the present case, the picture painted during argument, was far from reassuring. Throughout the Respondent's argument, it was clear that the community did not feature at all in AGMs of the station, let alone play a significant role in the affairs of the station. Ownership of the radio station had effectively been hijacked from the community.

[66] The allegation that the Respondent failed to comply with its Memorandum of Incorporation should be seen in perspective, which is that a community radio station, as we know it, is non-existent.

[67] It is apparent that the Respondent conducts its business affairs based on company law, rules and policies, including its Memorandum of Incorporation, rather than on the terms and conditions of its licence.

[68] If the Respondent is serious about running a community radio station, it has to do it in accordance with the recognised laws and regulations governing the industry.

[69] In addition, the Respondent has to take advantage of the assistance that ICASA readily provides to any licensee willing to learn and improve its regulatory performance.

[70] As a way forward, it would be wise for the Respondent to amend its memorandum of incorporation so that it aligns with the terms and conditions of its licence.

FINDING

[71] In view of the above, the CCC makes the following finding:

71.1 Schedule 1 Part A of the Memorandum of Incorporation:

There was not enough evidence to support the allegations.

Accordingly, this charge is dismissed.

71.2 Whether the Respondent Contravened Clause 4.2 of the Licence Terms and Conditions:

The CCC makes a finding that the Respondent failed to comply with clause 4.2 of its Licence Terms and Conditions in that it failed to ensure that the community participated in the affairs of the station.

71.3 Whether the Respondent Failed To Comply With Regulation 10(A), 7(a) of Terms And Conditions For Class Licences Regulations

The CCC's finding is that the Respondent failed to comply with Regulation 10A, 7(a) of Terms and Conditions for Class Licences Regulations in that the Respondent failed to ensure that ownership of the station remained with the community and that members of the Board resided in the coverage area of the station.

71.4 *Whether the Respondent has failed to comply with Regulation 11(1) of Community Broadcasting Services Regulations 2019.*

71.4.1 The relevant provision reads thus:

"The CBSL must, in the event of surplus, utilise and/or invest the funds in the community served for the purpose of community development."

71.4.2 The CCC's finding is that:

There was not enough evidence or facts to support this allegation. No information was provided to show if the Respondent had any surplus funds and, if yes, how those funds were used.

71.4.3 Accordingly, this charge is dismissed.

71.5 Whether the Respondent failed to comply with Regulation 5(3)(a) of the Community Broadcasting Services Regulations 2019.

71.5.1 The provision reads as follows:

"The role of the Board includes, but not limited to

- (a) ensuring compliance with all relevant laws, regulations and codes of good practice.*

71.5.2 The Complainant alleged that the Respondent failed to update the status of its directors at the CIPC. This allegation was found to have no merit as no evidence was led to support it. For that reason, this charge is dismissed.

RECOMMENDATIONS IN TERMS OF SECTION 17 E(2) OF THE ICASA ACT OF 2000

ORDER

[72] In terms of Section 17E(2) of the ICASA Act the CCC recommends the following orders to be issued by the Authority, namely—

72.1 Direct the Licensee, to desist from any further contravention of the said regulations.

72.2 Direct the Licensee to take the following remedial actions:

72.2.1 Hold an AGM within six months from the date of the issuing of this order to enable the participating members of the community to elect a new board of directors. The Licensee is to seek assistance from ICASA through its Compliance Officer who will, *inter alia*, oversee the elections.

72.2.2 Within 30 calendar days, after the issuing of this order, amend the Memorandum of Incorporation to align with the Licensee's terms and conditions of its licence.

[73] Direct the Licensee to pay a fine of R50000 (Fifty Thousand Rand), of which R25000 (Twenty-Five Thousand Rand) is suspended for 3 (three) years on condition the Licensee is not found guilty of a similar contravention during the period of suspension. An amount of R25000.00 (Twenty-Five Thousand Rand) must be paid to ICASA within 90 calendar days from the issue of this judgment.

[74] The CEO of ICASA or his nominee must be copied with proof of payment within 24 hours from when the payment was made.

TMMasipa

Judge Thokozile Masipa

Chairperson of the CCC

Date: 22 September 2025