



COMPLAINTS AND COMPLIANCE COMMITTEE

Date Heard: 14 May 2021

Case number: 404/2020

CCA

COMPLAINANT

VUMA FM 103 FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa - Chairperson
Councillor Dimakatso Qocha - Member
Mr. Peter Hlapolosa - Member
Mr. Thato Mahapa - Member
Mr. Paris Mashile - Member
Ms. Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

Xola Mantshintshi – Acting CCC: Coordinator
Meera Lalla – CCC: Assessor
Amukelani Vukeya – CCC: Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Ms. B Mashigo

For the Respondent – Ms. J Limpitlaw

JUDGMENT

Judge Thokozile Masipa

1. INTRODUCTION

- 1.1 The Complainant is the Compliance and Consumer Affairs ("CCA"), a division of the Independent Communications Authority of South Africa ("ICASA").
- 1.2 The Respondent is VUMA 103 FM ("the licensee").
- 1.3 The CCA alleged that VUMA contravened the terms and conditions of its service licence, the Universal Service and Access Fund Regulations, 2011 and the General Licence Fees Regulations, 2012.

2. SUMMARY OF THE COMPLAINT

The Charge Sheet lists a number of contraventions which are summarized below:

2.1 MUSIC FORMAT- Clause 4 of Vuma FM Licence

- 2.1.1 This clause provides for the "broadcasting programming that is exclusively and predominantly gospel music led".
- 2.1.2 The allegation is that the Licensee changed its music format from predominantly gospel to mainly popular music without the Authority's approval.
- 2.1.3 The non-adherence to the prescribed music format is alleged to have also occurred in the 2015/2016 and 2016/2017 financial years.

2.2 MUSIC CONTENT - Clause 5 of Vuma FM Licence provides that there should be 50% South African music on a weekly basis.

- 2.2.1 The allegation is that VUMA broadcasts less than 30% South African

music instead of the required 50%.

2.2.2 VUMA is also alleged to be non-compliant with the ICASA South African Music Content Regulations, 2016 which require commercial sound broadcasters to broadcast a minimum of 35% South African music.

2.2.3 It is alleged that VUMA has been non-compliant with clause 5 for the past three (3) consecutive financial years.

2.3 NEWS

Clause 6.3 of Vuma FM Licence

2.3.1 The allegation is that VUMA broadcasts 46 minutes of news on weekdays and 11 minutes of news on weekends instead of the prescribed 52 minutes of news on weekdays and 24 minutes of news on weekends.

2.3.2 A further allegation is that VUMA has been contravening clause 6.3 for the past four consecutive financial years.

2.4 MAKE-UP OF NEWS TEAM

Clause 8.2 and 8.3.

2.4.1 It is a service Licence requirement that the Licensee, (in this case VUMA), employ a local news team, to produce local news.

2.4.2 The allegation is that VUMA failed to submit information on the make-up of its news team as required by clause 8.

2.5 WORK FORCE DEMOGRAPHICS

Employment Equity Act 55 of 1998.

2.5.1 In terms of its Licence requirements at least 50% of Vuma's employees must be historically disadvantaged persons.

2.5.2 To determine equitable representation in all occupational levels Vuma

must submit information to the Authority with respect to its workforce.

2.5.3 The allegation is that VUMA failed to comply with the above requirements for the past two (2) consecutive financial years.

2.6 UNIVERSAL SERVICE AND ACCESS FUND REGULATIONS 2011

Clause 4(2)(b) of the above regulations stipulates that:

"payments in respect of contributions to the fund are payable within six months from the end of the licensee's financial year".

2.6.1 The allegation is that VUMA failed to adhere to the USAF fees payment due dates for the past three (3) consecutive financial years.

2.7 GENERAL LICENCE FEES REGULATIONS, 2012

Clause 7(a) and (b) of the above regulations stipulate as follows respectively:

"Annual payments are due annually based on the licensee's financial year" and "Annual payments are due and payable within six months from the end of the licensee's financial year".

2.7.1 It was alleged that VUMA had not complied with the annual licence payment due dates for the past three (3) consecutive financial years.

2.8 CORRESPONDENCE BETWEEN THE PARTIES

On 12 June 2020, in a letter, the CCA advised VUMA of the alleged non-compliance with the terms and conditions of the licence and with the Regulations as stated above.

2.8.1 On 9 July 2020, VUMA responded and provided reasons why the matter should not be referred to the CCC. The letter addressed to the Authority, is marked **Annexure "G"**.

2.8.2 It appears that the reasons as set out did not satisfy the CCA. Hence the present complaint.

3. RELIEF SOUGHT

The CCA sought the following relief:

"That appropriate penalties as prescribed in section 17E (2)(a) and (c) of the ICASA Act, 2000, as amended, be recommended as sanctions."

4. THE PROPOSED SETTLEMENT AGREEMENT

4.1 The Notice of Set Down was for 14 May 2021. On 10 May, the CCC received a proposed settlement agreement between the parties. Both parties requested that the said agreement be made the order of the CCC to be recommended to Council of ICASA.

4.2 The settlement agreement, from the Attorneys of the Respondent, was attached to a letter dated 11 May 2021, and addressed to the Ms. Mabulu, the CCC Coordinator.

4.3 At the hearing, the question became whether the settlement agreement had comprehensively covered the issues raised in the complaint against the Respondent. Having studied the proposed settlement agreement and having engaged counsel for the parties, the CCC was not persuaded that the proposed settlement covered all the issues highlighted in the summary of the alleged contraventions. The alleged non-compliance was far wider in scope than what was catered for in the settlement agreement. For that reason the parties were directed to have further discussions with a view to reaching a more comprehensive settlement agreement. The parties were given 21 days within which to submit an amended settlement agreement.

4.4 Pursuant to the direction above, the Complainant and the Respondent had further discussions which culminated in the settlement agreement annexed to this judgment and marked "X".

4.5 The CCC perused Annexure "X", and formed the view that the concerns raised at the hearing on 14 May 2021, had been adequately addressed.

5. ORDER

5.1 Accordingly, the CCC recommends the following to ICASA:

That the settlement agreement, between the CCA and VUMA **marked "X"** and dated 18 June 2021 be made an order of the CCC.



Date: 16 July 2021

Judge Thokozile Masipa
Chairperson of the CCC

The CCC Members agreed with the finding and the order advised to the Council of ICASA.