

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 07-07-2008

Case number: 21 / 2008

In the matter between:

The Democratic Alliance

COMPLAINANT

and

Eden FM

RESPONDENT

and

**Monitoring and Complaints Unit of
the Independent Communications
Authority of South Africa**

INTERVENING

Complaints and Compliance Committee

Mr Justice R Mokgoathheng:	(Chairperson)
N Ntanjana:	(CCCmember)
S. Thakur:	(CCC member)
T. Matshoba:	(CCC member)
JCW van Rooyen SC:	(Councillor)

¹ In terms of s 17C of the ICASA Act 13 of 2000 as amended

For the Complainant

Mr. Johan vd Berg: Representative for the Democratic Alliance

For the Respondent

Mr. Leon Prinsloo: Chairperson of the Board of Directors, Eden FM.
Mr. Morne Pietersen: Station Manager, Eden FM
Mr. Jaso Stanley: Technical Manager, Eden FM
Mr. Wessie vd Westhuizen: Marketing and Sales, Eden FM

For the Intervening Party

Ms. Fikile Hlongwane: Manager: Monitoring Complaints Unit
Ms. Ndondo Dube: Assisting MCU

JUDGMENT

JCW VAN ROOYEN SC

[1] The Respondent, a licensed community radio broadcaster, broadcast a political advertisement later than 48 hours prior to the commencement of the polling period in a by-election in the Eastern Cape. A complaint was received from the Democratic Alliance (“DA”) against the radio station for having contravened section 58(6) of the Electronic Communications Act 2005 (“ECA”).

[2] At the commencement of the hearing the Respondent conceded that it had contravened the said section. It also conveyed to the CCC that it had agreed with the Complainant that it would broadcast an apology during two newscasts after the Council of ICASA has approved the sanction recommended to it by the CCC.

[3] In determining what the sanction should be, the CCC took the apology as well as the fact that the respondent convinced the CCC that it had been unaware of section 58(6) of the ECA into consideration in mitigation. The Respondent conveyed to the CCC that it had not yet received its licence conditions. This, of course, is not a defence, since section 58 is in the ECA and broadcasters should ensure that they are informed of their duties which are explicitly stated in the ECA and in their licence conditions. The Respondent was, accordingly, negligent in not abiding by its duties in terms of the ECA.

[4] The broadcasting of a political advertisement after 48 hours prior to the commencement of the polling, is a serious contravention. Elections are crucial elements of a democracy and although parties and candidates have the right to promote their parties’ aims and candidates, it is clear that the Legislature requires that voters be granted a period within to reflect as from 48 hours before the polling date. In spite of the mitigating factors mentioned, it is necessary that the CCC and Council express its displeasure at the conduct of the respondent and impose a

sanction which would act as a warning against similar future conduct by the respondent.

[5] The CCC, accordingly, finds that the Respondent has contravened section 58(6) of the ECA.

[6] As to sanction, the CCC makes the following recommendation to Council:

1. That the licensee is ordered to pay a fine of R5000. This fine is suspended until expiry of the present license. If the licensee is found by the CCC to have contravened the same section in the said period, the fine becomes operative.
2. The CCC notes that the licensee and complainant have come to a settlement and that the licensee would broadcast an apology during two (2) newscasts within 21 days after the Council has endorsed the sanction. The contents of the apology must be approved by the Coordinator of the CCC.

The Chairperson, Ms Ntanjana, Mr Thakur and Ms Matshoba concurred in the above judgment of JCW van Rooyen SC.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC