

# **COMPLAINTS AND COMPLIANCE COMMITTEE<sup>1</sup>**

Date of hearing: 24 November 2008

Case number: 24 / 2008

**Compliance Unit of the Independent**

**Communications Authority of South Africa**

**vs.**

**Durban Youth Radio**

**Complainant**

**Respondent**

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## **Complaints and Compliance Committee**

IWB De Villiers J	(Acting Chairperson)
T. Matshoba	(CCC Member)
S Thakur	(CCC Member)
J.C.W. Van Rooyen SC	(Councillor)

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## **For the Complainant**

Ms. Fikile Hlongwane (Manager): Compliance Unit assisted by

Mr. Paseka Maleka: Licensing Officer

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## **For the Respondent**

Mr. Mfundo Simelane:	Chairperson of the Board
Ms. Mmabatho Kunene:	Board Member
Mr. Sthembelo Mhlanga:	Board member and legal representative

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<sup>1</sup> In terms of s 17C of the ICASA Act 13 of 2000 as amended

## JUDGMENT

### JCW VAN ROOYEN

[1] Durban Youth Radio is a licensed community broadcaster. The Compliance Unit of ICASA has filed charges with the Complaints and Compliance Committee (“CCC”) that the station has contravened its license conditions in three respects.

**Allegations:** Durban Youth Radio has failed to comply with the provisions of the terms and conditions of the licence as well as the Electronic Communications Act No 36 of 2005 (herein referred to as the EC Act) to the satisfaction of the Compliance Unit (CU). The matter has thus been referred to the Complaints and Compliance Committee (CCC) for a formal hearing to be held in respect of the following:

1. Failure to submit recordings on demand by the Compliance Unit of ICASA –

This is a contravention of Section 53(1)(a) of the Electronic Communications Act (ECA) no.36 of 2005 which states that; *“A broadcasting service licensee- must on demand by the Authority, produce to the Authority any recording of every programme broadcast in the course of his/her broadcasting service for examination or reproduction, within 60 days from the date of broadcast;*

2. Failure to submit Audited Financial Statements as requested by the Compliance Unit of ICASA –

This is a contravention of Clause 9.4 of its terms and conditions – which states that, *“the licensee shall furnish to the Authority, for every completed one year of this licence or upon written demand by the Authority, an audited financial statement compiled according to Generally Accepted Accounting Practices and any further supporting vouchers and documentation as may be required by the Authority after receipt of the annual audited statement”.*

3. Failure to comply with the condition relating to community participation –

This is a contravention of Section 50(d) of the EC Act read with Clause 5 of Schedule C of the licensee's terms and conditions - which states that, *“in considering the grant of a new community broadcasting service licence the Authority must, with due regard to the objects and principles enunciated in Section 2, among others, take into account whether....(d) the applicant intends to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting*

*service” and, clause 5 “the licensee shall establish and maintain structures for and or subcommittees of members of the community to ensure participation in all aspects of the station”.*

[2] The Respondent conceded that it had contravened allegations 1 and 2. As to the third alleged contravention, it argued that it did have such structures in place.

[3] In so far as count three is concerned, it was agreed that the Respondent would provide the Compliance Unit with the minutes of the meetings plus the persons who took part in the meetings as from 1 April 2008 to 30 November 2008. It was not sufficient, as discussed, that members of the community were on the Board and that they attended the Annual General Meeting (“AGM”). What is necessary is that a committee or committees be in place with members of the community and that regular meetings be held with the said members as to programming. Since management and control does not resort under the community, only programming may be discussed. Management and control are matters which resort under the Board and ultimately under the AGM. Only members may vote and take part in the AGM or any Special General Meeting. The concept that members of the community may, as of right, take part in AGM’s and SGM’s has been rejected by the Supreme Court of Appeal (see *Radio Pretoria v Chairperson ICASA & Others* 2003(5) SA 451(T)). A list of members as well as a list of attendees at General and Special meetings of the Respondent must be held by the Company Secretary, which list must be available on demand by the Compliance Unit.

[4] As to financial statements it was argued on behalf of the Respondent that its accountants had some queries and that that was the reason why the statements had not yet been filed with the Compliance Unit. It was pointed out to the representatives of the Respondent that *audited* financial statements differ from mere financial accounts. Although accountants are permitted to prepare the accounts, the accounts *must* be scrutinized and approved by auditors. The *audited* accounts must be filed with the Compliance Unit. This must be done in time.

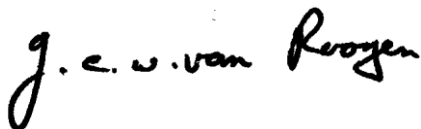
[5] In the result, the Respondent is found to have contravened counts 1 and 2. As to Count 3, they have agreed to the following:

That the Respondent will provide the Compliance Unit before or on 30 January 2009 with the detailed Minutes of Committee meetings (as from 1 April 2008 to 30 November 2008) which

dealt with advice by or discussion with members of the community, by a representative of the Respondent, on programming;

**The CCC recommends to Council:**

- (1) That the Respondent file its *audited* financial statements with the Compliance Unit on or before 30 January 2009;
- (2) That the Respondent confirms by way of a *sworn* statement (by the Chair of the Board or, in his or her absence, another Board member) to the Compliance Unit on or before 30 January 2009 that recordings as at that date are being made of all broadcasts and that a proper index system thereof is operational.
- (3) That if effect is not given to both, or any one of the above orders, the CCC would consider recommending to Council the suspension of the licence of the Respondent for a maximum term of 30 calendar days.



J.C.W. van Rooyen

27 November 2008

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JCW van Rooyen SC

*Mr. Justice De Villiers, Ms. Matshoba and Mr. Thakur concurred with the above judgment.*