

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

Date of Hearing: 08 June 2011

Case number: 44/ 2011

ICASA

COMPLAINANT

vs

ELECTRO INSTRUMENTS MINING (PTY) LTD

RESPONDENT

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## Complaints and Compliance Committee

Judge IWB De Villiers (Acting Chairperson)  
Councillor N. Batsi  
N. Ntanjana (CCC Member)  
Z. Ntshwana (CCC Member)  
J. Tlokana (CCC Member)  
T. Rammedzisi (CCC Member)

### FOR THE COMPLAINANT

Mr Tshepiso Lekganyane : ICASA

### FOR THE RESPONDENT

Mr M Scheepers : Attorney  
Mr T Botha : Director of Respondent

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

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JUDGMENT

**IWB de Villiers, Judge**

1. The Respondent is the holder of a radio frequency spectrum licence no 4886819 with radio frequency 161,2375MHz, authorised to operate as a private land mobile service. The charge against the Respondent is, shortly, that it rented radio apparatus to Batana Security Services in contravention of section 7 of the Electronic Communications Act 36 of 2005 (ECA) and that the apparatus was used outside its operation area of 15 km. The Respondent has filed a reply to the charge sheet.
2. At the commencement of the hearing of the matter before the CCC we were informed that the parties intended negotiating a settlement of the disputes between them. Later a document was produced signed by Mr Lekganyane, who appeared on behalf of ICASA and Mr F Botha, a director of the Respondent. A copy of the document is annexed hereto, marked "X". It is stated in the document the "the parties have settled the dispute on the terms set out hereunder". Paragraph 6 thereof states that "the above terms constitute the final agreement between ICASA and ELECTRO INSTRUMENTS MINING (Pty) Ltd."
3. The Committee pointed out to Mr Lekganyane and Mr Scheepers, an attorney who appeared on behalf of the Respondent, that Mr Lekganyane does not have authority to enter into such agreement on ICASA's behalf, but that we would regard the document as a proposal, upon which the parties have agreed. We also pointed out that, if satisfied with the relevant facts, the Committee would consider making a recommendation to the Authority that it should accept the agreed proposal. This was accepted by Messrs Lekganyane and Scheepers.
4. The Committee proceeded to hear the evidence of Mr Lekganyane and Mr Botha. We do not regard it necessary to set out a summary of their evidence. Suffice it to say that the evidence has convinced us that the agreed proposal, as contained in "X", is entirely justified and correct. We would, accordingly,

respectfully recommend that the Authority should regard the content of exhibit "X" as the finding of the Committee in terms of section 17D(1) of the ICASA Act as well as its recommendation to the Authority in terms of section 17D(2) of the Act.

5. It is necessary, in our view, to refer to certain aspects referred to in section 17E(1)(b) to (f) of the Act to enable the Authority to decide whether it is appropriate to endorse the contents of "X" as its decision regarding the action to be taken by the Authority in terms of Section 17D(3) of the Act.

6. In regard to the factors mentioned in section 17E(1) of the Act, the following should be borne in mind. It seems that mistakes have been made by both Respondents and the officers acting on ICASA's behalf which led to an incorrect formulation of terms of the licence. These mistakes, in our view, eventually led to the seizure of the radio apparatus, referred to in paragraph 4 of "X" on 14 April 2010, by an inspector of ICASA. As appears from the said paragraph 4, such apparatus is to be returned to the Respondent. We respectfully recommend that the Authority should investigate the reasons why mistakes were made by ICASA officers in relation to the license in question with a view to avoiding such mistakes in future.

7. We have not investigated the legality of the seizure since it is not an issue presently before us. We do, however, suggest that it should be further investigated. The inspector who seized the apparatus was not called as a witness. So we were not able to enquire from him whether he complied with the provisions of sections 17G(2)(4), (5) and (6) of the Act in obtaining a warrant from a magistrate or judge to seize the instruments. Subsection 17G(2)(g) requires an inspector to obtain such a warrant in order to seize "any document or thing which has a bearing on the alleged non-compliance".

8. It is, of course, vital that inspectors should not act without the necessary authority. To do so, may involve the Authority in claims for damages in respect of illegal seizures. The Authority should, in our respectful view, take the necessary measures to ensure that inspectors have the necessary warrants to perform seizures in terms of the Act.

9. Another aspect which in our respectful view, needs closer examination by the Authority is the fact that, although seizure of the apparatus took place on 14 April 2010 flowing from alleged non-compliance by a licensee with its licence terms and conditions such non-compliance only came before this Committee on 06 June 2011 for consideration. We did not delve into the reasons for this delay since it was not relevant to the issues before us. However, the provisions of subsection 17F(5)(d) of the Act make it clear that an inspector must refer all non-compliance matters to the CCC "where an inspector determines that a licensee has not complied with the terms and conditions of its licence, the provisions of this Act, or the underlying statutes". Subsection 17F(5)(e) provides that an inspector must refer all complaints to the CCC "for consideration after an investigation into the complaint has been carried out". It is inconceivable that it has taken the inspector about 13 months to investigate the complaint. In the meantime the Respondent has been deprived of the use of its apparatus. It was of course, essential that the inspector should have carried out his investigation and have referred the complaint to the CCC as soon as possible to enable the CCC to perform its duty to investigate and make a finding on the allegation on non-compliance. The adage "justice delayed is justice denied" is applicable.

10. We accordingly make the following recommendations to the Authority:

10.1 that the agreed proposal, as set out in "X" (annexed hereto) be accepted by the Authority;

10.2 that the Authority should investigate the reasons whether mistakes were made by ICASA officers in relation to the licence in question, with a view to avoiding such mistakes in future, if such mistakes were indeed made;

10.3 that the Authority should investigate whether or not the seizure of the instruments by the inspector of ICASA took place in terms of the ICASA Act;

10.4 that the Authority should take steps to ensure that inspectors of ICASA perform their duty of seizure in accordance with the provisions of the ICASA Act;

10.5 that the Authority should take steps to determine whether inspectors are properly performing their duties in terms of subsections 17F(5)(d) and (e) of the Act in speedily referring all non-compliance matters to the CCC for consideration;



**IWB de Villiers**  
Acting Chairperson of the CCC

The above judgment was concurred in by the other members of the CCC, namely

**Councillor N. Bafy!, Ms N. Ntanjana, Mr Z Ntshwane, Mr J. Tokana and Ms  
T. Rammedzisi**

11  
**X**

**COMPLAINTS COMPLIANCE COMMITTEE**

**06 JUNE 2011**

**ICASA JHB REGION**


**AND**

**ELECTRO INSTRUMENTS MINING (PTY) LTD**

)  
Whereas on the 17<sup>th</sup> November 2010, ICASA brought charges against ELECTRO INSTRUMENTS MINING (Pty) Ltd (EIM) alleging certain transgressions as per the charge sheet.

Now therefore, the parties have settled the dispute on the terms as set out here under:

- 1) ELECTRO INSTRUMENTS MINING (Pty) Ltd to apply for the amendments of licence number 4886819;
- 2) The application will be for the change of communications from "CONTROL OF PERSONNEL" to "RENTING OF RADIOS";
- 3) ELECTRO INSTRUMENTS MINING (Pty) Ltd will agree to the additional conditions of renting of radios as follows:
  - i. The licence application will be charged for the minimum of 50 stations;
  - ii. All equipment must operate with CTCSS;
  - iii. ICASA must be given the particulars of the persons to whom the equipment will be rented to;

*nsb*  


- iv. Permission from ICASA must be obtained before equipment is used outside the licensed operational area;
- v. The licensee will remain responsible at all times for the prevention interference, compliance with regulations and licence conditions;
- vi. The operational area will be within 50 km radius;
- 4) The seized radio apparatus will be returned to the ELECTRO INSTRUMENTS MINING (Pty) Ltd to be programmed to the approved licensed radio frequency;
- 5) The charges will be withdrawn;
- 6) The above terms constitute the final agreement between ICASA and ELECTRO INSTRUMENTS MINING (Pty) Ltd.

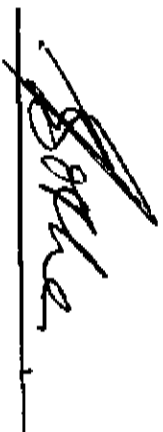
Signed on **06 June 2011** at **SANDTON**

ON BEHALF OF ICASA

ON BEHALF OF EIM (Pty) Ltd



**TSHEPISO LEKGANYANE**



**F.J. BOTHA**

**REGIONAL MANAGER**

**DIRECTOR**

**ICASA JHB REGION**