

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 8 November 2007

Case number: 12/2007

**MONITORING AND COMPLAINTS UNIT OF
THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

COMPLAINANT

Vs.

JOZI FM RADIO

RESPONDENT

Complaints and Compliance Committee

K.E. Moloto- Stofile	(Chairperson)
N. Ntanjana	CCC Member
D. Moalosi	CCC Member
J.C.W. Van Rooyen SC	CCC Member ²

For the Complainant

Monitoring Control Unit (MCU): Ms. Lindisa Mabulu

For the Respondent

Chief operations officer for Jozi FM: Ms. Nono Mchunu

Programmes Manager: Ms.Lungule Masondo

¹Appointed by the Independent Communications Authority of South Africa in terms of section 17C of the ICASA Act 13 of 2000 as amended

JUDGMENT

K E Moloto-Stofile (Chairperson of the CCC)

[1] The complainant, being the Monitoring and Complaints Unit (MCU) of the Independent Communications Authority of South Africa, lodged a complaint with the Complaints and Compliance Committee (CCC) against *Jozi FM Radio*, a Community radio station licensed by ICASA.² The complaint is that Jozi FM had breached the terms of the Code of Conduct for Broadcasters namely:

Clause 35.2 which provides that *“all comments shall be an honest expression of opinion and shall be presented in a manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to”* and

The conduct complained of is an alleged comment broadcast on 09 May 2007 between 21h30 and 22h00 in a programme called “Faces and Faith” to the effect that: *Pick 'n Pay workers were sluts, liked going to taverns and that they liked kissing in their store rooms.*

[2] Ms Mabulu in her opening address informed the Committee that they had received a complaint from a member of the public Ms. Thuli Monyamane employed at Pick 'n Pay. She indicated that she had listened to the taped recording of the broadcast and can confirm that the comments complained of were made. The tapes were available to the Committee to listen to. They had referred the complaint to Jozi FM and the response they received from the licensee was that the comment was “just a general observation” thereby reducing the serious nature of the remarks. The MCU maintains that the comments were a serious attack on the character and image of Pick 'n Pay employees

[3] The Jozi FM representative Ms Lungile Masondo acknowledged that the comments were made as alleged and stated that she had an explanation. She stated that she never meant to deny that the comments were of a serious nature but only questioned the reference to Pick 'n Pay Rosebank. She went on to state that Jozi FM has adopted

²As to the separation between the CCC and this unit, see *MCU v Radio Mafisa (case 1/2007)*

an internal Code of Conduct for its presenters which is included in their engagement contracts and one of the key clauses states that –“*on-air staff should never utter anything that is negative against the employer, against the station, against the listeners or any other people that may be listening at that time*”,.

[4] She stated that she and the Programme Manager listened to the tapes especially after ICASA had contacted them, then called the presenters to a meeting and questioned them about the issues and could not get a reasonable explanation. It was clear to them that there was a case to be made for charging them with contravening the Code of conduct and that both individuals are currently before a disciplinary hearing for that.

[5] She also conceded that the comments were made between two members of Jozi FM staff during the course and scope of its employment and that they considered the matter of such a serious nature that Jozi FM was instituting disciplinary actions against the employees concerned. In an answer to clarification questions she confirmed that she was not asserting the truthfulness of the comments

[6] The CCC found that it was satisfied that Jozi FM had indeed contravened the provisions of the Code of Conduct for broadcasters by broadcasting unwarranted and unsubstantiated comments imputing immoral behaviour on Pick ‘n Pay employees in general. The CCC finds the said contravention to be of a serious nature, bearing in mind the sensitivities around the moral and social standing of the Pick ‘n Pay employees, and not least the potential harm to their family members.

[7] When requested to address the Committee on a suitable sanction for Jozi FM in relation to the finding of guilty of breaching the Code of Broadcasters, she stated that the Committee should consider a warning supported by a formal apology to the complainant as well as ICASA for the reasons being that they are already taking action against such behaviour.

[8] When requested to address the hearing on the appropriate sanction Ms Mabulu stated that the MCU would welcome any sanctions that the committee regarded as appropriate.

She, however, requested that Jozi FM be directed to broadcast the sanctions imposed, so that it sets a precedent for other broadcasters.

[9] In the light of the seriousness of the offence and in order to ensure future compliance, it is recommended to the Council of the Authority that the following action be taken against Jozi FM:

- i) that Jozi FM be ordered to take remedial action by way of a public apology addressed to Pick `n Pay staff, broadcast in the same programme, but
- ii) that a written copy of their apology be lodged with the co-ordinator of the CCC, (i.e. the written copy must be provided to the Committee before it is aired, in order that it serves before the Council itself for its consideration), and
- iii) that only once the Council has endorsed the sanction, the broadcast must be made within seven (7) days after a Notice of the Council's endorsement of the sanction has been served on Jozi FM.

[10] The co-ordinator of the CCC is directed to communicate the recommendations to Jozi FM in writing and to indicate that they have an election of accepting the recommendation. If they accept they should advise him accordingly. If they do not accept the recommendations they should file representations with him to be placed before Council when it considers the recommended sanction. The time periods for submitting their election should be stated by the co-ordinator in the letter to Jozi FM.

The Committee Members Van Rooyen, Ntanjana, Moalusi and Thakur concurred in the above judgment.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC