

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 25 April 2007

Case number: 2/ 2007

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

Complainant

vs

Lentswe Community Radio

Respondent

Complaints and Compliance Committee Panel

E. K. Moloto- Stofile (Chairperson)
R. Msiza (CCC Member)
S. Thakur (CCC Member)
R. Ntanjana (CCC Member)
D. Moalosi (CCC Member)
J.C.W. Van Rooyen (Councillor)

For the Complainant

Monitoring Complaints Unit Manager: B. Mkhizi

For the Respondent

Station manager: B. Nzunga

The Complaint

Safekeeping of recordings of programmes- omission to keep recordings held to be a serious contravention of the licence conditions of a broadcaster.

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

JUDGMENT

JCW Van Rooyen SC (Councillor on the CCC)

[1] The applicant is the MCU, being is the monitoring and complaints unit within the Independent Communications Authority of South Africa, lodged a complaint with this Committee against *Radio Lentswe*, a Community radio station licensed by ICASA.² The complaint is that *Radio Lentswe* had failed in terms of its licence conditions to submit recordings to enable the complainant to verify a complaint from a member of the public against the station. It was alleged that repeated requests of the Complainant were ignored by the station.

[2] *Radio Lentswe* conceded at the hearing of the complaint that it had not sent the requested copies. However, it argued that the facilities, which it had used to store the recordings for the required time period, had been inadequate and that the recordings had simply gone astray. They now have proper facilities in place for storage of recordings.

[3] It is part of the MCU's case that the omission to properly keep copies of recordings for the required time period amounted to a contravention of a licence condition which applied for *Radio Lentswe*. This fact was conceded by the representatives of *Radio Lentswe*. However, they pleaded in mitigation that the employees responsible for the proper storage had acted in conflict with the instructions they had issued. Even if the CCC were to accept that the employee had acted contrary to their instructions, this still would not help the radio station as at the material time they had failed to provide adequate safe storage facilities for the recordings, as is required by the licence conditions. They also stated however, that they had subsequently installed a proper safekeeping structure and vouched that such failure to comply would not take place again.

[4] The CCC regards the above contravention in a particularly serious light. The prescribed records which are to be kept by a licensee form an important source of information on which the MCU and ICASA has to rely in the execution of monitoring

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

compliance with licence conditions and the law. Furthermore, the complaints of the public would not be adequately dealt with if these recordings were not available. The Radio Station should count itself lucky this time as otherwise the only evidence of the contravention, which would have been before the CCC, will have been that of the public complainant. If this complaint against it were to be pursued, it would have meant that the CCC would, of necessity, have had to accept the evidence of the complainant and adjudicate the matter solely on that evidence. Should such evidence have proved to be in contravention of the Broadcasting Code, a finding of a contravention would of necessity have had to follow. This could have had dire consequences for the licensee, affecting the success of a future application for the renewal of its licence, or the sanction, which could have been imposed for a contravention like the one before the CCC. This omission is regarded as a gross violation of the licence conditions. For the Radio Station to plead that the omission is attributable to the negligence of its employee is not an acceptable excuse, because the radio station could still be held to be vicariously liable for the negligent deeds of its employees, who acted within the course and scope of their employment. The same rule would apply to persons who are in the temporary employ of the radio station. In any case, negligence can also be attributed to the Board of the station for not having taken adequate steps to install proper safekeeping storage facilities for the recordings. The CCC finds that this was in fact the case, in this matter.

[5] As a result *Radio Lentswe* is found to have contravened the said condition of its licence. 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 is taken against *Radio Lentswe*:

A fine of R5000 is imposed. The whole of the fine is suspended for two years subject to the condition that *Radio Lentswe* is not found by the CCC to have contravened the same condition within a period of two years from the date upon which the Council orders that the said sanction must apply.

[6] The co-ordinator of the CCC is directed to communicate the recommendations to *Radio Lentswe* in writing and to advise them that they have an election of accepting the

recommendation and if they do, they should advise him accordingly or if they do not accept the recommendations they should file representations with him to be placed before Council when considering the appropriate order, with due consideration of the recommended sanction. The time periods for submitting their election should be stated by the co-ordinator in the letter to *Radio Lentswe*.

The Chairperson, Ms Moloto-Stofile and Committee Members R. Mokwena-Msiza, N.Ntanjana, D.Moalosi and S.Thakur concurred in the above judgment.



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CHAIRPERSON OF THE CCC

24 July 2007