

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 24 April 2008

Case number: 19 / 2008

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

Complainant

Vs.

Nkqubela Community Radio

Respondent

Complaints and Compliance Committee

E. K. Moloto- Stofile: (Chairperson)
S. Thakur: (CCC Member)
N. Ntanjana: (CCC Member)
T. Matshoba: (CCC Member)
J.C.W. Van Rooyen SC: (Councillor)

For the Complainant

Monitoring Complaints Unit:

Ms.Lindisa Mabulu

Assisted by: Compliance Officer:

Paseka Maleka

For the Respondent

Chairperson of the Board of Nkqubela Community Radio:

Mongameli Peter

Board member:

Lulameli Menziwa

General Secretary:

Thandaza Koya

The Matter

Community radio station – non-compliance with conditions of license concerning filing of audited financial statements, programme schedule and recordings.

Procedure – splitting of charges not permissible

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

Judgment

JCW van Rooyen

[1] Nkqubela Community Radio Station is charged for not having submitted its audited financial statements for 2006-7; failing to submit on request of the Complainant *audible* recordings; failing to submit monthly programme log sheets; failing to comply with the 30% music and 70% talk requirement and failing to promote labour related issues and awareness in its programmes, as required by its licence conditions.

[2] The Respondent admitted that the station had not complied with the above mentioned conditions of its license. It was, however, argued that circumstances beyond the present management's control had made it difficult to comply. The new management had now purchased new recording equipment. It was conceded that the old equipment had failed to properly record programmes – hence the inaudible tapes. The Complainant argued that it was aware of the problems of the management who regularly promised to rectify the matters complained about. However, in spite of these promises, no results followed and, accordingly, the present complaint was filed.

[3] It should be pointed out that in so far as the charge sheet refers to the omission not to broadcast music and talk on a ratio of 30:70 and the labour related issues, the charges are procedurally irregular. These two charges amount to a splitting of charges. The first charge is sufficient: it delineates the omission to file audible tapes. The consequences of the omission would be relevant in determining the seriousness of the omission, but should not be added as separate charges. The two content related charges are, accordingly, struck from the charge sheet.

[4] There is no doubt that the Respondent has not complied with the three conditions as set out above.

[5] As to sanction it is relevant that management has taken steps to address the poor performance in terms of its license conditions. At the hearing its audited financial statements were handed in and, as mentioned, new recording equipment has been purchased.

Nevertheless, swift and efficient reaction is necessary and the sanction recommended below should hold the sword of Damocles over management. Argument as to sanction was heard at the hearing.

The following recommendation will be forwarded to Council:

“Nkqubela Community Radio Station is ordered to file with the coordinator of the CCC and the Monitoring Unit of ICASA;

- (1) its audited financial statements for the period 2006-7 within 30 calendar days from this Council resolution; (noted that these were filed at the hearing)
- (2) its programming log schedule as required by its license conditions for June 2008 on or before 6 July 2008 and thereafter monthly as required by its license conditions;
- (3) audio recordings of its programmes when required by the Complainant.

For the contraventions listed above the Respondent is fined R5000, which fine is suspended for the balance of the term of its license, subject to the condition that if it is again found to have been in contravention by the CCC *of any one* of the above three charges, the R5000 fine will have to be paid in addition to any sanction which is then imposed by Council.”

The Chairperson, E. Moloto-Stofile and Committee Members D. Moalosi, S. Thakur N. Ntanjana and T. Matshoba concurred in the above judgment.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC