



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 20 APRIL 2022**

**CASE NO: 441/2022**

**LICENSING AND COMPLIANCE DIVISION**

**COMPLAINANT**

**V**

**VUKANI COMMUNITY RADIO**

**RESPONDENT**

**CCC MEMBERS:**

Judge Thokozile Masipa – Chairperson  
Councillor Yolisa Kedama- Member  
Mr Monde Mbanga - Member  
Mr Peter Hlapolosa - Member  
Mr Thato Mahapa - Member  
Mr Paris Mashile – Member  
Ms Ngwako Molewa - Member

**FROM THE OFFICE OF THE CCC:**

Lindisa Mabulu – CCC: Coordinator  
Meera Lalla - CCC Assessor  
Xola Mantshintshi - CCC Assessor  
Thamsanqa Mtolo - CCC Assessor  
Amukelani Vukeya – CCC Administrator

**REPRESENTATIVES OF THE PARTIES BEFORE THE CCC**

**For the Complainant** – Ms. Busisiwe Mashigo and Ms. Fikile Hlongwane (ICASA)

**For the Respondent** – Mr. Xola Nozewu, in his capacity as the Station Manager (Vukani Community Radio)

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## JUDGMENT

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Judge Thokozile Masipa

### INTRODUCTION

[1] The complaint in this matter concerns an allegation relating to regulation 6(14) of the Municipal Election Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2021 (“the Regulations”).

[2] The Complainant alleges that during the election period of the 2021 Municipal Elections, the Licensee contravened regulation 6(14) in that Vukani Community Radio broadcast Political Advertisements (“PAs”) for an Independent Candidate without tail disclaimers in contravention of the said regulation.

Regulation 6(14) provides as follows:

*“A broadcasting service licensee that broadcast PAs must ensure that all PA broadcasts are clearly identified through a standard pre-recorded introductory and concluding message (top and tail) disclaimer.”*

[3] The contravention occurred six times over five days namely 13/10/2021 at 16h51; 14/10/2021 at 15h57 and again at 20h32; 15/10/2021 at 15h53; 18/10/2021 at 06h56 and on 20/10/2021 at 18h59. On all these occasions the PAs broadcasts had no tail disclaimers.

### THE RESPONDENT’S RESPONSE

[4] The response from the Respondent is captured in a letter addressed to the office of the CCC. The letter, is dated 25 March 2022, and signed by Xola Nozewu, the station manager. In part it reads as follows:

*"We would like to inform the Complaints and Compliance Committee that we made our own investigation on the issue and find the finding of the Licensing and Compliance Division were accurate and therefore we admit as Vukani Community Radio that we were in contravention as explained on the charge sheet.*

*We would like to inform the Regulator that we have since taken action against The Sales Manager who committed the offence and is now serving his suspension and disciplinary hearings are in the process.*

*We sincerely apologize for this oversight on our side and we would like to assure the Regulator that it will never happen again, we would like to assure you that we take this matter very seriously as it is happening for the first time since our inception in 1996.*

*We would like to confirm our commitment to abide by Regulations and we will accept any penalties as per Party Election Broadcast."*

## **FINDING**

[5] At the hearing, the Respondent admitted the charge unequivocally. Having considered the charge as well as the admissions by the Respondent, the CCC was satisfied that the Respondent's admissions were properly made.

[6] Accordingly, the CCC made its finding as follows:

**The Complaint that the Respondent contravened Regulation 6(14) in that it broadcast PAs without tail disclaimers, on six occasions, is upheld.**

## **MITIGATING CIRCUMSTANCES**

[7] Mr Nozewu, the station manager, apologised on behalf of the station for the contravention. He explained that the mistake happened because the task of receiving and flighting the PAs was given to their Sales Manager. At the time, the Programmes Manager was out of the office. In the absence of the Programmes Manager, the Sales Manager had been entrusted with this role and had been fully equipped for the job as he had attended more than one pre-elections workshop organised by ICASA. That is why his failure to perform properly was puzzling and disciplinary action had to be taken against him.

- [8] Mr. Nozewu emphasised that this was the first incident of its kind and assured the CCC that the station took the contravention seriously. He added that the station would, in future, ensure that Mr. Teketa, the Programmes Manager, focused only on the flighting of PAs during the election period.
- [9] A sincere and effective apology is always welcome as it is an indication that the wrongdoer genuinely regrets the wrong he has done, wants to make amends and has learned a lesson. All this serves to ensure that the mistake is not repeated. However, how much weight is accorded to an expression of remorse will depend on a number of factors, including the presence or absence of aggravating factors.

### **AGGRAVATING CIRCUMSTANCES**

- [10] Mitigating circumstances are undoubtedly an important consideration to enable the decision maker to arrive at an appropriate and just sanction. Equally important are aggravating factors. These factors have to be balanced against each other.
- [11] The CCC took into consideration that this was the very first transgression by the station since it came into existence, twenty five (25) years ago. As impressive as this clean record might sound, it cannot absolve the Respondent from the guilt. It has to be carefully weighed against aggravating factors, if any.
- [12] One striking feature of this matter was the apparent slipshod management in the business of the Respondent.
- I say this because the contravention occurred several times over a number of days and no one even noticed. It was only when the CCA wrote a letter to the station informing it of the contravention, that the station became aware of the incident, made its own investigation and admitted the non-compliance.
- [13] That something like that should happen to a station that is twenty five (25) years old, is baffling, to say the least. Not only did the contravention happen several times, without anyone noticing it that same week, but it was only when the CCA brought the transgression to the attention of the station, months later, that the station became aware of it for the first time.

[14] There was no plausible explanation as to how that might have happened. It seems to us that the station's weakness may be its tendency to depend on an individual instead of a team. Without wanting to interfere with the internal affairs of the Respondent, the CCC feels the need to suggest that the station rethink the way it operates. Efficiency is always improved by team work as that is where monitoring activities, including checks and balances, come in.

[15] Monitoring is something that no successful broadcaster can do without. Unfortunately, it seems to be a term that is often bandied about by licensees, but rarely applied. Used properly, monitoring can be an effective tool to prevent and/or detect mistakes before they reoccur. Sadly, in the present case, like in many others, that we have recently dealt with, the importance of monitoring is ignored.

### **BALANCING EXERCISE BETWEEN MITIGATING FACTORS AND AGGRAVATING CIRCUMSTANCES**

[16] It is worth repeating the fact that the same contravention occurred on six (6) separate occasions over five (5) days, without anyone at the station noticing, is astounding. This is laxity at its worst and a serious oversight, in our view.

[17] The mitigating factor is that the Radio station is twenty five (25) years old, having commenced its operations in 1996. During that period there has not been any reported case of non-compliance. This means that we are here dealing with a first offender.

[18] A clean record over so many years is remarkable and should normally count in the Respondent's favour. However, when this is balanced against all the factors, it seems to me, that in this case, aggravating factors far outweigh mitigating factors. This then normally, would call for a heavy sanction.

[19] There was, however, one important factor, that was clearly beyond the control of any broadcaster that affected all broadcasters during the Municipal Elections in 2021. This was the challenge brought about by the COVID-19 pandemic and its ramifications and it is only fair that it should also be taken into consideration.

## ORDER

[19] Accordingly, the CCC recommends that the following order be issued by the Authority:

19.1 The Licensee is directed to desist from further contraventions.

19.2 The Licensee is directed to take the following remedial steps:

19.2.1 The Licensee is to broadcast an apology during the first week after this order is issued

The apology is to be broadcast once a day for five consecutive days as its first item on its news service between 7h00 and 20:10 in IsiXhosa, English and Afrikaans, in the same news Bulletin. On the first two (2) days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest forty eight (48) hours before the broadcast. The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his or her representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

The apology must be phrased thus:

*"The Independent Communications Authority of South Africa has found that Vukani FM was negligent in having failed to abide by the Municipal Elections Regulations 2021 in that Vukani FM broadcast PAs without tail disclaimers [a statement which clearly identified Political Advertisements as such] on six separate occasions.*

*This is in conflict with the Municipal Elections Regulations 2021 which require top and tail disclaimers to be made before and after Political Advertisements so as to identify them as such.*

*Vukani FM apologises to its listeners for having committed these contraventions.”*

An electronic copy of each broadcast stating the date and the time of the broadcast must be sent to the CCA at ICASA by email within forty eight (48) hours from the last broadcast in the said five (5) days.

- (c) direct that the licensee pay as a fine a total amount of thirty thousand rands (R30000), the breakdown of which is as follows:
- (i) Five thousand rands (R5000) for the first transgression which is wholly suspended until the next Municipal Elections;
  - (ii) Five thousand rands (R5000) for the second transgression half of which is suspended until the next Municipal Elections;
  - (iii) Five thousand rands (R5000) for the third transgression half of which is suspended until the next Municipal Elections;
  - (iv) Five thousand rands (R5000) for the fourth transgression half of which is suspended until the next Municipal Elections;
  - (v) Five thousand rands (R5000) for the fifth transgression half of which is suspended until the next Municipal Elections;
  - (vi) Five thousand rands (R5000) for the sixth transgression half of which is suspended until the next Municipal Elections;
- (d) In summary, the Respondent is directed to pay a total amount of twelve thousand, five hundred rands (R12 500) in respect of the second to the sixth transgressions. The amount of twelve thousand, five hundred rands (R12 500) is to be paid into the account of ICASA within 90 calendar days from the date of issue of this order.
- (e) The remaining twelve thousand, five hundred rands (R12 500) in respect of the second to the sixth transgression as well as the five thousand rands (R5000) in respect of the first transgression is suspended until the next Municipal Elections, subject to the condition that the licensee is not found guilty of any contravention of its licence conditions or election regulations during the next election period.

*TWMasipa*

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**Judge Thokozile Masipa**  
**CCC Chairperson**

**Date:** 25 July 2022