



COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date heard: 5 October 2019

CASE: 382/2020

In the matter between:

GOMES

COMPLAINANT

And

KURARA FM

RESPONDENT

Prof JCW van Rooyen SC (Chairperson)

Ms Dimakatso Qocha

Mr Peter Hlapolosa

Mr Mzimkulu Malunga

Dr Jacob Medupe

Prof Kasturi Moodaliyar

Mr Jack Tlokana

The Complainant: In person - Ms Gomes (Programme Manager)

For the Respondent: Mr Bradley Mmusi – Station Manager of Kurara FM

Coordinator: Ms Lindisa Mabulu and with her Attorney Meera Lalla

JUDGMENT

JCW VAN ROOYEN [1] The Complainant in this matter is the Programme Manager of Kurara FM, a community broadcaster licensed by the Independent

¹ The Complaints and Compliance Committee (“CCC”) is an Independent Administrative Tribunal set up in terms of the Independent Communications Authority Act 13 of 2000. Its constitutionality as an independent Administrative Tribunal in terms of section 33 of the Constitution has been confirmed by the Constitutional Court. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such judgments: are referred to Council for noting and are, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the Compliance and Consumer Affairs Division at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to an order against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued.

Communications Authority of South Africa. Essentially her complaint boils down to her allegation that two members of the Board have overstepped the 2019 Regulations for Community Broadcasters by interfering with the daily operation of the radio station. The details will appear hereunder. The allegation was denied by the Station Manager, who appeared on behalf of the radio station.

COMPLAINT

[2] I am hereby writing this complaint against two Board members, Ms Sarah Mereotlhe and Mr Patrick Mocumi that have been abusing their powers in the radio station Kurara FM. On the 6th of January 2020 I was summoned to a meeting by the two Board members to come and explain events that took place in the year 2016, which they claimed that I was responsible for, without presenting evidence against me.

Secondly, claiming that I do not treat staff accordingly, in which I never received a verbal or written complaint either from a junior staff member or the station manager.

Firstly, I do not even know why they overstepped their boundaries to call me for a meeting, because it was not the first time they did it. It firstly happened on 2 February 2019 where my first meeting with three members of the board took place. In that meeting I was verbally attacked and abused where I was even told that I am mobilizing community members against the Board and was false. Kurara FM is currently left with only four active members on the Board, which makes them illegitimate.

Only two members of the Board have been interfering with the station's daily operations. These members decide who gets paid and when, what should be bought and when, who gets hired and fired and when. They fake events only to help themselves. I will attach the attendance register they used at June 16 event 2019 and claimed it was a community participation meeting, which is false.

They call community meetings which they do not record, like the one of 18 January 2020, just to confuse and mislead community members. On the Community Broadcasting Service Regulations of 22 March 2019 No 42323 on Page 203 no 5 under Governance and Management it clearly states the role of the Board and Management.

I believe that the Board has contravened with that clause by interfering with operations by writing letters and threatening line Managers in their line of duty.

I was summoned by the Board for a meeting and letters were written to me to request documentation about my work by both the Treasurer and the Chairperson of the Board. The role of the Board is to supervise the Station Manager according to clause 3(f) and me as the line manager is supposed to be managed and supervised by the Station Manager. The Board requesting for documentation related to my job, which has been submitted to the Station Manager. This also amounts to a contravention.

The Kurara FM Board of Directors is interfering with operations by calling meetings with staff, running events, forging programming community meetings, taking the station's bank account and using it for their own personal stuff. They are contravening the 2019 Regulations: "The Board must not interfere with the daily operations of a licensee."

The Board decides when and how some staff members should be paid and they pay them according to their emotions. They get paid to fill their cars with petrol and receive money for transport, worst: get an allowance from the station while the station remains bankrupt. Almost here at the station every week to hold meetings which makes us uncomfortable to work, passing remarks to some of us which feels intimidating.

I have attached the documents as evidence.

- Annexure A: On this letter I have attached the letter delivered by the Station Manager coming from the Board.
- Annexure B: Grievance letter against two Board members
- Annexure C: Client commission list from the treasurer
- Annexure D: June 16 event attendance register
- Annexure E: Meeting recording of 6 January 2020
- Annexure F: Community Broadcasting Service Regulations No 42323 page 203 – 205 No 5 Governance and Management.

I am expecting this matter to be resolved, where some members of the Board need to understand that they should not interfere with operations. Stop abusing their powers. Call a community AGM as they are only four members left, which makes them illegitimate and account for every cent that has been used by them.

Some members to stop bringing and using their personal vendettas against us. Stop holding their meetings at the station as their presence is intimidating to some of us. By writing this complaint, I am also confirming to be willingly known as the complainant in this matter.

I hope you can carefully look into my complaint and assist with this matter.

Precious Gomes

Programmes Manager²

[3] Attached to the complaint was also the following letter of the Station Manager, Mr Bradley Mmusi:

Dear Mrs Gomes,

The Board has raised concerns about you, which they mentioned different events of misbehaviour and insubordination.

I am doing an investigation to ascertain as to what really transpired.

Please find the attached report and respond to the concerns raised.

You have 7 days to respond from 28 December 2020.

[4] A further attachment:

KURARA LETTERHEAD

The report of the Board of Directors, inviting the programme Manager Ms Precious Moeketsi regarding her misbehaviour and insubordination to the Board.

On 6 January 2020 the station manager was asked to inform the programmes manager to meet with the Board. The Board members had to wait for her because she came late to work at 10am instead of 8am as contracted.

Reason we requested a meeting with the programmes manager instead of the station manager is.....³ The station manager also failed to inform the Board about complaints raised against Ms Precious Moeketsi.

Ms Moeketsi has been disrespectful to some staff members in a verbally belligerent manner.

² This letter of complaint was slightly amended to address a few grammatical errors.

³ Reason *irrelevant* to the present matter, but relevant as to the notice being sent directly to the Complainant. The station manager, having appeared for the radio station would, of course, be aware of the whole letter. Nevertheless, it should be stated that the Station Manager, who represented the Board in two matters before the CCC in the preceding twelve months, clearly has the confidence of the Board.

Disrespecting and insubordination to the Board members.

Ms Moeketsi was invited to two meetings by the Board members of which she had failed to attend. The Board then wrote a letter to her through the station manager. He later informed us that she had refused to sign the letter and requested that some words be removed before she could sign the letter. On 1 January 2020 she misbehaved at the Kurara FM Birthday celebration ...⁴

Conflict of interest. Ms Moeketsi has also been using the Stations' bakkie to transport her personal building materials such as bricks, cement, water etc. In some instances and in her presence the station's bakkie was not driven by a staff member of the radio station.

Taking the radio station's back-up generator for her personal use and demanding litres of petrol from the treasurer, which was refused to be given to her. This occurred when the station was on leave.

Engaging local businesses, requesting donations on behalf of Kurara FM without being authorised to do so. ..

Character assassination of Board members. Lastly, on 6 January 2020 she was invited by the Board members through the station manager to attend to these matters, but she decided to respond with insubordinate behaviour.

[5] A further attachment:

Dear Station Manager/Mr M Mmusi

Re: Grievances against two Board members of Kurara FM (Mrs Sarah Mereotlhe and Mr Patrick Mocumi)

I am hereby writing a formal GRIEVANCE against the Kurara FM Board of Directors. I personally feel the Chairperson and Treasurer are violating my Constitutional rights.

On 6 January 2020, after coming back from annual leave, I received a phone call from the receptionist while at home waiting for my cousin to look after my kids, claiming the Board members are looking for me and I asked the receptionist why and she said she doesn't know. I told her to tell them I will be late and I reported to the Station Manager.

On my arrival at work they were not at the station and the Station Manager told me that they want to see me. I asked why and he claimed to not know.

⁴ A *prima facie* defamatory reference was made of the complainant, which is not part of the complaint and thus not included. Defamation is a common law delict and does not fall within the jurisdiction of the CCC in a matter such as the present.

While I was in your office Station Manager, the Chairperson came in and demanded that I see them for they have funerals to attend. I was summoned to attend a meeting which I was not invited for and it was not the first time.

The first meeting took place, if not mistaken, 2 February 2020 where I was threatened and intimidated and abused verbally by the two members of the Board (which is the Treasurer and Chairperson) on both meetings.

I am now writing this grievance because I went almost four times to your office Station Manager, requesting my salary. Firstly the Treasurer gave an instruction that I should be paid only 40% of my salary and secondly, according to your statement, I should not be paid with the rest of the staff that got paid on 5 February 2020, of whom some received their full salaries.

I am unhappy on how the treasurer instructed the Station Manager according to his statement, not to pay me. I have debts to pay and children to take care of – worst, transport to pay to get to work. I can't do none of those things if the right to be paid my salary is denied.

I have been threatened, intimidated. Worst, junior staff members have been assigned to spy on me. The right to do my job privately has also been violated.

My name and brand has been dented by both the Treasurer and the Chairperson of the board. This very two members of the board is making my life a mess in the workplace by making false allegations against me and demanding me to explain unknown events of four years back.

The last time I checked, I report to you Station Manager, but you have allowed these members to abuse and violate me like that. I have been bruised and crucified in the workplace and yet no one says a thing about it. I don't know: is it because I am a woman in a leadership position? Is it why I have been belittled, shamed, bad named, scorned, and worst, exploited. I am pained by all of this which is causing my history of depression to return, which is the very same cause that made me resign in the year 2017.

Today I have decided to take a stand against woman abuse in the workplace. ENOUGH IS ENOUGH. Allegations are that they even went as far as investigating which company did my house roofing and how I paid for it. I know that my salary has only been withheld to frustrate me. This kind of exploitation I cannot stand anymore. Sir, such behaviour in the workplace should not be allowed, worst tolerated.

They are also intervening in my personal matters that does not concern them. Station Manager, can you please attend to my grievance. I have been violated, abused and worst, undermined by the Treasurer and the Chairperson and it needs to come to an end.

ANSWER TO COMPLAINT BY STATION MANAGER

[6]The Board has never interfered with daily operations.

The Board forwarded only two resolutions pertaining to the following:

Transport: The resolution was to minimise travelling cost and to be cost effective. Please refer to annexure A.

The Board compiled a report to the Station Manager. As the Station Manager was doing his investigation, he wrote a letter to the Programmes Manager. Please refer to annexure A.

The Board has never requested any documentation from the Programmes Manager; however, the treasurer requested documentation of sales and marketing, which was done by Ms Gomes, from the Station Manager. Please refer to annexure C as attached by Mrs Gomes. The Station Manager requested outstanding documentation from the Programmes Manager. Mrs Gomes uses her personal emails to do the station's work. The Programmes Manager is only interested in doing sales while Programming is suffering. Please refer to annexure D. The annual meeting which the Board called through the Station manager was to update the staff with regards to the preparation of the Kurara FM birthday festival in December 2019, which Mrs Gomes was also invited to, but she did not attend the meeting as she decided to take leave during a crucial time of preparing for the festival. Furthermore, to form a task team for the event. The second meeting in 2020 through the influence of Mrs Gomes was called by the staff members and the Board honoured the invitation. The meeting was chaired by the Station Manager as the accounting officer on behalf of the staff. There was no agenda and the Board requested for the agenda. However through the influence of the Programmes Manager, Mrs Gomes, the meeting was cancelled.

The Board held two community participation meetings at Seven miles and Bankhara-Bodulong on 23 November 2019 and 18 January 2020 and the

registered (members of the community) are authentic. Please refer to annexure B.

May Mrs Gomes provide such a bank account she is referring to and information of the personal use she is claiming?

Which staff members has the Board intimidated? The Board has never received any written complaints from Station Manager nor has the Station Manager received any complaint from the staff, however a grievance from Mrs Gomes she lodged with the office of the station manager, the CCMA and ICASA CCC in a period of 15 days. She withdrew the CCMA case when she realised the case had no merits.

The wage bill is compiled by the station manager with the assistance of Mrs Gomes. Station Manager will further discuss the wage bill with the finance committee and pay staff based on availability of funds. The Bboard gets an update from the finance committee.

There's no staff transport allowance.

In conclusion, Mrs Gomes has started this quest of complaints to different institutions after she realised she is under investigation. She is just trying to shift the attention away from the investigation.

Mrs Gomes is only interested in getting paid commissions and salary, whether the staff is paid or not. As the manager she should work in the interest of the entire staff, not personal gains. The main fight is that Mrs Gomes is fighting is to be kept in sales while programming will suffer.

Mrs Gomes is not a resolute person, petty matters that must be sorted within management arena. She will always resort to fighting.

Signed: Patrick Mocumi
Chair: Board of Directors
Date: 22/03/2020

Signed: Sara Mereothle
Treasurer: Board of Directors
Date: 22/03/2020

[7] BOARD RESOLUTION

Dear Mr Mmusi and the Management Team

...

For the Management Team to further continue to develop the station, it is hereby RESOLVED by the Board of Directors of Kurara FM that:

The vehicle of the station will only be used for work purposes and it will mostly be used to: Transport night shift staff; Transport the news team during the day; Transport the station equipment to outside broadcasting. Log book should be filled, signed by the driver and the person being transported.

For management meetings outside town, management will claim R3.50 per km. All the meetings should be authorised by the station manager and an attendance register should be used for all the meetings. Telephone of the station should only be used for work related calls. The management team should be at the office at 08:00AM as per contract unless otherwise it has been arranged prior. Approved: 6 December 2019

Patrick Mocumi
Chair: Board of Directors

Bradley Mmusi
Received: Station Manager

[8] The following Board resolution was sent to Ms Gomes:

.....

To build/develop great and excellent content, the board has realised that you have a lot on your hands and programming is suffering.

It is hereby RESOLVED by the Board of Directors of Kurara FM that as agreed on 4 January 2019 by Mrs Precious Gomes, the station manager and the Board, the Programmes Manager is hereby requested to excuse herself from Marketing and concentrate on Programming as from 10 December 2019. The station manager will oversee Marketing Department until further notice.

The station manager shall from time to time and as requested or when necessary, delegate or assign the Programmes Manager to attend or handle certain meetings or deals in his absence.

Approved: 6 December 2019.

Patrick Mocumi
Chair: Board of Directors

Precious Gomes
Received: Programmes Manager

[9] The Station Manager also sent the following letter per hand delivery to Ms Gomes:

Dear Mrs Gomes,

The board has raised concerns about you, which they mentioned different events of misbehaviour and insubordination.

I am doing an investigation to ascertain as to what really transpired.

Please find the attached report and respond to the concerns raised.

You have 7 days to respond from 28 December 2020.

Yours in Community Development

Signed: Bradley Mmusi

Station Manager 27/01/2020

[10] The Board sent the following letter to Ms Gomes:

The report of the Board of Directors, inviting the programme Manager Ms Precious Moeketsi regarding her misbehaviour and insubordination to the Board.

On 6 January 2020 the station manager was asked to inform the programmes manager to meet with the Board. The board members had to wait for her because she came late to work at 10am instead of 8am as contracted. Reason we requested a meeting with the programmes manager instead of the station manager is because..... (Reason given acceptable although vague, but material included irrelevant to this matter). The station manager also failed to inform the Board about complaints raised against Ms Precious Moeketsi.

- Ms Moeketsi has been disrespectful to some staff members in a verbally belligerent manner.
- Disrespecting and insubordination to the Board members.
- Ms Moeketsi was invited to two meetings by the Board members of which she had failed to attend them. The Board then wrote a letter to her

through the station manager. He later informed us that she had refused to sign the letter and requested that some words be removed before she could sign the letter...

- On 1 January 2020 she misbehaved at the Kurara FM Birthday celebration... (Prima facie defamatory material excluded by CCC)
- Conflict of interest. Ms Moeketsi has also been using the Stations' bakkie to transport her personal building materials such as bricks, cement, water etc. In some instances and in her presence the station's bakkie was not driven by a staff member of the radio station.
- Taking the radio station's back-up generator for her personal use and demanding litres of petrol from the treasurer, which was refused to be given to her. This occurred when the station was on leave.
- Engaging local businesses, requesting donations on behalf of Kurara FM without being authorised to do so. ...
- Character assassination of Board members.

Lastly, on 6 January 2020 she was invited by the board members through the station manager to attend to these matters, but she decided to respond with insubordinate behaviour.

CONCLUSION BY THE CCC ON THE MERITS OF THE COMPLAINT

[11] As stated earlier, quoting the detailed correspondence in this matter was necessary. To summarise it would have been unfair to both parties: the Board and the Complainant. It should be noted that correspondence was correctly addressed through the station manager, who also appeared for the radio station at the hearing of this matter. The one exception, clearly mentioned, where on the case before the CCC the Manager was not included initially, was motivated in the letter referred to, with reference to alleged conflict of

interest of the Manager. *Vague* references to other instances of intervention by the Board are simply not acceptable in a legal inquiry such as the present and are also not covered with sufficient detail in the written complaint. In any case, on the papers before the CCC the Station Manager is shown, except in the one instance, to have consistently been involved. And there is an acceptable reason for this, which is not relevant to the case before the CCC.

[12]The 2019 Regulations for Community Broadcasting licensees, inter alia, provide as follows:

(5) The Station Manager must serve as *ex-officio* member of the board and report to the board.

(6) Managers below the Station Manager must report to the Station Manager in respect of the operations in their respective departments.

(7)Management is responsible for the daily administration duties of a licensee.

(8)The Board must not interfere in the daily operations of a licensee. (accent added)

[13] Although it is true that it would seem as if the Board might have overstepped the fine line between Management and Board, reasons are given by the Board Members why they directly contacted the Complainant in the case explicitly mentioned. Since the reasons might be detrimental to possible future procedures against another member of the staff, it would be procedurally unfair to mention them in this judgment. In any case, it is unfortunate that a letter was directly sent to the Complainant by the Board members involved. However, the Station Manager's further procedure in this matter, judged as a whole, was correct and demonstrative of the fact that the Board and the Station Manager have separate roles. An overview of the letters sent to the Complainant demonstrates that the Station Manager consistently followed the correct procedure in this matter. Ultimately, the letter from the Manager to the Complainant that substantially excludes the Complainant from being involved in future financial affairs, is clear and makes sense: she is, above all, the Programme Manager and the Board was entitled to intervene. It makes good sense to limit the Complainant's work to what she was appointed for: Programme Manager and to allow for exceptions where the Manager directs her to play a role in obtaining, for example, advertisements and sponsorships.

[14] Other allegations by the Complainant of interference by Board members are too vague to consider. In any case, the CCC is of the view that, on the whole, the correspondence sought an answer from the complainant which was relevant: her activities in obtaining clients which brought in money for the station by advertisements were indeed quite remarkable. In fact, during the hearing of this matter the Complainant conceded, upon a question by the undersigned, that she would prefer this commercial activity above being Programme Manager. However, the allegation in defence is that she spends too much time in marketing and neglects her task as Manager Programming. Whether that finding was justified is not for the CCC to decide.

[15] The complaint before the CCC is, however, whether the Board was not interfering, in conflict with the 2019 Regulations, in the daily operations of the radio station. That is clearly the task of the Station Manager. Although vague references to interference and mismanagement were made by the Complainant, the question before the CCC is whether, in the set of facts before the CCC, there was interference in the daily operation of the radio station. Reasons were provided by the two members of the Board for their direct intervention in calling the Complainant to a meeting. From the correspondence as a whole, it would appear that the Complainant's raising of funds for the station – however valuable it was – had a detrimental effect on programming, for which the Complainant is responsible. The letter to the Complainant that specifies that that the Manager would have to mandate the complainant to do fundraising in future, on a balance of probabilities, lies at the core of the matter. And this is a matter that would also concern the Board – since, ultimately, it is the holder of the broadcasting licence.

[16] The conclusion which the CCC has thus reached is:

That in essence the meeting which was called by two members of the Board with the Complainant did not amount to a contravention of the 2019 Regulations.

The letters written by the station manager to the complainant also demonstrate that there is an established practice of operational management by the manager.

However, the impression which is gained from the facts, judged as a whole, is that the Board might be too closely involved with the operation of the station. Despite the reason provided on behalf of the Board when it called the Complainant to a meeting and the acceptability thereof *for this particular matter*, the Board must, unless exempting legal circumstances apply, desist from direct contact with the employees. It must apply its (legitimate) policies via the station manager and where relevant, also ensure that communication with personell is directed via the Manager.

The Complaint is, accordingly, not upheld.

A handwritten signature in black ink, reading "J.C.W. van Rooyen". The signature is written in a cursive style with a large initial 'J'.

JCW van Rooyen

The Members agreed

9/12/2020