



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 7 AUGUST 2024**

**CASE NO: 477/2024**

**LICENSING AND COMPLIANCE DIVISION OF ICASA**

**COMPLAINANT**

**V**

**JOZI FM**

**RESPONDENT**

**CCC MEMBERS:**

Judge Thokozile Masipa – Chairperson  
Councillor Catherine Mushi - Member  
Mr Monde Mbanga - Member  
Mr Thato Mahapa - Member  
Mr Paris Mashile – Member  
Ms Ngwako Molewa - Member

**FROM THE OFFICE OF THE CCC:**

Meera Lalla – Acting CCC Coordinator  
Thamsanqa Mtolo - CCC Assessor  
Amukelani Vukeya – CCC Administrator

**LEGAL REPRESENTATION FOR PARTIES**

For the Complainant - Busisiwe Mashigo (Manager: Broadcasting Compliance)

For the Respondent - Bonginkosi Sithole  
Tshepo Makhopa  
Franklin Huizies

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## JUDGMENT

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Judge Thokozile Masipa

### INTRODUCTION

- [1] The complaint is brought against Jozi FM for an alleged breach of regulation 6(13) of the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024 ("Regulations").

### THE PARTIES

- [2] The Complainant is the Licensing and Compliance Divisions. Both the Licensing and Compliance Division are divisions of ICASA whose responsibilities, are, *inter alia*, to issue and grant Licenses to Licensees and to monitor and report on compliance issues.
- [3] The Respondent is Jozi FM, a Community Sound Broadcasting Service Licensee providing services to Soweto and surrounding areas in the Gauteng Province as set out in its radio frequency spectrum licence.

### THE CHARGE SHEET

#### ***Allegations of Contravention of Regulation 6(13) of the Regulations***

- [4] The allegations are that during the elections period, the Licensee contravened regulation 6(13) of the National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024 as published in Government Gazette No: 50204 dated 25 February 2024 as follows:

- 4.1 Failure to comply with the abovementioned Regulations. The Regulation provides that:

*"A BSL that broadcasts PA must ensure that all PA broadcasts are clearly identified through a standard pre-recorded concluding message ("tail disclaimer")."*

### **Summary of Complaint.**

- [5] Circumstances that led to the lodging of this complaint are set out hereunder.
- [6] *"During its compliance monitoring in respect of the 2024 National and Provincial Elections coverage, the Licensing and Compliance Division noted that Jozi FM transmitted Political Advertisements ("PAs), in contravention of regulation 6(13); of the Regulations as set out in the table below".*
- [7] The table referred to is **Table 1 - Political Adverts by Jozi FM** and reflects the following information:
- [8] On the 8 April at 17:29:45; 10 April at 18:32:03; 15 April at 17:41:28; 17 April at 18:31:17; 22 April at 17:29:38; and 24 April 2024, at 16:14:58, Jozi FM flighted Political Advertisements by a Political Party, namely **Basic Income Grant SA**, without the tail disclaimers.

### **THE RELIEF SOUGHT**

- [9] The Complainant sought the following relief: *"that the CCC impose appropriate penalties as prescribed by section 17E (2) of the ICASA Act."*

### **THE RESPONDENT'S RESPONSE**

- [10] In a letter, dated 19 July 2024, Jozi FM responded to the allegations against it as follows:
- "a) *Jozi FM acknowledges that the listed slots are proof of contravention of said clauses in relevant regulation.*
- b) *Jozi FM confirms that the specific PA did not have a tail disclaimer, but want to submit the following as extenuating circumstances.*
- i. *The said PA started with an opening disclaimer;*
- ii. *All other PAs, PEBs and disclaimers were in compliance with regulation;*
- iii. *This was an honest human oversight during a very busy election broadcast period".*

[11] In conclusion, Jozi FM pleaded for leniency.

## **DISCUSSION**

### ***The Contravention***

[12] The complaint in this matter is clear and straightforward. The Respondent is alleged to have contravened regulation 6(13) of the Regulations in that: in broadcasting PAs for one political party, during the election period, Jozi FM failed to ensure that the PAs concerned had tail disclaimers

### ***The Respondent's Defence***

[13] The defence by the Respondent was far from clear. The Respondent admitted the contravention, or so it seemed. In its response, where it deals with its so called "extenuating circumstances", however, it states just the opposite. In this regard, Jozi FM refers to only one PA which, according to it, *"started with an opening disclaimer"* while *"all other PAs PEBs and disclaimers were in compliance with regulation"*.

[14] From the analysis of the statement by Jozi FM, it appears that the Respondent is admitting only part of the charge whilst denying the rest. If this is the case then the Respondent need to have called witnesses to explain to the CCC why the record reflected **as TABLE 1** of flighted PAs during the period namely 8, 10, 15, 17, 22 and 24 April 2024, could not be relied on as proof of the contravention. It chose not to call any witnesses at its own peril.

### ***Error Made Only In Respect of One Political Party***

[15] A puzzling feature about this case is that on all the days on which the contravention allegedly happened, the PAs concerned were in respect of one political party, namely:— the **Basic Income Grant SA Political Party**.

[16] There was no explanation why the error only happened in respect of one particular political party and not in respect of others as well. To a question by the CCC, on this point, the response, on behalf of Jozi, was that although the matter was investigated, such investigation did not include delving into motives of those responsible for the "error".

- [17] This is a wholly unsatisfactory answer, to say the least. I say this because, to arrive at the conclusion that the contravention was an error, one would have had to satisfy one's self that there was no intention to contravene on the part of the person responsible for fighting the PAs.
- [18] In the present case, the conclusion that the contravention was an error could only have properly been reached if Jozi FM had satisfied itself that the alleged oversight had not been planned by the perpetrator.
- [19] By stating that motives of the personnel concerned were not investigated, Jozi FM made a startling concession that its investigation lacked depth, was superficial and conducted shoddily, to say the least.
- [20] Such a poorly conducted investigation could, therefore, only produce a superficial outcome that cannot assist in finding a satisfactory solution to the problem at hand.
- [21] In any event, the question is not whether the contravention was intentional. The element of intention is not a requirement. Intention would be important only in so far as the existence of aggravating factors is concerned.
- [22] In an attempt to assist Jozi FM with its submissions, it became necessary for the CCC to afford it an opportunity to deal thoroughly with the shortcomings above, as well as with other questions that arose concerning the repeated contraventions. To this end, the CCC requested further written submissions setting out mitigating factors, among others.

### ***The Facts and the Evidence***

- [23] The Complainant relied on **TABLE 1** to support the allegation that Jozi FM contravened Regulation 6(13) of the Regulations.
- [24] The dates and the times were set out clearly showing that the contravention occurred on the dates stated on the Charge Sheet.
- [25] The Respondent produced no evidence in rebuttal. This means the evidence by the Complainant was not contradicted in any way. Moreover, there was no attempt by Jozi FM to challenge the validity of **TABLE 1**, or any argument why the evidence could not be relied upon.

[26] In the absence of any evidence to the contrary, the non-compliance set out in the Charge Sheet, was proven.

### ***Mitigating Factors***

[27] What remained to be determined was whether there were any mitigating factors which might justify a lighter penalty for the contravention.

[28] Jozi FM referred to extenuating circumstances in an attempt to justify a lesser penalty. Extenuating circumstances are circumstances or facts that are mitigatory and serve to render the complaint less serious in the mind of the decision maker. This, in turn, serves to reduce the damages to be awarded or the penalty to be imposed.

[29] In cases where extenuating circumstances are found to exist, the sanction recommended or imposed is usually less severe than would have been the case had there been no extenuating circumstances.

[30] In the present case the Respondent set out the following as extenuating circumstances:

*"i. The said PA started with an opening disclaimer;*

*ii. All other PAs, PEBs and disclaimers were in compliance with the regulation;*

*iii. This was an honest human oversight during a very busy election broadcast period."*

[31] None of the above qualify as extenuating circumstances. Moreover, the challenge with the first two statements is that they are inconsistent with the admission of guilt made by Jozi FM. And that is unacceptable, in my view.

[32] The third statement is equally inadequate as an attempt to explain why the transgression happened and how it happened. It simply states that this "*was an honest human oversight...*," without an attempt to explain the nature of the oversight and how the oversight occurred. Moreover, no mention is made of the person or persons responsible for the alleged oversight.

### ***How Busy is a Very Busy Election Period?***

- [33] Jozi FM referred to a very busy election period. Although a busy period could count as mitigatory, in the present case, no basis was laid for such a statement. As a result, the CCC has no idea as to what is meant by "*a very busy election period*". This phrase was thrown in without giving any detail as to how many other PAs or PEBs the station had to deal with, the number of other tasks that had to be performed during that period, as well as the number of personnel involved.
- [34] In any event, it was not for Jozi FM to draw conclusions, let alone conclusions with no basis. Jozi FM's function was to state facts and leave the CCC to draw its own conclusions from those facts.
- [35] Important details concerning names of people, dates and times as well as the comparison of what is termed "*very busy*," to non-election periods, or to previous election periods, were omitted. This was one of the major shortcomings with the initial submissions from Jozi FM.

### **FINDING**

- [36] The CCC had regard to all the facts, and the evidence before it, and unanimously came to the conclusion that the Licensee, Jozi FM, is guilty as charged.
- [37] Accordingly, the CCC finds that Jozi FM contravened Regulation 6(13) as charged in that it flighted PAs for the Basic Income Grant Political Party on 10, 15, 27, 22 and 24 April 2024 at the times mentioned in the charge sheet, without a tail disclaimer.

### **FURTHER WRITTEN SUBMISSIONS**

#### ***Steps Taken in Jozi FM's Preparation For the Election Broadcast Period 2024***

- [38] In response to a request from the CCC, Jozi FM submitted its written submissions, dated 19 August 2024. For convenience some points in the submissions shall be set out verbatim.

Jozi FM stated ***inter alia***, "*Jozi Fm wants to confirm the steps taken in our preparation for the Election Broadcast Period 2024.*

*Jozi FM*

- a) Attended the ICASA preparation workshops.*
- b) Held internal workshop with Programs and Sales departments to ensure the Regulations are internalised. (See attached BSL Election Basics document that was facilitated)*
- c) Jozi FM Political Branding Policy was drafted and approved for implementation. (See attached Jozi FM Policy on Political Branding).*
- d) Jozi FM drafted PA Procedure for the Programs and Sales Department. (See attached Jozi FM PA Procedure document).*
- e) Jozi FM drafted Staff Political Declaration for all staff and directors to ensure compliance. (See attached Jozi Fm Staff Political Declaration).*

*Upon receipt of notice of non compliance Jozi investigated the processes we have put in place and traced the specified PA. We found out that our internal processes were lacking a few critical steps of verification and ensuring daily broadcasted content are continuously checked. ... (my emphasis). [I shall come back to this point later in the judgment].*

*Jozi has taken the following steps to ensure that the conditions leading to the non compliance incident will not be repeated. The station developed a PA and PEB Procedure, (please see attached Jozi Fm PA & PEB Procedure document”.*

## **ANALYSIS**

***Steps taken by Jozi to ensure that the conditions leading up to the non compliance would not be repeated.***

[39] According to Jozi FM, the station developed a PA & PEB Procedure.

[40] In addition, Jozi FM stated that it views this matter as very serious. Consequently it is committed to ensuring that it complies fully with all regulations in future. To this end, it plans to put in place agreed upon preventative measures.

[41] To measure the usefulness of the supplementary written submissions, it is

convenient to deal with them point by point.

### ***Training and Workshops***

[42] Points a) and b) refer to training and workshops that Jozi FM allegedly attended. Missing are dates and times as well as the venues at which these events were conducted. Also missing are details of what the training or workshops were all about and who conducted them.

[43] More importantly, nothing was said about how many people attended, who they are as well as their designations. Who the people are as well as their roles at the station would assist in determining how attending the events would add value to the station and its business, and in preventing or resolving the current problem.

### ***Documents Drafted by Jozi FM***

[44] Points c), d), and e) refer to Jozi FM Political Branding Policy, PA Procedure for the Programs and Sales Department and Staff Political Declarations.

[45] All these documents, which were annexed to the supplementary written submissions, make interesting reading but their usefulness, in respect of the complaint before the CCC, is not clear.

[46] A good example is the PA Procedure which is reproduced hereunder for ease of reference:

*"1) All PA Schedules should be based on written Client brief/request indicating the political party or independent candidate and the day and the time of broadcast, and relevant broadcast service/s for the PA.*

*2) Jozi FM agreed rate card is effective with **No Discounts***

*3) Quotation should follow the agreed effective Rate Card.*

*4) All Political Advertising Clients must send audio material for approval before the placement agreement is finalised.*

*5) The client is responsible to ensure compliance of PAs to ICASA regulations, i.e. the mandatory disclaimers and duration of max 45 seconds.*

6) *Once audio material is approved the PA will be scheduled.*"

[47] The document then sets out the Jozi Fm Political Advert Disclaimer.

[48] It would have been helpful if Jozi FM had highlighted items on the document that were relevant in assisting the prevention of future similar contraventions.

[49] Similarly, the Jozi FM Declaration on Political Status raises the same question. To what extent, if at all, is it relevant in helping to resolve the problem at hand?

[50] The relevancy is important for the following reason: The document purports to be a Declaration Concerning Political Status of Staff, Management and Board Members of Jozi FM.

[51] The complaint in this matter is contravention of Regulation 6(13) which is failure to identify a PA as such by means of a tail disclaimer. It has nothing to do with the *"political status of staff"*.

[52] Failure by Jozi FM to explain the relevance of the attachments, to its submissions, in the present proceedings, has left the CCC, in the dark.

[53] And that is not the only challenge. Jozi FM stated that it had identified its internal processes as *"lacking a few critical steps of verification and ensuring daily broadcasted content are continuously checked."*

[54] One would have expected Jozi FM to come up with a solution for the said identified internal weaknesses but it chose not to deal with the issue.

[55] The CCC is left with no option but to conclude that Jozi FM is not serious about finding a solution to the issue that led the complaint.

## **CONCLUSION**

[56] Jozi FM's submissions were found wanting in very important respects which have been highlighted above.

### ***Mitigating versus Aggravating Factors***

[57] Consequently, the CCC found no mitigating circumstances. Aggravating factors, on

the other hand, are, *inter alia*, the shoddy manner in which Jozi conducted this matter from the time it received the notice of non compliance and during the course of these proceedings. We are also here dealing with a serious contravention that may cause the public to lose confidence in the electoral system. Added to this, Jozi FM is, unfortunately, not a first offender.

### ***Jozi is a Repeat Offender***

[58] Jozi FM appeared before the CCC during the 2016 Municipal Elections having contravened section 56 of the Electronic Communications Act (ECA).

Section 56 provides:

*"A party election broadcast and a political advertisement must not be broadcast on any broadcasting service except during an election period and then only if, and to the extent authorised by the provisions of section 57 and 58."*

[59] The CCC found Jozi FM to have contravened section 56 read with section 58 of the ECA in that it broadcast a PA For the EFF before the election period. This happened four times.

[60] Jozi FM, which was a first offender at the time, was fined R2000 and ordered to broadcast a public apology to the Authority and to its listeners.

[61] One would have expected Jozi FM to have learnt its lesson. It is apparent that it did not.

### **ORDER**

[62] In view of the above, the CCC recommends to the Authority that it

62.1 Directs the Licensee to desist from any further contravention of the said regulation;

62.2 Directs the Licensee to take the following remedial actions;

62.2.1 Within 90 Calendar days from the date of the issue of this order, Jozi FM is to submit to the LCD a report, setting out, among others, a brief technology readiness report, articulating the technology

operations plans, systems preventative maintenance and how they would be implemented during the next election period.

62.2.2 That the radio station upgrade its hardware and software. This must be followed by a dry run on the system's operation well before the commencement of the next election period to ensure that it is foolproof.

62.2.3 Directs the Licensee to deploy a team of five (5) people who would individually check the PAs before they are flighted.

62.3 directs Jozi FM to issue and publish an apology during the first week after this order is issued.

62.3.1 The apology is to be broadcast in English and in Zulu once per day for five consecutive days as its first item on its news service between 7h00 and 20:10. On the first two days the broadcast must take place in the first newscast after 7h00.

62.3.2 The times of the broadcast must be notified by email to the LCD of ICASA at the latest 48 hours before the broadcast.

62.3.3 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/her representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

62.4 The apology must be phrased thus:


*"The Independent Communications Authority of South Africa has found that this station was negligent in not having abided by the National and Provincial Elections Regulations 2024. This station broadcast Political Advertisements without adding a statement which clearly identifies Political Advertisements as such.*

*This is in conflict with the ICASA Election Regulations which require such statements to be made before and after the advertisement. This station further extends its apology to ICASA and to its listeners for having committed*

*these contraventions”.*

62.5 An electronic copy of each broadcast stating the date and the time of the broadcast, must be sent to the LCD at ICASA by email within 48 hours from the last broadcast in the said five days.

[63] In aligning the sanction in this matter with other class licensee precedents, and in view of the seven contraventions committed, a fine of R5000.00 (five thousand rands) for each is recommended. This would make a total of R35 000.00 (thirty five thousand rands) fine which is payable to ICASA within 90 calendar days from when this judgment is issued. The CEO of ICASA or his nominee must be copied with proof of payment within 24 hours from when the payment was made.

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**Judge Thokozile Masipa**  
**Chairperson of the CCC**

**Date:** 22 November 2024