



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 25 APRIL 2022**

**CASE NO: 439/2022**

**LICENSING AND COMPLIANCE DIVISION**

**COMPLAINANT**

**V**

**EASTERN CAPE MUSLIM BROADCASTING  
ASSOCIATION T/A IFM**

**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** – Ms. Rosheeda Hendricks (Station Manager)

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## JUDGMENT

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Judge Thokozile Masipa

### INTRODUCTION

[1] The Complainant brought a complaint against IFM 88.3 ("IFM"), concerning an alleged breach of Section 58(6) of the Electronic Communications Act, 2005 ("ECA") and Regulation 6(14) of the Municipal Elections Party Election Broadcasts and Political Advertisement Regulations, 2021 ("the Regulations").

### THE COMPLAINT

[2] Allegations relating to Section 58(6)

According to the Complainant

2.1 The Respondent, during the elections period, contravened section 58(6) of the ECA in that:

2.1.1 It broadcast a Political Advertisement (PA) for an Independent Candidate (IC) in contravention of the above provision.

2.1.2 Section 58(6) provides that:

*"No Political advertisement may be broadcast later than 48 hours prior to the commencement of the polling period."*

[3] Allegations Relating to regulation 6(14)

3.1 The Respondent, during the election period, contravened regulation 6(14) of the Regulation in that:

3.1 IFM broadcast PAs for an Independent Candidate in contravention of the above provisions.

3.2 Regulation 6(14) of the Regulations reads:

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

## **SUMMARY**

- [4] The Complainant's summary of the complaint is that during its compliance monitoring activity, in respect of the 2021 Municipal elections coverage, the Licensing and Compliance Division noted that IFM transmitted an Independent Candidate's PA on November 2021, later than 48 hours prior to the commencement of the polling period. (It must be noted that the last day to broadcast PAs in accordance with Section 58(6) of the ECA was 29 October 2021).
- [5] In addition, the Licensing and Compliance Division noted that on 25 October 2021 and 1 November 2021, IFM broadcast PAs for an Independent Candidate in contravention of regulation 6(14) of the Regulations, that is, without a top and tail disclaimer.

## **RELIEF SOUGHT**

- [6] The Complainant sought the following relief:

That the CCC imposes appropriate penalties as prescribed by section 17E(2) of the ICASA Act.

## **THE RESPONDENT'S DEFENCE**

- [6] The Respondent denied the allegations against it and sought to shift the blame onto its Sister Station, Radio Islam. Its response is captured in its letter, dated 25 March 2022 and addressed to the CCC Assessor in the Office of the CCC.

In part it reads as follows:

*"The ECMBA t/a IFM 88.3 did not contravene the ECA and Municipal Regulations ... All rules were strictly adhered to in their program line up. Due to financial constraints, IFM was operating with skeleton staff on weekends and public*

*holidays, which included Election Day and as per our licence agreement we are in a program sharing broadcast with Radio Islam, another sister broadcasting licensee.*

*The transgression occurred whilst IFM 88.3 was partaking in the program sharing with Radio Islam based in Gauteng. The Independent Candidate party advert aired by Radio Islam held no potential of bias, as the potential candidate was not on the Nelson Mandela Metropolitan Municipality ballot form and would have no bearing on the outcome in area of broadcast.*

*The contravention noted related to the disclaimer, occurred during the program sharing broadcast with Radio Islam.*

*Regrettably IFM 88.3 has no influence with the production of the programs of Radio Islam.”*

The letter is signed by Rosheeda Hendricks, the Station Manager.

- [7] Firstly, the response from IFM is far from convincing. It is a feeble response from a Respondent persistent in shirking its responsibilities as a broadcaster. Programme sharing can never be a cause of or an excuse for a contravention. The cause is usually to be found in the internal workings of the broadcaster.
- [8] Secondly, the last sentence "*Regrettably, IFM 88.3 has no influence with the production of the programs of Radio Islam*" sounds equally feeble and fails dismally as a defence. I say this because IFM may not have had any influence over what programmes are produced by Radio Islam, but it certainly does have the power and the obligation as a station, to choose what it allows to be broadcast.
- [9] Compliance with section 58(6) of the ECA simply requires the licensee to know the date of the commencement of the polling period and then to ensure that no PAs are broadcast 48 hours before the commencement date. There has been no allegation by IFM that it was ignorant of the commencement of the polling period.
- [10] Failure to ensure that there was compliance by the station is inconsistent with the statement by IFM that the station "*did not contravene the ECA and Municipal Elections Regulations...*  
*All rules were strictly adhered to in their program line up.*"

[11] Maintaining the industry regulations and guidelines set for the station, and ensuring that the station complies with the relevant legislation in general are some of the crucial functions of a radio station manager. It, therefore, does not make sense, when there has been a contravention, for any station manager to lay the blame elsewhere.

## **THE HEARING**

[12] The Respondent was not legally represented. Rosheeda Hendricks, the Station Manager, made submissions on behalf of the Respondent.

[13] In her submissions, Ms Hendricks re-iterated that the Respondent was a victim of circumstances as it had played no part in the contravention. The guilty party was Radio Islam. It was the program sharing that led to the contravention and the Respondent had no control over what Radio Islam chose to broadcast, was the submission.

[14] During the course of the hearing it transpired that the Respondent was mistaken about a program sharing agreement between the two radio stations as there was no such agreement in place at the time. A memorandum of agreement that had existed, at some time, had expired and had not been renewed at the time the contravention occurred.

[15] In the result, the defence, as set out by the Respondent, has no basis. However, even if there had been an agreement as alleged, the defence would not have assisted at all. I say this because the Respondent had an obligation to ensure that there was compliance with the relevant provisions of the Act and regulations during the election period.

## **AGGRAVATING FACTORS**

[16] Most concerning about this matter is the fact that the Respondent refused to take responsibility for its actions. Such refusal to take responsibility and failure to own up to wrongdoing is disturbing. For without the necessary insight, the Respondent might soon find itself appearing before the CCC, once more, having committed the same contraventions.

- [17] In fairness to the Respondent, it did eventually admit that it should have checked the content before it was broadcast. However, that admission was clearly an afterthought and as such cannot be given much weight.
- [18] The real concern, as briefly discussed above, concerns the nature of the transgressions. It is difficult to understand how a broadcaster can shift blame onto a third party for contravention of section 58(6). The wording of the section is simple and straight forward while the obligations of the Respondent and its liability in the event there is a failure to comply, is set out clearly.
- [19] Where there is a contravention of section 58(6) of the Electronic Communications Act, a defence which lays the blame on the door of a third party is an indictment on the broadcaster, and a clear indication that the Respondent is unrepentant.
- [20] The obligation to ensure that section 58(6) is complied with is that of the broadcaster. It is an obligation that cannot be delegated. As a responsible broadcaster, IFM ought to have been aware of the commencement of the polling period, and what was expected of it during the election period. Consequently, no Political Advertisement would have been flighted without its knowledge or say so.
- [21] Failure to ensure that no political advertisements (irrespective of their source or origin), were flighted later than 48 hour prior to the commencement period, is a serious contravention. In our view, this is clear evidence that the Respondent was grossly negligent in carrying out its duties.
- [22] Similarly, with regard to the contravention of Regulation 6(14), the responsibility rested on IFM to monitor every content that came in and to give a go ahead only when it was satisfied that the said content was compliant with the relevant legislation.
- [23] Interestingly, although the Respondent boldly stated that "*All rules were strictly adhered to in their programme line up*", it failed to identify the rules referred to. It also failed to demonstrate how exactly it adhered to those rules.

[24] The Respondent certainly has the power and, more importantly, it has the obligation to ensure that whatever content it chooses to broadcast, is in compliance with the Act and the Regulations. The excuse, therefore, that the Respondent does not have influence over what Radio Islam produces, holds no water and is rejected.

## **MITIGATING FACTORS**

[25] The only mitigating factor in the Respondent's favour is that the Respondent is a first offender. But, having regard to the aggravating factors discussed above, a clean record on its own is not adequate to assist the Respondent.

[26] Fortunately for the Respondent there are factors in its favour. The CCC has also taken into consideration the fact that, like all the other stations charged with non-compliance in respect of elections-related legislation, IFM operated under difficult conditions as a result of the Covid's 19 pandemic. But for this fact, a heavy sanction, would have been warranted.

## **CONCLUSION**

[27] Compliance with the relevant legislation by broadcasters is not optional.

The Act as well as the Regulations are there for a good reason. The public interest demands that the law be complied with. Every broadcaster that is serious about serving the public, should, therefore, strive to comply with the applicable laws. Recently, there has been a disturbing trend among broadcasters where we have seen repeated non-compliance with what appears to be impunity. And it's time to put in place effective sanctions.

## **FINDING**

[24] In view of the above, the CCC's finding is the following:

24.1 Allegations relating to contravention of Section 58(6) in that the Licensee failed to ensure that no PAs were broadcast 48 hours prior to the commencement of the polling period.

- **The complaint is upheld.**

24.2 Allegations relating to contravention of Regulation 6(14) in that the Licensee failed to ensure that all the PAs broadcast by it had both the top and tail disclaimers.

- **The complaint is upheld.**

**ORDER:**

[25] Accordingly the CCC recommends to the Authority that the following order be issued to the Respondent:

25.1 direct that the Licensee desist from further contravention.

25.2 direct the Licensee to take the following remedial step:

25.2.1 The Licensee is to broadcast a public apology during the first week after this order is issued.

25.2.2 The apology is to be broadcast once a day for five consecutive days as its first item on its news service between 7h00 and 20h10 in English, Afrikaans, IsiXhosa, Arabic and Urdu in the same news bulletin. On the first two 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 her representative who must declare that she is the Station Manager or is acting on behalf of the station manager.

25.2.3 The apology must be phrased thus:

*"The Independent Communications Authority of South Africa has found that IFM was grossly negligent in having failed to abide by the Electronic Communications Act and the Municipal Elections Regulations 2021 in that IFM broadcast a Political Advertisement less than 48 hours prior to the commencement of the polling period.*



*This is in conflict with the Electronic Communications Act which prohibits the broadcast of Political Advertisements less than forty eight (48) hours prior to the commencement of the polling period. In addition, IFM broadcast Political Advertisement without adding a statement which clearly identifies the Political Advertisements as such.*

*This is in conflict with the Municipal Elections Regulations 2021 which require such statements to be made before and after each and every Political Advertisement.*

*IFM apologises to its listeners for having committed these contraventions."*

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

25.3 direct that the licensee pay as a fine a total amount of ten thousand rands (R10000), the breakdown of which is as follows:

- (i) Ten thousand rands (R10 000) for contravention of Section 58(6), half of which 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.
- (ii) Ten thousand rands (R10 000) for contravention of Regulation 6(14), half of which 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;

25.4 The amount of R10 000 (ten thousand rands) is to be paid into the account of ICASA within 90 calendar days from the date of issue of this order.

*TWMasipa*

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

**Date:** 25 July 2022