



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 28/11/2025

CASE NO: 494/2025

IN THE MATTER BETWEEN:

HAMMANSKRAAL RESIDENTIAL ASSOCIATION

COMPLAINANT

V

MORETELE FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councilor PN Sithole – Member
Mr Luthando Mkumatela - 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 Masia – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

Complainant: Mr. Ken Mabuza (Secretary of the Hammanskraal Progressive Residential Association) and Ms. Nchabeleng

Respondent: Mr. Spies (Legal representative)

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is a complaint against Moretele Community Radio (MCR) for its alleged failure to comply with certain regulations, a number of clauses of its licence and its own Constitution.

THE PARTIES

- [2] The Complainant is Hammanskraal Progressive Residential Association ("HPRA"/"Complainant").
- [3] The Respondent is a sound broadcasting service operating under the name Moretele Community Radio Station. It shall be referred to as "Moretele FM", "MCR" or "the Respondent").

THE COMPLAINT

Regulation 13(2) of the Broadcasting Services Regulations of 2019

- [4] The Respondent is alleged to have failed to comply with Regulation 13(2) of the Broadcasting Services Regulations of 2019 which states that

"A Licensee must involve the community members in the management of the community broadcasting licensee."

- 4.1 The Complainant alleged that the Respondent failed to involve community members in the operations of the Radio Station.

Clause 4.2.3 of the Service Licence

[5] Clause 4.2.3 of the Service Licence which states:

"The Licensee shall hold Annual General Meetings (AGMs) for the following purposes:

4.2.3.1 to provide feedback on the licensee's compliance with licence conditions,

4.2.3.2 to provide feedback on the licensee's operational and financial performance, any Special AGM as and when required by the Constitution and

4.2.3.3 to elect members of the controlling structure, for example, Board of Directors, Trustees etc, subject to the licensee's founding document".

5.1 The Complainant alleged that the respondent had failed to hold AGMs since 2019.

Clause 5.1.4 of the Licence

[6] Clause 5.1.4 of the licence which states:

"the Licensee shall provide programming as follows: Languages of broadcasting:

5.1.4.1 Setswana - 62%

5.1.4.2 English - 32%

5.1.4.3 isiNdebele - 5%

5.1.4.4 Xitsonga - 1%".

6.1 The Complainant alleged that the Respondent only broadcasts in Setswana and English while excluding isiNdebele and Xitsonga.

Clause 5.2 of the Licence

[7] Clause 5.2 of the licence which states:

"the Licensee shall keep a log of programmes broadcast which must be submitted

on a monthly basis to the Authority. Pro-forma of the log to be kept will be supplied to the Authority."

7.1 The Complainant alleged that the Respondent failed to keep recordings of broadcasting activities.

Clause 12.1.1 of the Constitution

[8] Clause 12.1.1 of the Constitution of the MRC which states:

"The Board of Directors shall be elected at an elective AGM duly constituted and assembled. The notice period prior to the AGM meeting shall be communicated to the community through accessible media."

8.1 The Complainant alleged that the AGMs of the Radio Station are convened by members of staff, and not by the BOD.

Furthermore, there was no 21 day notice period observed. In addition, there was no communication through accessible media.

Clauses 22.2, 22.3 and 22.4 of the Constitution

[9] Clause 22.2, 22.3 and 22.4 of the Constitution of MCR which states that:

"22.2 no person may open a banking account in the name of MCR or any other similar name without:

22.3 the explicit written authority of a resolution of the AGM or BOD on an official MCR letterhead signed by three (3) BOD signatories and 22.4"

9.1 The Complainant alleged that the Respondent has two bank accounts, one of which is not reflected on its financial statements and is unknown to the community.

Clause 14.5 of the Constitution

[10] Clause 14.5 of the Constitution of the MRC which states that:

"the BOD shall acquire movable and immovable property including investments of whatever nature and hold such property and invested funds in Trust and act as agents on behalf of MCR".

10.1 It was alleged that the BOD failed to raise funds for the Radio Station.

Clause 26.1 of the Constitution

[11] Clause 26.1 of the Constitution of MCR which states that:

"Any constitutional amendment to this constitution shall be by a two-thirds majority of the attendees present who are Listeners Club members and voting at the annual or special AGM."

11.1 The Complainant alleged that the Respondent had two illegitimate, unauthorised parallel constitutions neither of which has been adopted, signed or endorsed by the community. (A third constitution was later obtained from the Licensing and Compliance Division of ICASA. As a result, the CCC was confronted with 3 constitutions.)

THE RESPONDENT'S RESPONSE

[12] The Respondent denied any wrongdoing and raised the defence set out hereunder.

[13] According to the Respondent, Regulation 13(2) of the Broadcasting Services Regulations of 2019 which deals with participation of members of the community in the affairs of the station was complied with.

[14] In support of the above submissions, counsel for the Respondent relied on the Listeners Club's attendance register dated 16 October 2021. It was attached to the papers and marked Annexure MCR-1. Also produced as evidence was corresponding minutes of the same day marked Annexure MCR-2.

- [15] It is clear from the evidence before the CCC that, although there may have once been a semblance of community participation through listeners clubs, in truth, there is no real participation by members of the community.
- [16] I say this because one element that differentiates a community radio station from a commercial or public broadcasting is its ability and willingness to really involve the community in all aspects of its operations.
- [17] True community participation means the community owns, manages, controls, and produces the content. This ensures that the station serves the community's local, social and cultural needs.
- [18] In the present case, there is no evidence that the community owns the station. In addition, there is no evidence that the community is involved in any management or control of the station or in the production of content.
- [19] Similarly, insofar as Community Consultations is concerned, no evidence was provided. This can reasonably indicate that no community consultations of any sort exist.
- [20] Over and above the evidence that there is no community consultation at all, there is also overwhelming evidence that proper AGMs are a rarity.
- [21] The Respondent was inconsistent in its responses, often denying an allegation only to undertake to remedy the alleged noncompliance at the same time.
- [22] An example is where the Respondent denied the allegation that it failed to comply with Regulation 13(2). In the same breath, it made an undertaking "*to strengthen mechanisms of engagement in compliance with Regulation 13(2).*"

Re-Allegation 2.2 (Failure to Hold AGMs - Service Licence Clause 4.2.3)

- [23] According to the Respondent, it was not true that the last AGM was held in 2019. In fact, since 2019, there have been two more AGMs, held in 2021 and in April 2025, respectively.

- [24] The AGM attendance register for the 12 April 2025 was annexed to the papers and marked Annexure MCR-3. Notably, there was no document to support that the AGM of 2021 had taken place.
- [25] The stakeholders invitation register marked Annexure MCR-4 as well as the minutes of the AGM held on 12 April 2025 and marked Annexure MCR-5 were attached to the papers.
- [26] What was produced by the Respondent was not sufficient to persuade the CCC that the Respondent was meaningfully involving the community in its operations.
- [27] The involvement of the community in the affairs of a community radio station is not optional. It is at the core of a vibrant and healthy community radio station.
- [28] Without meaningful participation of the community in the affairs of the community radio station, the said radio station is a community radio station in name only and has no right to exist. In the present case, it was clear that community participation was limited and there was room for improvement.

The Respondent was also unable to set out in great detail the activities that were undertaken in the lead up to the purported AGM of 2025, the vetting of the participants and what confirmation was considered to confirm that the meeting was quorate. Similarly, the same applies to the 2021 alleged AGM, over and above the absence of documents related to the alleged AGM.

Re- Allegation 2.3 (Language of Broadcast - Service Licence Clause 5.1.4).

- [29] The Respondent denied that it broadcast only in Setswana and English languages while ignoring isiNdebele and Xitsonga.
- [30] According to the Respondent, broadcasts were made in all four languages, namely Setswana, English, isiNdebele and Xitsonga.
Recordings of isiNdebele and Xitsonga programming were attached and marked MCR-6 and MCR-7 respectively. In addition, a Programme Schedule marked as Annexure MCR-8 was included.

- [31] Furthermore, the Respondent undertook to expand isiNdebele and Xitsonga content *"to ensure consistent compliance"*.

It is notable that on its own version, the Respondent was not complying consistently with this clause. What is troublesome is that the Respondent could not even outline the extent to which it was complying with its obligations.

Re- Allegation 2.4 (Programme Logs and Recordings - Service Licence Clause 5.2)

- [32] The Complainant alleged that the Respondent failed to keep programme logs and recordings.

- [33] The Respondent denied the allegation and stated that it did keep logs and recordings which were duly submitted to the Authority in compliance with the Regulations.

Copies of programme logs were attached to the papers and marked MCR-9. In addition, screenshots of logs submitted to and acknowledged by ICASA were attached and marked MCR-10 and MCR-11.

- [34] Furthermore, a digital play out system (Air Check) has been implemented to automatically retain logs and recordings, in compliance with the Electronic Communications Act, 2005.

It is not clear from the Respondent's response when the digital play out system was implemented and whether there were any recordings actually available.

Also not clear is whether the installation of the system was to cure the noncompliance or whether it was intended as an additional feature to what already exists.

Re-Allegations to 2.5 (Clause 12.1.1 of MRC Constitution)

- [35] The Complaint referred to Clause 12.1.1 of Annexure A. In response, the Respondent pointed to the fact that "Annexure A" had not been signed. For that reason, it was not valid.

[36] According to the Respondent, the current and valid constitution is Annexure C which was adopted at the AGM of 18 December 2021 and was signed by office bearers. The Respondent attached the AGM attendance register marked MCR-12. The AGM minutes were attached and marked MCR-13.

[37] The Respondent also denied that AGMs were convened by Staff. The Respondent stated that the staff only provided administrative support while the Board of Directors convened the AGMs.

[38] The Respondent submitted that it was also compliant with the requirement of 21 days' notice for AGMs. As an example, the Respondent produced a notice that was given for the AGM which took place on 26 November 2021. The Respondent provided Annexures MCR-14 and MCR-15 to support the 21 days' notice statement above.

[39] In addition, the Respondent undertook to take steps to ensure strict compliance by:

"1. Publishing AGM notices at least 21 days before the meeting;

- 1. Using multiple accessible media (broadcasts, local newspapers, posters, social media); and*
- 2. Retaining proof of notices for transparency."*

Once more, the above undertaking by the Respondent creates an impression that the allegations by the Complainant are true.

The Respondent could not provide detailed clear facts around the procedure followed prior to convening the AGM, the minutes of the AGM, verification of the quorums required and validity of the AGM. The Respondent also could not explain why the constitution, allegedly approved on 18 December 2021, was only signed in December 2024 by the Secretary and Treasurer, despite being signed by the Chairperson in December 2021. This contradicts clause 134.6 of the Constitution, setting the maximum limits of the term of office of a Board Member at 36 months.

Re-Allegation 2.6 (Bank Account - Constitution Clause 22)

- [40] The Complainant alleged that the Respondent kept irregular bank accounts.
- [41] The Respondent admitted that the Respondent had two FNB accounts instead of one.
- [42] On the Respondent's version, two accounts were necessary for security reasons. Both accounts were legitimate and subject to oversight. To support the legitimacy of the latest account, the Respondent attached a resolution authorising the second account and marked Annexure MCR-16.
- [43] The Respondent stated that it was committed to full transparency and would consolidate accounts in line with Clause 22 of the Constitution.

Interestingly, the Respondent failed to elaborate on what it meant by "*for security reasons*". The response, therefore, falls short of what is expected of a proper defence or explanation.

Re-Allegation 2.7 (Clause 14.5 of Annexure A).

- [44] The Complainant alleged that the Board of Directors failed to raise funds for the radio station.
- [45] The Respondent denied the allegation. Counsel for the Respondent submitted that the cited provisions were not a mandate for the Board to raise funds. Instead, the provisions were merely empowering the Board of Directors to acquire and hold property or investments on behalf of the station.

The submission has merit as the provisions cited in the complaint say nothing about the obligation of the Board of Directors to raise funds. Instead, a proper reading of the provision shows that its purpose is to empower the Board of Directors to acquire and hold property on behalf of the station.

- [46] The Respondent acknowledged the importance of financial sustainability and stated that it has actively pursued funding through sponsorships and grant applications.

[47] The Respondent attached, to the papers, copies of proposals and correspondence and marked them Annexures MCR-17, MCR-18 and MCR-19, respectively. There was no reason for the CCC to doubt the Respondent's attempt to raise funds for the station.

Re-Allegation 2.8 (Constitutional Amendments - Clause 26.1

[48] The Complainant alleged that the Respondent was in possession of more than one unauthorised Constitutions.

[49] The Respondent denied the allegation. It stated that Annexure C was the only adopted and, therefore, valid Constitution.

[50] The Respondent distanced itself from the other Constitutions which it labelled as unauthorised and "*without legal standing.*"

DISCUSSION AND ANALYSIS

[51] From the list of complaints, what stands out clearly is that the Respondent is failing to fulfil its mandate as a Community Radio station. I say this because it cannot be denied that community participation in the affairs of the station is almost non-existent.

[52] According to the Respondent, participation of members of the community in the affairs of the station was complied with and took place in several ways, namely:— through Listeners Clubs, community consultations and Annual General Meetings.

[53] Respondent relied on the Listeners Club's attendance register dated 16 October 2021, marked Annexure MCR-1. Also produced as evidence was corresponding minutes of the same day marked Annexure MCR-2.

[54] Beyond these, no further concrete evidence of any community participation was provided. It is clear from the evidence before the CCC that although there may have been community participation in the past, in truth there is no real participation by members of the community.

- [55] The intention to form Listeners clubs may be genuinely to involve members of the community in the affairs of the station. However, the level of community involvement through Listeners clubs is limited and, therefore, questionable. Listeners form clubs to listen, provide feedback, and sometimes even produce recorded content for the station.
- [56] So, Listeners club may be an essential starting point but the depth of community participation is what defines a true community radio station.
- [57] Questions such as whether community members hold seats as Board members or are community members in management committees are essential in determining the health of a community radio station.
- [58] In the present case, there is no evidence at all that members of the community hold seats in the Board or that members of the community are included in management committees.
- [59] The station appears to have misunderstood its mandate and is, therefore, a community radio station in name only. I say this because although what triggered the complaint were concerns regarding Community Broadcasting Service Regulations, Licence Terms and Conditions, that was only the tip of the iceberg, brought by a group of persons who identified themselves as concerned community members. The real problem at the station seems to run deeper.
- [60] There was an allegation, for instance, that a properly constituted AGM was last held in 2019. The validity of the alleged 2021 AGM was disputed. Although the Respondent tried to deny the allegation, it was unable to provide evidence in support of its denial.
- [61] The majority of complaints against the Respondent indicate a lack of proper governance. This is a problem that often requires the intervention and oversight of the Authority rather than mere punishment.
- [62] Lack of proper governance is often seen in breakdown in institutional, financial and ethical oversight where the station is no longer guided by its founding mandate,

constitution or community interests.

- [63] In the present case, the allegations were that the station had three constitutions, two of which had not been signed. In response, the Respondent alleged that the signed Constitution, Annexure C, was the only version that could be relied on as it had been submitted to and approved by the Authority.
- [64] However, Annexure C was found to be wanting as a document that could be relied upon. It was signed by different people over three different years. One signature was dated 18 December 2021 while another was dated 18 December 2024.
- [65] The gap period, between 2021 and 2024, creates a “grey area”. If the radio station was conducting business and receiving funding or acting as a legal entity, based on Annexure C, those actions might be challenged, if not ratified properly.
- [66] In the present case, however, the question whether Annexure C can be ratified does not even arise, as there is doubt whether the AGM, which gave birth to Annexure C, was properly constituted.
- [67] The most appropriate solution would be for the station to go back to the drawing board by calling an elective AGM to be held as soon as possible.

FINDING

- [68] Owing to challenges regarding the reliability of the Respondent's current Constitution, the CCC is unable to make any finding on allegations of noncompliance with the station's Constitution.
- [69] Similarly, making a finding regarding the rest of the alleged noncompliance would serve no purpose for the following reasons:
- [69.1] A community radio station cannot legally operate, legally hold a licence or legally receive funds without a constitution. This is because a community radio station is mandated to be a non-profit entity owned by the community it serves. A constitution is foundational for this legal status.

[69.2] As stated earlier, the problems experienced by the station, are deeper than the complaints on the charge sheet. For that reason, the present case calls for a unique solution.

ORDER

[72] Accordingly, the CCC recommends to the Authority that

- 72.1 it directs Moretele FM to convene an elective AGM in which a new board of directors shall be elected, within 60 calendar days of the issue of this order.
- 72.2 a Compliance Officer/ Team from ICASA be involved to ensure that the AGM is properly advertised and properly constituted.
- 72.3 the Compliance Officer/Team supervise the elections to ensure that they are conducted properly.



Judge Thokozile Masipa
Chairperson of the CCC

3/6/2026

Date