



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 4 JUNE 2025

CASE NO: 481/2024

MOTHOBI MOKHELE

COMPLAINANT

V

AGANANG FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Ntombazi PN Sithole
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 – Mr Mothobi Mokhele

For the Respondent - Mr Molefi Rabotapi

DECISION

Judge Thokozile Masipa

INTRODUCTION

- [1] On 12 August 2024, Mothobi Mokhele, (the Complainant), referred a complaint against the Respondent to the CCC for investigation in terms of section 17(B)(a) of the ICASA Act.
- [2] The allegations were that the Respondent failed to comply with specified terms and conditions of its Licence.

THE PARTIES

- [3] The Complainant is Mothobi Mokhele, an adult male who resides within the geographical area of the Respondent.
- [4] The Respondent is Aganang FM, a community sound broadcasting service licensee, holding a class licence. It shall be referred to as the Respondent/Aganang FM/ the station or the Licensee.

THE CHARGES

- [5] The Respondent is alleged to have contravened the following:

5.1 Clause 5.1.4 of the Licence Terms and Conditions

("licence ") which states that:

"the Licensee shall provide programming as follows:

Language(s) of broadcasting:

Setswana - 44%, Afrikaans and Sesotho - 12%, isiXhosa - 11% and other 4%".

5.2 The Complainant alleged that the Respondent failed to broadcast in Afrikaans and Sesotho (including news Bulletins) and that English is being used extensively.

5.3 Clause 4.2 of the licence which states that:

"the Licensee shall provide for the participation of the community members in the affairs of the station."

5.4 The Complainant alleged that the Respondent failed to engage the community in any consultations or feedback mechanisms.

5.5 Clause 5.1.1 of the licence which states that:

"News and Information: The Licensee shall broadcast thirty six (36) minutes of local, twelve (12) minutes of provincial, twelve (12) minutes of national and seven (7) minutes of international news per day."

5.6 It was alleged that the Respondent had been sourcing programming from other stations such as Madibeng FM and Mahikeng FM, rather than maintaining the 36 minutes of local programming.

5.7 Clause 4.3.2 of the Licence which states that:

"The Licensee shall hold AGMs for the following purposes: to provide feedback on the Licensee's operational and financial performance."

5.7.1 The Complainant alleged that the station manager appeared to be the only person with access to the station's account. In addition, the station manager, allegedly, unilaterally decides how to use the funds without the involvement of management.

5.8 Clause 4.2.3 of the Licence which states that:

"The Licensee shall hold AGMs for the following purposes: to elect members of the controlling structure, for example Board of Directors, Trustees etc, subject to the Licensee's founding documents."

5.8.1 The Complainant alleged that the current Board of Directors was

elected by the station manager, acting on his own.

THE RELIEF SOUGHT

- [6] The relief sought is that the CCC make a finding of non compliance on all charges and recommend the imposition of appropriate sanctions.

THE RESPONDENT'S RESPONSE

- [7] In its response, the Respondent denied the allegations and raised the following defences.

Clause 5.1.4 of the Licence

- [8] The Respondent denied the allegation. According to the Respondent, there is no failure to comply with the Language programming requirements. It always had Afrikaans talent to fill the slots required. The only challenge it had was to keep the presenters on the system *"because the show called "Welkom Tuis" comes only once a week."*
- [9] The Respondent's, version was that the last and longest presenter to do the show was a soldier who was deployed to Cape Town during lockdown. His last show was 16 June 2020.
- [10] Another last and longest presenter to render service on Aganang FM was a lady who, after getting married, had to relocate to Johannesburg.
- [11] Similarly, the Respondent had never been without a Sesotho presenter. The presenter did a 3 hour show called "Reggae Moments" every Thursday. He went from being a content provider to co-hosting and is currently a presenter on the show from 2013.
- [12] The Respondent stated that most of the talent that left the station did so after accepting better offers elsewhere, for example commercial radio or government.
- [13] The Respondent prides itself in having been instrumental in giving young people an opportunity to grow and gain experience. Most of the presenters, who left Aganang FM, are now skilled and qualified enough to join the mainstream media.

[14] The Respondent was in the process of applying for an amendment of its licence to reflect and align with the needs of the station as reflected in its recent internal research concerning languages.

Clause 4.2 of the Licence

[15] The Respondent stated that it recognised the importance of continuous workshops and engagements with ICASA to ensure that the station fulfilled its regulatory obligations.

[16] The Respondent refuted the claims by the Complainant that there was no community engagement with the station. Instead, the station was engaged in community work which included various sports activities.

[17] The Respondent also denied that attendance registers were forged to create an impression that AGMs had taken place when it did not.

[18] The Respondent insisted that the so called forged signatures were genuine signatures of real people who could prove that the AGMs did in fact take place.

Clause 4.2 of the Licence

[19] The Respondent drew the attention of the CCC to the following:

19.1 The station manager had compiled an internal report to the AGM that covered all aspect of operations, research and compliance. According to the Respondent the report was submitted at the AGM and is used as the implementation tool to comply. Some of the aspects of the report have been completed and others will be implemented soon. This will include committees that will handle the community participation meetings.

DISCUSSION AND ANALYSIS

[20] Though the charges were straightforward, the Respondent's defence was long winded and couched in very vague terms. This certainly created an impression that the Respondent had something to hide and/or had no defence at all.

[21] In the discussion and analysis of the facts, the CCC considered a number of issues, namely:— The nature and seriousness of the non compliance, consequences of the

non compliance, circumstances under which the non compliance occurred, steps taken by the Respondent to remedy the noncompliance, and steps taken to ensure that a similar non compliance did not occur in the future.

[22] Similarly, mitigating factors and aggravating factors were considered to ensure that the CCC came up with a just recommendation in respect of a penalty.

Circumstances Under Which the Non Compliances Occurred

[23] The circumstances under which the non compliances occurred are not clear. This is because the Respondent failed to explain what led to the failure to comply. Without any explanation from the Respondent, the CCC cannot even determine if there are any mitigating circumstances.

The Nature and Seriousness of the Non Compliances

[24] All the charges set out on the charge sheet are serious and warrant a heavy penalty, if a finding of non compliance is made. However, the determination of a particular sanction will depend both the aggravating circumstances and mitigating factors, as well as the nature of each non compliance. By way of example, the exclusion of members of the community from participating in the affairs of the station, in the present case, is seen in a very serious light since we are here dealing with a community radio station.

Consequences of the Non compliances

[25] The CCC is unable to determine, with certainty, what the consequences or impact of the non compliances are. This is because the CCC has neither the resources nor the expertise to determine, assess or measure the consequences of the non compliances. Suffice it to say that in the present case, where there is non participation of members of the community in the affairs of the station, a great impact is likely to be felt, as the community is robbed of an opportunity to take its rightful place as owner of the station.

[26] Lack of community participation in the affairs of the station also means that the community is deprived of an opportunity to shape its own destiny. And, considering that we are concerned about ordinary people, at grass root level, who are usually ignored by the mainstream media, the consequences of the non compliance are serious.

Steps Taken By The Respondent to Remedy the Non Compliances

- [27] The Respondent did not take any steps to remedy the non compliances. The reason is easy to understand. Out of the five charges set out in the Charge Sheet, the Respondent conceded to only one charge, that is, failure to ensure the participation of community members in the affairs of the station. Even that concession seems to have been made reluctantly. The concession was possibly made because of the many questions by the CCC, which remained unanswered.
- [28] Initially, submissions were made to the effect that there was community involvement in the affairs of the station. However, later, it became apparent that the Respondent was unable to distinguish between community involvement or participation, as opposed to sharing the profits of the Respondent with the community.
- [29] Community involvement recognises the community as an important component of a community radio station, without which the community radio station cannot exist.
- [30] This is where members of the community are provided an opportunity to not only to run the station, but also to own it. In short, the community plays a vital role, in the affairs of the station, which cannot be satisfied by a once-a-year gathering in the form of an AGM.
- [31] On the other hand, the sharing of the Respondent's profits by the community is a separate obligation, altogether. Here the participation or active involvement of a community is likely to be minimal, if at all. More likely, the community or a certain group in the community, would be a passive recipient or beneficiary with no say in the matter.
- [32] In the present matter, it transpired that the Respondent did in fact share its profits with various community organisations. However, as commendable as that is, it cannot take the place of community participation in the affairs of the station. Currently, there is no evidence to show that the community has ever been meaningfully engaged in the affairs of the station.
- [33] It is precisely this confusion that probably caused the Respondent to boldly make the following statement:

"Many community radio stations can take a leaf out of Aganang FM's books."

"The community we serve knows our impact driven programs, not only do we have the community interests at heart, we also share the little we have with our organisations as depicted below as encouraged by the Authority- ICASA."

[34] The above statement, is confirmation of the CCC's suspicions that the Respondent equates sponsoring community projects with community participation in the affairs of the station.

[35] This shows clearly that the Respondent was actually making reference to its performance in sharing its profits with the community.

[36] It must be noted that there was no allegation, at all, that the Respondent failed to share its profits with the community. Rather, the allegation was that the Respondent failed to involve community members in the affairs of the station.

[37] In our view, this allegation has merit. One major fact that supports this allegation is that no proper AGM has been held since 2022. This alone is adequate evidence that Aganang FM failed to involve the community in the affairs of the station.

[38] The sad part is that the Respondent failed to remedy the non compliance between the period after the lodging of the complaint and the hearing thereof.

Community Participation - Clause 4.2 of the Licence

[39] It is proper at this stage to say something about the importance of involving members of the community in the affairs of a community broadcasting service.

[40] The importance of community participation in the affairs of a community radio station cannot be overemphasized. It is essential because it is the very foundation on which a community radio station is based.

[41] And more importantly, the exclusion of the community from the affairs of the station may have far reaching consequences on the running of the station. Lack of transparency and lack of accountability are just two of the problems that might arise.

[42] In the present matter, there were a number allegations of various contraventions

before the CCC. Most of these could not be verified because of lack of evidence. That, however, will not assist the Respondent. I say this because the core or fundamental aspect of the problem with the Respondent is its failure to involve members of the community in the affairs of the community.

[43] My view is that if the community were to be fully and actively involved in the affairs of the station, the chances are that the problems that the station is facing today would be minimal. A validly elected board by members of the community would, in all probability, operate transparently while remaining accountable to the community.

[44] In addition a truly active community would be in a position to make input and decisions on programming and ask the right questions about the financial performance, operational performance and other aspects of running the station.

[45] In all likelihood, if the issue of community participation were to be addressed, all the other issues that beset the Respondent would be resolved.

The Nature of A Community Radio Station

[46] It is important to note that a community radio station is unique in its nature. What distinguishes community radio stations from commercial or public broadcasting stations is the high level of participation by members of the community from management to programming.

[47] Unlike mainstream radio stations, a community radio station exists solely to serve the interests of the community. It is an entity that is for the benefit of the community and is wholly owned by the community.

[48] It is also important to bear in mind that community involvement is more than just holding an AGM once a year. It is a meaningful engagement with the community which makes it possible for members of the community to know what is going on with their radio station and to shape their own destiny, among other things.

[49] Through this community participation, members are offered an opportunity to volunteer their time, skills, expertise and experience for the good of the community through the community radio station.

[50] In the present case, such participation is nonexistent.

Accordingly, clause 4.2 of the Licence has been contravened.

Steps Taken By The Respondent to Ensure That Similar Non Compliances Did Not Occur In The Future

[51] Unfortunately no steps were taken by the Respondent to prevent a re occurrence of similar non compliances in future. This does not bode well for the future of the Respondent as it is an indication that the Respondent lacks insight into the situation. This might mean the Respondent might easily find itself facing the same problems that it is currently experiencing.

CONCLUSION

[52] From the facts, it is clear that the core problem is lack of community participation and that if that is addressed, all the other issues that beset the Respondent will be resolved.

[53] Currently, Aganang FM is in total disarray, and something has to be done quickly to ensure that the station stops being a community broadcasting service in name only. This will require not only the ability of the station to remedy the situation, but also its genuine willingness to do so. In addition, it will require assistance from ICASA, especially from its Compliance Officer.

[54] Among other things, the station needs a validly elected board. Such a board will have to act quickly to attend to the issues of governance and restore the station to the community, which is the rightful owner of the Respondent. For that reason an AGM would have to be convened as soon as it is reasonably possible, for instance, within the next three months. In addition, a close monitoring of the station by the Monitoring Division of ICASA, for as long as it is necessary, might be required.

FINDING

[55] Accordingly, the CCC makes the following finding:

55.1 In respect of

55.1.1 Clause 5.1.4 of the Licence Terms and Conditions

("licence ") which states that:

"the Licensee shall provide programming as follows:

Language(s) of broadcasting:

Setswana - 44%, Afrikaans and Sesotho - 12%, isiXhosa - 11% and other 4%". Languages

The Complainant alleged that the Respondent failed to broadcast in Afrikaans and Sesotho (including news Bulletins) and that English is being used extensively; and

55.1.2 Clause 5.1.1 of the licence which states that:

"News and Information: The Licensee shall broadcast thirty six (36) minutes of local, twelve (12) minutes of provincial, twelve (12) minutes of national and seven (7) minutes of international news per day."

there is not enough evidence that the Respondent failed to comply with the above clauses.

For that reason, the CCC makes no finding in this regard.

55.2 In respect of

55.2.1 Clause 4.3.2 of the Licence which states that:

"The Licensee shall hold AGMs for the following purposes: to provide feedback on the Licensee's operational and financial performance."

55.2.2 Clause 4.2.3 of the Licence which states that:

"The Licensee shall hold AGMs for the following purposes: to elect members of the controlling structure, for example Board of Directors, Trustees etc, subject to the Licensee's founding documents."

55.2.3 In respect of Clause 4.2 of the licence which states that:

"the Licensee shall provide for the participation of the community members in the affairs of the station."

[All the above refer to the failure by the Respondent to convene an AGM and/or involve the community in the affairs of the Respondent].

[56] On the facts, the CCC makes a finding of non compliance with Clause 4.2 and Clause 4.2.3 and Clause 4.3.2

in that the Respondent failed to convene an AGM and to involve members of the community in the affairs of the Respondent.

RECOMMENDATIONS IN TERMS OF SECTION 17E (2) OF THE ICASA ACT NO 13 OF 2000

[57] In terms of section 17E(2) of the ICASA Act the CCC recommends to the Authority the following order to be issued, by the Authority


57.1 direct the Licensee to desist from further contraventions of the Licensee's Terms and Conditions of its Licence;

57.2 direct the Licensee to take the following remedial steps:

- a) Convene an ANNUAL GENERAL MEETING (AGM) within 90 calendar days, from the issue of this judgment, to enable members of the community to elect members of the Board in terms of its Constitution.
- b) Dedicate adequate amount of time and resources that may be required for a successful AGM to ensure that the community actively participates in such an AGM.
- c) Ensure that the AGM is facilitated or overseen by the appropriate Division of ICASA.
- d) Seek the assistance of its Compliance Officer to ensure that the AGM is a success.
- e) Within six (6) months of the issue of this judgment, submit a report to

ICASA confirming its compliance with this judgment and setting out steps taken to avoid future violations of a similar nature.

- 57.3 direct the Licensee to pay, as a fine for the non compliances, an amount of R50 000 (Fifty Thousand Rand), wholly suspended for a period of three (3) years on condition that the Respondent is not found guilty of having failed to comply with the same clauses set out in the charge sheet.



Judge Thokozile Masipa
Chairperson of the CCC

Date: 31 October 2025

