



COMPLAINTS AND COMPLIANCE COMMITTEE

Date of Hearing: 21 October 2021

Case No: 421/2021

NDIITWANI MUTANGWA

COMPLAINANT

v

VHEMBE FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Dimakatso Qocha-Member
Mr Peter Hlapolosa - Member
Mr Thato Mahapa - Member
Paris Mashile - Member
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

LEGAL REPRESENTATION FOR PARTIES

None of the parties was legally represented.

Mr. N Mutangwa appeared on his own behalf as
the Complainant

Mr. N N Maluleke, in his capacity as a member of the Interim Board, made
submissions on behalf of the Respondent.

JUDGMENT

1. INTRODUCTION

[1] The Complainant is Mr Ndiitwani Mutangwa. He describes himself as the secretary of the local village committee responsible for the administration of community services "*in line with the Traditional Leadership and Governance Framework Act 41 of 2003 and Limpopo Traditional Leadership and Institutions Act 6 of 2005.*"

[2] The Respondent is Vhembe FM, a community sound broadcasting licensee operating on Class Broadcasting Service Licence No. Class/Re/COM/R225/FEB/2021.

The licence is due to expire in February 2025.

HISTORICAL BACKGROUND

[3] Because of the checkered and convoluted history of this matter it is necessary to first briefly state the background.

[4] The Complainant first lodged his complaint with the CCC against the Respondent in June 2021. When the CCC brought the complaint to the attention of the Respondent, in terms of Regulation 4(1) of the Regulations Governing Aspects of the procedures of ICASA, Mr V M Netshipale, from Netshipale Attorneys, purportedly acting on behalf of the Respondent, responded to the allegations.

[5] In his response, Mr Netshipale, requested more time in which to deliver his response and prepare a proper defence on behalf of his client, Vhembe FM. The request was granted. In addition, Mr Netshipale requested that the Complainant be directed to lodge the complaint in the form of an affidavit and that he furnish the Respondent with further particulars of the complaint. This request was refused on the basis that it had no merit.

- [6] Unfortunately, this set in motion three more requests to postpone the filing of the Respondent's defence.
- [7] Eventually it became necessary for the CCC to set the matter down for hearing as it was of the view that further delay in bringing the matter to rest would not serve the interests of justice.
- [8] Meanwhile, investigations by the Office of CCC revealed that all was not well with Vhembe FM. It became apparent that the reasons for the extended delays on the part of Vhembe FM, in responding to the complaint, had more to do with internal conflicts within Vhembe FM than the reasons set out in Mr Netshipale's letters requesting the various postponements.
- [9] It transpired that bad blood, among key players within the station, had led to faction fights and ultimately court action. (It is necessary to state that none of the court actions had any relevance to the complaint before the CCC). Nonetheless, this state of affairs prompted the CCC to ask the question: "who is Vhembe FM?"
- [10] With this question in mind the Office of the CCC sought to find persons at Vhembe FM who had legal standing to represent the station. Accordingly, Mr Percy Mathobo, the Acting Chairperson of Vhembe FM and Mr Lawrence Mashau, were invited to respond to Mr Mutangwa's complaint against the station, no later *"than close of business day on Friday, 2 July 2021."*
- [11] No such response was forthcoming from Mr Mathobo or Mr Mashau. Instead, more delaying tactics were employed by Mr Netshipale who gave notice that Mr Mathobo and Mr Mashau intended to apply for a court order to set aside the decision of the CCC that Vhembe FM answers to the allegations against it before the Complainant could answer to the request for further particulars. Further details are not necessary to delve in as they are not relevant for

purposes of this judgment. Suffice it to state that the notice was ignored and, as one might expect, nothing further was heard of it.

[12] Subsequently, the CCC delivered the NOTICE OF SET DOWN for the 21 October 2021.

[13] The hearing proceeded without Mr Netshipale as Vhembe FM had dispensed with his services.

THE COMPLAINT

[14] The complaint concerns a live interview which was broadcast on Vhembe FM radio on Wednesday 12 May 2021 between 11h00 and 12h00. It is alleged that Mr Mukhethwa Ravhuhali, the presenter on the show, contravened regulations regarding the Code of Conduct for Broadcasting Service Licensees issued in terms of section 54 of the Electronic Communications Act No. 36 of 2005.

[15] In his reply the Complainant withdrew the allegation that the presenter on the show was Mr Mukhethwa Ravhuhali when Vhembe FM pointed out, in its response, that Mr Ravhuhali was not the presenter that day. The presenter was Phumudzo Siavhe while Mukhethwa Ravhuhali was the producer of the show.

[16] The guests hosted, amongst others, were Mr Boston Tshabuse, Mr Rofhiwa Mahada and Ms Tshivhase all from Dzingahe village. It is alleged that the presenter allowed some of the guests to make unsavory comments concerning the conduct of and the role played by the Complainant in the community. Some of the Complainant's colleagues who occupied leadership positions as members of the village committee also became the subject of the discussions. This was done without giving an opportunity to the leaders concerned to respond to the allegations against them. I shall deal with each of these allegations in detail hereunder.

THE ALLEGED CONTRAVENTIONS

[17] Violence and Hate Speech - Regulation 3(1)

provides:-

"Broadcasting service licensees must not broadcast material which, judged within context:

(a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or

(b) sanctions, promotes or glamorises violence or unlawful conduct."

[18] During the discussion Mr Rofhiwa is alleged to have stated the following:

18.1 that the Civic and Village Committees were led by people who did not want to relinquish power and the residents were afraid of them;

18.2 that these leaders were selling stands to people for amounts ranging from R1500 to R50000;

18.3 that the leadership used community funds to give loans to some members of the community.

[19] During the same show Mr Boston Tshabuse is alleged to have said that his paternal uncle died as a result of having been removed from the community service.

[20] The Complainant alleged that the utterances from these guests on the show amounted to Hate Speech which promoted violence and other unlawful conduct against him and his colleagues. He alleged that violence might be committed against them since some members of the community might think that the accusations levelled against them were true.

[21] Contravention of Section 3(2):-

"Broadcasting service licensees must not broadcast material which judged within context, sanctions, promotes or glamorises violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability."

[22] Furthermore, Mr Mahada and Ms Tshivhase stated that Civic and Village Council members demanded sexual favours from members of the community before they could assist them with service delivery.

[23] The Complainant submitted that this was a serious allegation which should not have been broadcast without being verified by the station. More importantly, the presenter of the show did not even try to get to the bottom of the allegations by asking specific questions such as where the incident happened and against whom in particular. Once the allegations were made he moved on to the next point.

[24] Contravention of Section 11(2), 11(3), 12(2) and 14(1)

Comment - Regulation 11(2) reads thus:

"Comment must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to."

Regulation 11(3) provides as follows:

"Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the programme."

**Controversial issues of public importance -
Regulation 12(2)**

"A person whose views are to be criticized in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impractical, a reasonable opportunity to respond to the programme should be provided where appropriate, for example, in a right of reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned."

Regulation 14(1) reads:

"Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest."

[25] The Complainant alleged that the Respondent's comments, during the show, contravened all of the above regulations. It was submitted on behalf of the Complainant that the Respondent failed to take seriously the importance of the privacy, dignity and reputation of the people whose characters were being attacked during the programme. Moreover, there was no indication on the show that there had been an attempt to reach the true leadership of Dzingahe and invite them to the show.

THE RESPONDENT'S DEFENCE

[26] At the outset, Mr M. R. Mphephu, in his capacity as the Chairperson of the Vhembe FM Interim Board, responded to the allegations against Vhembe FM and corrected the impression created that Mr V Netshipale was the legal representative of Vhembe FM. As stated earlier, at the hearing, Vhembe FM did not have any legal representation. Accordingly, Mr. N. Maluleke was requested to make oral submissions on behalf of the Respondent.

[27] Mr Maluleke's starting point was that Vhembe FM did not deliberately tarnish people's names on the show referred to by the Complainant. The show in question was about service delivery to the community, particularly about

services provided by Eskom. Hence people on the show were those affected by the lack of service delivery, the concerned public as well as a representative of Eskom. There had been no plan to include other people.

[28] Allegations against those in leadership positions were unexpected while the utterances were not deliberately invited by the presenter. Moreover, they were treated as mere allegations as the people affected by the discussions were not present to give input. When an interviewee on the show cast aspersions against certain people, he/she was immediately cautioned not to mention names of people who were not on the show and were, therefore, not in a position to defend themselves.

[29] Mr Maluleke made an undertaking that Vhembe FM would, after the hearing, make submissions to the CCC with regard to what remedial steps it would take over and above the sanctions which the CCC might recommend to ICASA against Vhembe FM.

(I interpose to state that, at the time of writing this judgment, no feedback had been received from Vhembe FM).

ANALYSIS OF THE EVIDENCE

[30] Like any other community broadcaster, Vhembe FM is free to provide an independent platform for interactive discussion about matters and decisions of importance to the community. This freedom, however, is not to be misused. Furthermore, it is a limited right as can be seen from the Constitution of the Republic of South Africa, 1996.

(See Section 16 of the Constitution which deals with Freedom of Expression)

[31] An analysis of the discussion during the interview, which is the subject of the present complaint, reveals that what was said had the effect of being hurtful and damaging as people's characters were attacked. The Complainant certainly has reason to complain. However, none of what was said by the guests contained violence or sanctioned or promoted violence against the Complainant or anyone. In addition, none had to do with race, ethnic origin,

colour, religion or any of the disabilities mentioned in the Regulation dealing with Hate Speech.

- [32] The CCC views in a serious light the use of such a powerful medium as radio to tarnish people's characters as it is clearly inexcusable. Sadly, the CCC has no power to adjudicate cases of this nature. The correct forum to hear defamation cases is not the CCC but a High Court with competent jurisdiction.
- [33] What happened on the show was that some guests were allowed to seriously attack characters of leaders who were not given an opportunity to refute what had been said against them. Vhembe FM's defence that the presenter cautioned the guests not to mention people's names after the names had already been mentioned, cannot assist it. I say this because that was like closing the stable after the horse had bolted. More was required on the part of Vhembe FM. It could have distanced itself from the unsavory utterances. It did not. And that was the unfortunate part, in my view.
- [34] It follows from the above that serious as the allegations are, they cannot be said to constitute Hate Speech. The allegation that there was a contravention of Regulation 3(1) and 3(2), therefore, cannot stand.
- [35] It is so that Vhembe FM may have been taken by surprise when the discussion took an unexpected turn and included issues outside the planned discussion. That cannot be a defence but can serve as a mitigating factor. When the unexpected happened, Vhembe FM had a responsibility to invite the people affected by the discussion and afford them an opportunity to respond to the allegations against them. It did not take this remedial step. In my view, failure of Vhembe FM to do so was irresponsible.
- [36] It seems to me, that on a proper reading of Regulation 11(2) and 11(3), the discussions, which are the subject of the complaint in this matter, do not fall under the definition of 'comment' as set out in the Regulations. No views were being criticized that would have warranted a reply from those who were being

criticized. But as already stated above, one way to remedy the wrong done to the people whose characters were being attacked, would have been to invite them to answer to the allegations.

[37] If my understanding of the Regulations is correct, the utterances that prompted the present complaint can also not fall under Regulation 12(2) as that regulation specifically relates to controversial issues of public importance. We are here concerned with a discussion that was allegedly about the lack of service delivery by Eskom, which discussion veered off course, as it were. It follows, therefore, that it cannot be said that Regulations 11(2), 11(3) and 12(2) were contravened during the interview. Accordingly, the complaint brought under these regulations cannot be upheld.

[38] That leads to the allegation that Vhembe FM contravened Regulation 14(1). It is so that the right to privacy, dignity and reputation of individuals may be overridden by a legitimate public interest. Vhembe FM did not deny that slanderous utterances were made against the Complainant. Significantly, it did not and could not suggest that the rights to the Complainant's privacy, dignity and reputation were overridden by a legitimate public interest. For that reason, I would uphold the complaint.

FINDINGS

[39] In the result, the CCC makes the following finding:

39.1 The allegation that Vhembe FM contravened Regulations 3(1) and 3(2) of the Regulation is not upheld. The complaint in this regard is therefore dismissed.

39.2 The allegation that Vhembe FM contravened Regulation 11(2); 11(3) and 12(2) are not upheld. The complaint in this regard is dismissed.

39.3 The allegation that Vhembe FM contravened Regulation 14(1) is upheld.

ORDER

[40] Accordingly the CCC recommends the following order to be issued by ICASA that:

40.1 Vhembe FM is directed to desist from further contravening Regulation 14(1).

40.2 Vhembe FM is directed to take the following remedial steps:

40.2.1 issue an apology to the Complainant and that such apology be broadcast once just before the introduction of any regular/popular live show. During the same broadcast, Vhembe FM is directed to distance itself from the utterances of its guests concerning the Complainant made on 12 May 2021 during a talk show on 'lack of service delivery'.

40.2.2 The broadcast in paragraphs 40.2.1 above be made within 14 days after ICASA has published its findings.

TMMasipa

Judge Thokozile Masipa

CCC Chairperson