



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 18 OCTOBER 2024**

**CASE NO: 474/2024**

**LEBOHANG THAKO**

**COMPLAINANT**

**V**

**MIX 93.8 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 - Mr Lebohang Thako

For the Respondent - Mr Mtakati - Chairperson of MCC  
Mr Kudzayi - Station Manager

---

## **JUDGMENT**

---

Judge Thokozile Masipa

### **INTRODUCTION**

- [1] On 31 May 2024, the Complainant referred this matter to the CCC for investigation in terms of section 17B(a) of the ICASA Act.

### **THE PARTIES**

- [2] The Complainant is Lebohang Thako, an adult male who is approaching the CCC as a member of the community and listener of Mix FM.
- [3] The Respondent is Midrand Community Communications (MCC) Project (054-603 NPO), a Community Sound Broadcasting Service, known as MIX 93.8 FM.
- [4] In February 2024, the Authority granted and issued a renewal licence, A CLASS BROADCASTING SERVICE LICENCE No: Class/Re/Com/R125/Feb/2024, to MIDRAND COMMUNITY COMMUNICATIONS PROJECT (054-603) for the provision of Community Sound Broadcasting Service to be known as MIX 93.8 FM.

### **THE LICENSEE**

- [5] The Licence was issued to the Midrand Community Communications (MCC) Project (054-603 NPO). In terms of the licence, the control of the Licensee shall vest in the Board of Directors of Midrand Community Communications Project (054-603 NPO).
- [6] The Licensee shall provide services to its Geographic Coverage Area, namely: — a geographic community residing within the geographic area specified in the Licence.

### **THE COMPLAINT**

- [7] The Complainant alleged that the Respondent contravened the following:

7.1 Clause 4.2.1 of its Licence Terms and Conditions which states that:

*"the Licensee shall hold at least two (2) meetings annually with its community on programming and programme related matters for the selection and provision of programmes."*

[8] Clause 5.1.2 of the Licence which states that "the Licensee shall provide programming as follows: South African Music Content - 80%".

8.1 The Complainant alleged that the Respondent does not broadcast 80% South African Music Content.

[9] Contravention of Clause 5.1.3 of the Licence which states that *"the Licensee shall provide programming as follows: Talk and Music: 50% Talk and 50% Music."*

9.1 The Complainant alleged that the Respondent does not meet its 50% Talk and 50% Music quota.

[10] Clause 5.1.4 of the Licence which states that *"the Licensee shall provide programming as follows:*

*Language(s) of broadcast - 5.1.4.1  
English 80% and 5.1.4.2 IsiZulu 20%."*

10.1 The Complainant alleged that the Respondent does not meet its language requirements of 80% English and 20% IsiZulu.

[11] Clause 1.3 of the Licence which states that *"Control of the Licensee shall vest in the Board of Directors of Mirand Community Communications Project (054 603 NPO)"*.

11.1 The Complainant alleged that the Respondent rendered a third party entity as a shareholder and owner of a community broadcasting licence, in that a company that is not mandated by the Licensee is operating the radio station.

[12] The Complainant further alleged that the station is not broadcasting and managed in terms of or in accordance with the management contract lodged with the Authority which was signed by the Midrand Community Communications and dated April 2024.

[13] Regulation 10A (7) (d) of Schedule 1 of the Standard Terms and Conditions Regulations for Class Licenses of 2010 as amended which states that "*General Obligations of Licensees (7) Ownership and Control of Community Television and Community Radio (d) the Board of Directors/Trustees and station management must not occupy dual roles with regard to being managers/presenters at the radio station.*"

13.1 The Complainant alleged that the Board member, Mr Cliff Hocking, is a presenter on Mix FM which is a violation of ICASA's anti-dual roles policy,

## **THE RELIEF SOUGHT**

[14] The Complainant sought the following relief that:

- 14.1 The broadcaster be ordered to pay a fine for the non compliance;
- 14.2 The licence be suspended;
- 14.3 Alternatively, control of the licensee be restored to a Board of Directors
- 14.4 The broadcaster be instructed to comply;
- 14.5 ICASA takes action that is deemed fit.

## **RESPONSE TO THE COMPLAINT**

[15] The Respondent admitted the allegations against it, and made an undertaking to remedy the problems. The details are set out hereunder.

### ***Charge 1***

***Contravention of Clause 4.2.1 of the Respondent's Licence Terms and Conditions.***

[16] Clause 4.2.1 of its Licence Terms and Conditions states that:

*"the Licensee shall hold at least two (2) meetings annually with its community on programming and programme related matters for the selection and provision of programmes."*

[17] The allegations were admitted by the Respondent. In addition, the board resolved *"to comply with this condition"* through the following measures:

17.1 The Board submitted that in the program of action for the new Board from the elective AGM, the plan was to amend the Constitution so that it included community participation platforms and mechanisms in accordance with the Electronic Communications Act of 2005 as amended, the Community Broadcasting Services Regulations of 2019, and Standard Terms and Conditions of 2021 and Service Licence Conditions.

17.2 The Board also expressed its intention to explore the option to draft Terms of Reference document for the establishment of a community programming committee/listeners forum structure to outline its members, duties and responsibilities from other structures within the organisation for better management of the organisation.

## **Charge 2**

***Contravention of Clause 5.1.2 of the Licence*** which states that *"the Licensee shall provide programming as follows: South African Music Content - 80%"*.

[18] It was alleged that the Respondent does not broadcast 80% South African Music Content.

[19] The allegations were admitted. Once more the Board resolved to comply with its regulatory obligations.

[20] In addition, it drew the attention of the CCC to the following:

20.1 The ICASA South African Local Music Regulations were published in 2016 repealing the 2006 South African Local Music Regulations. Part of the changes in the 2016 were the revised quotas for local music for all the three tier broadcasting service licensees.

20.2 Regulations 3.3 of the 2006 South African Local Music Regulation had the quota for community sound broadcasting licensees at 40%. The 2016 South African Music Regulations in Regulation 3.3 revised the quota to 60% after 18 months from the date of gazetting and then with an increase of 10% annually until 80%. This means all community sound broadcasters should have been broadcasting at 80% of South African music by September 2019, according to the Respondent's understanding.

20.3 Unfortunately the Respondent was not able to meet the quota as set out in the Regulation. It was, however, currently working with the team from programming and music departments to address the non compliance as a matter of urgency.

### **Charge 3**

**Contravention of Clause 5.1.3 of the Licence** which states that "*the Licensee shall provide programming as follows: Talk and Music: 50% Talk and 50% Music.*"

[21] It was alleged that the Respondent failed to meet its 50% Talk and 50% Music quota.

[22] The Respondent admitted the allegations and undertook to ensure that there was compliance henceforth.

[23] The Respondent submitted that the current formal split is 60% music and 40% talk. The current format would be adjusted in accordance with the licence conditions. The format of the programming during the week is mostly an even split from one program to the next with the most split over the weekend to a more music driven than an even split which affects the overall week day output split. The Board, with the programming team, would put measures in place to ensure that the current format split is complied with accordingly.

#### **Charge 4**

**Contravention of Clause 5.1.4 of the Licence** which states that "*the Licensee shall provide programming as follows:*

*Language(s) of broadcast - 5.1.4.1  
English 80% and 5.1.4.2 IsiZulu 20%."*

[24] It was alleged that the Respondent failed to meet its language requirements of 80% English and 20% IsiZulu.

[25] The Respondent admitted the allegations and the Board undertook to ensure that there was compliance henceforth.

[26] The Respondent explained that it had an ongoing challenge as an attempt to address the non compliance with the language spread has not been successful.

[27] Currently the language of broadcast was English. Meanwhile the Respondent was working on an amendment to be submitted to the Authority which would include all the languages as contained in the service licence conditions.

#### **Charge 5**

**Contravention of Clause 1.3 of the Licence** which states that "*Control of the Licensee shall vest in the Board of Directors of Mirand Community Communications Project (054 603 NPO)".*

[28] It was alleged that the Respondent caused a third party entity to be a shareholder and owner of a community broadcasting licence, in that a company that is not mandated by the Licensee is operating the radio station.

[29] The Complainant further alleged that the station is not broadcasting and managed in terms of or in accordance with the management contract lodged with the Authority which was signed by the Midrand Community Communications and dated April 2024.

[30] The Respondent denied the allegations that it had transferred to a third party entity shareholding and/or ownership of the community broadcasting licence.

[31] The ECA defines community broadcasting services as non profit and licensed to a no-profit making entity. As per the background explanation, the radio is licensed to a non profit organisation registered with the Department of Social Development in accordance with the provisions of the NPO Act.

[32] Regulation 10 A (12) 2016 of the Standard Terms and Conditions made provision for licensees to enter into agreement with management companies that can manage operations on behalf of the Licensee which must be lodged with the Authority.

[33] Regulation 12 of the Community Broadcasting Services Regulations of 2019 that repealed the above mentioned provisions in the Standard Terms and Conditions outlines the process for entering into a management contract as well as requirements thereof in principle.

[34] The current Board that was elected in February 2024 has entered into such a management contract and it has been lodged with the Authority accordingly for responsibilities as prescribed in law.

[35] In addition, there is no third party who is a shareholder or a member of the board in the Licence Holder.

### **Charge 6**

**[37] Contravention of Regulation 10A (7) (d) of Schedule 1 of the Standard Terms and Conditions Regulations for Class Licenses of 2010 as amended** which states that *"General Obligations of Licensees (7) Ownership and Control of Community Television and Community Radio (d) the Board of Directors/Trustees and station management must not occupy dual roles with regard to being managers/presenters at the radio station."*

[38] It was alleged that one of the members of the Board of the station also occupied a role as a presenter.

- [39] The Respondent admitted that prior to the election of the current Board, one member of the Board was also a presenter of the station. The said member had been a presenter before he was elected as a member of the Board. After the elections, he continued in the two roles. This came to the attention of the Board in May 2024. The Board decided he had to resign from one of the roles, or the Board would expel him. This member eventually left and is no longer part of Mix FM.
- [40] A document dated 20 May 2024, refers to the elective AGM which took place on 29 February 2024. One of the members elected was Clifford Hocking, the member mentioned in the previous paragraph.
- [41] The admission is sufficient as proof of non compliance. The Respondent's case is that although Clifford Hocking acted in dual roles for a period of three months, the Board did not know anything about it.
- [42] Considering that during that period Mr Hocking was also a Board member, the said statement must be taken with a grain of salt.
- [43] I say this because members of the Board must have recognised his voice on air each time Mr Hocking worked as a presenter. This is a serious indictment on the Board. By not being aware (if this is to be believed), that Mr Hocking, one of their members, was also a presenter at the station, the Board was guilty of gross negligence.

## **HISTORICAL BACKGROUND**

- [44] This is no run of the mill case. To fully understand it and its nuances, the facts ought to be placed in perspective. Such an exercise would assist to distinguish this case from others which may appear similar. This might also afford the CCC an opportunity to consider an innovative approach in respect of a possible sanction.
- [45] I now turn to the historical background as provided by the Respondent. Notably, the historical background was not contradicted.
- [46] The Midrand Community Communications registration number 054-603 NPO, which is the Licence Holder for Mix FM, held its elective Annual General Meeting (AGM) on Thursday, 29 February 2024 in accordance with its founding documents and

service licence conditions. The AGM notice was broadcast on air and published in the newspaper.

[47] At this AGM, two new board members were elected to complement three board members who were part of the previous board.

[48] The Board then consisted of the following members:

Khuliso Mafumadi - Chairman Gordon Mtakati, Clifford Hocking, Sanelisiwe Mbatha, and Warwick van Breda who resigned on 17 May 2024.

[49] At the first board meeting it was observed that there were governance challenges and issues of noncompliance with the Regulations. These challenges had been neglected over the years and needed to be addressed urgently by the new Board.

[50] The Board members sought to address these issues through committees and other units.

[51] One of the main challenges faced by the new board was that a third party, station, refused to hand over the reins and continued to control the affairs of the station. This meant that the Board had no control at all and, as a result, was unable to implement any plans to rescue the station from the current situation. That much was conceded by the station manager, Mr Kudzayi.

[52] The history given to the CCC commences on Thursday 29 February 2024 at the elective AGM. What went on before then was not before the CCC.

[53] For that reason, it was not clear how long Bambanani has been in control. All the CCC knows is that Bambanani, the predecessor to the current managing company, is acting unlawfully and this cannot be allowed to continue.

[54] In terms of the Regulations and the licence terms and conditions of the Licensee's licence, the control, governance and management of Mix FM remains the sole responsibility of the Midrand Community Communications through its Board of Directors.

[55] If a third party, therefore, assumes the responsibility and control of the radio station, that would be a violation of the Regulations and licence terms and conditions of the Licensee.

[56] In the present case, the CCC was assured that the Board did try to do something about the situation. Among other things, it engaged Bambanani and requested it to relinquish its control over Mix FM. When this engagement did not yield the expected results, it approached ICASA through the Licensing and Compliance Division for assistance in removing Bambanani from the seat of control over Mix FM. At the time of the hearing, the process was underway and the Board was still awaiting feedback from the Division.

## **SUMMARY OF THE CHARGES**

[55] In an email, addressed to the CCC Coordinator and dated Monday May 13, 2024, Mr Lebohang Thako, the Complainant, summarised the charges as follows:

*"This licensee does not adhere to their licence conditions in that:*

1. *The licensee does not conduct programming meetings as per the licence conditions*
2. *The Licensee does not broadcast 80% South African Music Content.*
3. *The Licensee does not meet its 50% Talk v 50% music quota.*
4. *The Licensee does not meet its language conditions of 80% English and 20% Zulu.*
5. *I have strong reasons to believe that the Licensee has rendered a third party entity as a shareholder and owner of a community broadcasting license.*
6. *Board Member, Cliff Hocking is a presenter on Mix 93.8 FM. This is direct violation of ICASA's anti dual roles policy. This has been going on for a long time."*

## **ANALYSIS**

[56] As stated earlier, the Respondent admitted all but one charge. In respect of all the admitted charges, the Board made an undertaking that it would resolve the issues and ensure that the Respondent complied with its regulatory obligations.

- [57] The plan of action by the Board seemed doable, until one scrutinised the facts. During the course of the hearing, it became apparent that the chances of the Board implementing any of its plans were slim.
- [58] I say this because the charges in this case are inextricably linked to the fact that the new Board has no power to change or shape the destiny of the station, let alone run its business. This is so because Bambanani, not the licence holder, is currently in control.
- [59] The CCC was informed that it was not easy to dislodge Bambanani from this position of authority, as it held sway over the station's purse strings. In addition, it owned the equipment and could dictate how the station should operate. This included planning programmes as well as making decisions on content.
- [60] This is disturbing and calls for action on the part of the Regulator. While a suspension of the licence may sound appealing, as a possible solution to the problem, it has to be noted that the CCC is a creature of statute and cannot act outside the scope of its jurisdiction.
- [61] Section 17E(2)(d) qualifies the CCC's powers to recommend the revocation of a licence by limiting its exercise to instances where "*the licensee has repeatedly been found guilty of material violations*".
- [62] This means that the power to recommend that the licence be revoked can only be exercised in specific instances, i.e. where "*the licensee has repeatedly been guilty of material violations*".
- [63] In the present case the above question does not arise, ***inter alia***, for the following reasons.
- [64] The Licensee in the present case has not repeatedly been guilty of material violations.
- [65] The Licensee appeared before the CCC to answer allegations of non compliance with its Licence Terms and Conditions. None of these non compliance issues can be tackled without referring to the all important question of who is in control. So, even

if the suspension of a licence was warranted, that would fail to solve the root cause of the problem, which is the issue control.

### ***Common Cause Facts***

- [66] It is common cause that the entity in control is not the licence holder but a third party, an entity by the name of Bambanani. Also, common cause is that this is against the Regulations. The question is what is the best solution?
- [67] In the course of an argument, the Respondent made an impassioned plea that the station's licence should not be suspended. It was argued, on its behalf, that suspending the licence of the station would not solve the problem. Instead, such a decision would be against the public interest as the community served by Mix FM would suffer prejudice.
- [68] The Respondent's submission above has merit. Mix 93.8 FM is a community radio station ***which, inter alia***, plays a vital role in the development of the community.
- [69] The station has been in operation since 2008, long enough to have had a strong bond with the community it serves. Its unceremonious departure from the scene is likely to have a significant adverse impact on the lives of members of the community.
- [70] It must be mentioned that no one doubts that the new Board genuinely wants to see the station progressing and being fully compliant with its regulatory obligations. The new Board demonstrated its willingness to resolve the issues by taking action. It discussed the issue with Bambanani. When that strategy failed, it approached the LCD for assistance and advice.
- [71] From what the CCC heard, it is apparent that Bambanani is adamant that it will not relinquish its control over the station. Also apparent is that the new Board has no wherewithal to fight back effectively.
- [72] It is obvious that the Plan of Action by the Board is likely to remain just good intentions on paper, as long as Bambanani is on the scene. This is so because currently, the Respondent can do little, if anything, as it is hamstrung by a total lack of control over the prevailing situation.

[73] In an attempt to resolve the issues raised in this case, the CCC approached the Licensing and Compliance Division (LCD) to provide the following information regarding Mix FM:

74.1 Latest Compliance Report;

74.2 Status of the Ownership of Mix FM; and

74.3 The progress on the Bambanani takeover issue

[75] The LCD's report on the above certainly assisted the CCC in making progress. Among other things, the LCD is reported to have served a notice of non compliance while inspectors ordered a halt to the transmission. Although Bambanani is reported to have refused to sign the notice or to cease transmission, it is a matter of time before the issue is resolved. I say this because the CEO of ICASA is empowered to instruct inspectors to halt transmission and cease equipment.

## **FINDING**

[76] Having considered all the facts before it, the CCC makes the following finding.

### ***76.1 Finding in respect of***

#### ***Charge 1***

**The Respondent is found to have contravened clause 4.2.1 of its licence as charged.**

### ***76.2 Finding in respect of Charge 2***

**The CCC's finding is that the Respondent has contravened clause 5.1.2 as charged.**

### ***76.3 Finding in respect of Charge 3***

**The Respondent is found to have contravened clause 5.1.3 of its licence as charged.**

### ***76.4 Finding in respect of Charge 4***

**The Respondent is found to have contravened clause 5.1.4 of its licence as charged.**

***76.5 Finding in respect of Charge 5***

**There is not enough evidence in support of this charge. No adverse finding is, therefore, made against the Respondent in respect of Charge 5.**

***76.6 Finding in respect of Charge 6***

**The Respondent is found to have contravened Regulation 10A (7) (d) of Schedule 1 of the Standard Terms and Conditions Regulations for Class Licenses of 2010 as amended.**

**CONCLUSION**

***Appropriate Sanctions***

[77] In determining what the most appropriate sanction is, the CCC had to take into consideration the gravity and seriousness of the non-compliances, the consequences thereof as well as the steps taken to remedy the situation. In addition, the CCC considered whether there were any steps taken to ensure that the contraventions do not re-occur.

***The Gravity and Seriousness of the Non Compliances***

[78] That the non-compliances in this matter are serious cannot be disputed. Licence terms and conditions are prescribed for a good reason. Among other things they guide Licensees in what they can or cannot do within the law. They also ensure that there is order in the industry among various stakeholders. A noncompliance disturbs that order and the equilibrium in the industry.

***Consequences of the Non Compliances***

[79] The CCC does not have a formula or methodology to measure the impact of a contravention but can only generalise. Consequences of a non-compliance, if not detected and dealt with promptly may create loss of confidence in the regulatory system.

[80] In addition, it may encourage other Licensees to breach the terms and conditions of their licenses and/or Regulations with impunity. That is why it is important that the Authority should deal swiftly and effectively with complaints that come to its attention.

### ***Steps Taken to Remedy the Non Compliance***

[81] The new Board commendably dealt with the challenges at the station by approaching Bambanani with a view to resolving the issue of control. When this effort failed, the Board approached the Authority for assistance.

[82] The new Board was also instrumental in terminating Hocking's appointment at the station when it became aware of his dual role as a member of the Board and as a presenter in Mix FM.

### ***Steps Taken to Prevent Similar Contraventions in the Future***

[83] Under this subtitle it is important to note that the contraventions in this matter are interlinked to the question of control over the Licensee. The Board may have a plan of action to prevent future contraventions, but as long as Bambanani is in control, there is little chance that such action would be implemented. Suffice it to state that the Board did approach the ICASA's Licensing and Compliance Division for assistance.

### ***Mitigating Factors***

[84] Also taken into consideration was the fact that the new Board admitted the five charges and undertook that it would do something about them. This is notable. More importantly, it did this without trying to put the blame on someone else.

[85] It was only through the history that was provided, that the CCC became aware of the involvement of Bambanani. The fact that the new Board accepted that it was accountable, for what was happening in the station, must count in its favour. So, was its impassioned plea that a suspension of the licence would not be ideal as it was likely to harm the community that is served by Mix FM.

[86] The CCC took into consideration that the new Board has been in existence since the 29 February 2024. This means it was three months old when the present charges were filed against Mix FM, in May 2024. That the steps taken by the Board, to resolve the issue, have not borne any fruit yet, should be seen in the context of this short period.

## **RECOMMENDATIONS**

[87] In terms of Section 17E (2) the CCC recommends to the Authority that it

87.1 directs the Licensee to desist from further contravention of its Licence terms and conditions;

87.2 Issues the Licensee with a licence suspension notice to allow the parties to resolve their impasse by 30 April 2025 and restore control of the licensee to the MMC Project Board of Directors, failing which the Authority must consider suspending the Licence until there is resolution.

87.3 In respect of Charges 1, 2, 3, 4, and 6, direct the Licensee to pay as a fine an amount of ten thousand rands (R10 000.00) for each charge. The total amount is fifty thousand rands (R50 000.00) which is wholly suspended for a period of three (3) years on condition there are no similar contraventions during the period of suspension.

[88] In view of the fact that the non-compliances, that the Respondent admitted, are linked to the unlawful control over the station, by Bambanani, it shall not be necessary to consider any further sanction; save to

88.1 direct the Licensee to approach the Authority for the purpose of surrendering the licence; subject to the impasse between parties not being resolved by 30 April 2025.

88.2 and to invite the Licensee to make a new application for a licence in respect of Mix FM.

*TMMasipa*

---

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

**Date: 25 November 2024**