



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 5 AND 6 SEPTEMBER 2024

CASE NO: 464/2024

KOENA DAVID MONYEBODI

COMPLAINANT

V

WITBANK FM T/A EMALAHLENI FM

RESPONDENT

AND

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**EMALAHLENI CONCERNED COMMUNITY AND
CIVIC ASSOCIATION**

COMPLAINANT

V

WITBANK FM T/A EMALAHLENI 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 David Monyebodi
Mr Jacob Masina

For the Respondent - Mr Isaac Mampane

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

PREAMBLE

- [1] *"2.1 We, the people of Malahleni pledge to continue the struggle against historical injustice and consequent impoverishment of our freedom and well being, by establishing community radio station that will mobilise and develop Emalahleni to become a home for diverse people living in peace and economically self-reliant."*

MISSION

- [2] *"Deliver a professional, community centred and financially sustainable broadcasting service that informs, educates and entertains the community."*
- [3] So read the preamble and the mission statement ushering the new community radio station and hope in Witbank.
- [4] In a small town, with limited opportunities, such as Malahleni, the preamble and the mission statement above, must have brought hope and optimism to the community of Emalahleni. Here was an opportunity for the community to improve and develop - something that would enable ordinary people to have a say in shaping their destiny as a community and as individuals.
- [5] As a community, people of Emalahleni were going to be owners of a vehicle of communication that would benefit them and their children. They were going to use

their community radio station to educate themselves and improve their lives. In addition, Witbank FM would come with employment opportunities for local residents. In short, there was hope of a better life "*for all who live in Emalahleni.*"

- [6] Sadly, that hope remained a dream unfulfilled and soon the community of Emalahleni had a different story to tell.
- [7] A year later, Witbank FM has turned into a battleground. Competing interest groups saw to that. Moreover, the promise of a better life "*for all who live in Emalahleni*", has remained a mere dream. Amidst allegations of serious governance issues and maladministration, the station is, *inter alia*, battling to pay basic salaries to its workers. The saddest part is that the community of Emalahleni is ignored and excluded from decision making.
- [8] As a sequel to the above, two separate complaints were referred to the CCC in terms of section 17B

THE COMPLAINT

- [9] Each Complainant filed a complaint which was allocated a case number.
- [10] However, because, the facts are similar and the complaints overlap, it became prudent to hear the two matters simultaneously. For that reason only one judgment is issued for the two matters.
- [11] The *rationale* for consolidating the two matters, was among other things, to save time and costs as well as for convenience. It was also to avoid possible undesirable duplication of charges or worse still, conflicting decision.

THE PARTIES

- [12] The Complainant in the first matter is Koena David Monyebodi, Technical and Production Manager at Witbank FM. He shall be referred to as Mr Monyebodi.
- [13] The second complaint was lodged by the Emalahleni Concerned Community and

Civic Association, ("Emalahleni"/"Civic Association"). Emalahleni requested that the matter be heard on an urgent basis in terms of Regulation 6 of the Regulations Governing the Aspects of the CCC, 2010, as it amended.

THE ISSUE OF URGENCY

[14] The Respondent, having been given an opportunity to make submissions on the issue of urgency, disputed the urgency of the matter. After considering submissions from both parties, I dismissed the request for the matter to be heard urgently, as I was of view that no case had been made out for urgency. More reasons are set out hereunder.

THE REASONS FOR THE DISMISSAL

[15] As stated earlier, in the second matter, the Complainant requested that the complaint be dealt with as a matter of urgency in terms of Regulation 6 of the Regulations Governing the Aspects of the CCC, 2010.

[16] The Respondent disputed the urgency of the matter, on the basis that the reason behind wanting the matter to be heard on an urgent basis was to disrupt the disciplinary proceedings that were pending against Mr Monyebodi.

[17] On the facts before me, the allegations by the Respondent had a ring of truth. A perusal of the papers, revealed a chequered history and infighting between various parties within the station. So, it was not surprising that a large portion of the complaints were rooted in labour-related issues over which the CCC has no jurisdiction.

[18] Since the process to address these issues was already underway, a sensible approach was to let the relevant authorities handle the labour related issues first and get them out of the way. I also bore in mind that no prejudice would be suffered by anyone if the matter was not heard urgently.

[19] The parties, in this matter, were then given adequate time to deal properly with the issues before the CCC by adhering to the usual timelines.

DETAILS OF THE COMPLAINT

A. Complaint No 1

Complainant: David Monyebodi

[20] The Complainant (David Monyebodi), alleged that the Respondent had contravened the following:

20.1 **Regulation 5(2) of the Community Broadcasting Services Regulations of 2019 ("Regulations").** Regulation 5(2) states that *"the composition of the Board must exclude immediate family members such as parents, siblings, children connected by birth or adoption, etc."*

[21] It was alleged that the Chairperson of the Board, Samuel Walter Mampane, is related to the Station Manager, Isaac Magapu Mampane.

[22] The Complainant led evidence to the effect that one of the two men referred to the other as *"mtwana ka Mamncane"* meaning *"child of my mom's sister."*

[23] The Respondent denied the allegations. No other evidence was led on behalf of the Complainants.

[24] **Regulation 9(a) of the Regulations** which states that *"the following office bearers must not play any role in the Board, Management and Staff of a Community Broadcasting Service: (a) Members of the Local Executive Committees of political parties, the youth affiliates and the women's affiliates of political parties, and any organisation that is in alliance with a political party."*

[25] It was alleged that Samuel Mampane, while being a member of the Board, was also an executive member of the African National Congress in branch 13 Emalahleni.

[26] This allegation was denied but the Complainant chose not to lead evidence to prove

the allegation, or provide more information, not even when the parties were given an opportunity to submit additional written submissions.

- [27] **Clause 18.2 of the Witbank FM Constitution (“Constitution”)** which states that:

“the Board is responsible for making decisions and acting on such decisions, which it believes it needs to make in order to achieve the objectives of the organisation as stated in the constitution, however such decisions and their activities may not be against the resolutions of the members or be against the law of the Republic of South Africa.”

- [28] It was alleged that at the previous Annual General Meeting (“AGM”) in November 2022, the station changed its name from Witbank FM to Greater Coal FM. However, this issue was never discussed.

- [29] In addition, proper procedures, such as consulting relevant Stakeholders of the Station, were not followed, it was alleged.

- [30] **Regulation 8(1) and 8(2) of the Regulations** which states that:

“(1) An intention to transfer a licence from one entity to the other must be tabled and endorsed by the licensee’s constituency either at the AGM or Special General Meeting and

(2) full disclosure of the intended transfer must be tabled and submitted to the community served”.

- [31] It was alleged that there was a transfer of a licence of Witbank FM to another entity which issue was never discussed and endorsed at an AGM.

- [32] **Clause 18.3.1 of the Constitution** which states that:

“raise funds or to invite donors and receive contributions on behalf of the organisation.”

[33] It was alleged that the Board and the Station Manager failed in their fiduciary duties to raise funds for the Station.

[34] **Clause 20.5.1 of the Constitution** which states that:

"the Board of Directors shall consist of not less than 7 Executive members democratically elected at the AGM."

[35] It was alleged that one of the Board members was expelled for no valid reason and was never replaced. The current number of Board members is less than seven. This, eventually, became common cause as the Respondent admitted that the number of Board members was less than the requisite number, which is seven.

[36] **Regulation 13(2) of the Regulations read with clause 32.2 and clause 33 of the Constitution. Regulation 13(2)** states that:

"a licensee must involve the community members in the management of the Community Broadcasting licensee."

[37] It was alleged that the current Board deprived the community an opportunity to participate in the affairs of the Station. This allegation was not denied and there was no valid defence.

[38] **Clause 21.1.5 of the Constitution** which states that:

"the organisation is properly audited and accounts to be shared with the public."

[39] It was alleged that at the last AGM in November 2022, the Community Audience Advisory Committee members and community members were never apprised of the state of the finances of the Station. Again this allegation was not denied and there was no defence raised.

B. Complaint 2

Complainants - Emalahleni Concerned Community and Civic Association

[40] The charges against the Respondent by Emalahleni Concerned Community and Civic Association are set out hereunder:

[41] The Complainant alleged that **there was maladministration at Witbank FM in that it the station contravened its Constitution.** More specifically, the Complainant alleged that:

41.1 The current Chairperson of the Board of Witbank FM is an executive member of the African National Congress (ANC) in branch 13, Emalahleni, **thereby contravening Clause 13 of the Witbank FM's Constitution** which provides:

"13 Ending Membership

13.2 Staff and management and Board members must not be office bearers of any political party and its allies, if so, it shall be terminated with immediate effect."

41.2 The next allegation was that the current Board of Witbank FM is not reaching the required number of members. As a result, the members do not form a quorum to take decisions on behalf of the Station. It was alleged that **such conduct amounts to the contravention of Clause 20.5 of Witbank FM's Constitution**

41.3 The clause concerned provides as follows:

"20.5 Composition of the Board of Directors: The Board of Directors shall consist of not less than 7 (seven) members democratically elected at the Annual General Meeting."

[42] **There is no community participation as required by clause 32 of the Station's Constitution.**

[43] It was alleged that Witbank FM failed to convene meetings with Community Audience Advisory Council as required by the Station's Constitution on programming content discussions.

[44] Witbank FM **is not complying with the language obligations as per the licence terms and conditions.**

[45] The Board of Directors of Witbank FM **failed to provide Annual Reports including Financial Statements as required by the station's Constitution.**

[46] The allegations above were not denied. There was also no attempt by the Respondent to raise a defence.

THE RESPONDENT'S RESPONSE

[46] In a document titled REPORT TO ICASA, dated 3 May 2024, the Respondent responded to some of the allegations above. The report was compiled by Mr Samuels Walter Hermans, the Chairperson of the Board. I set out the response verbatim hereunder.

"Case number 464/2024 and response as per item the following section 2.

2.1 Mr Isaac Magapu and Mr Walter Samuel Herman are not immediate family members. Only their mothers have similar names, "Mampane" but they are not related.

2.2 Mr Samuel Walter Herman is not an executive member of the ANC or any other political party.

[47] According to Mr Hermans, Mr Monyebodi took it upon himself to disrupt the business of the station by, among other measures, calling unauthorised workers' meetings

which included members of political parties who claimed that they represented the community.

- [48] At one of the meetings, at the instructions of Mr Monyebodi, the attendees planned, *inter alia*, to remove board members from their offices, discharge the station manager from his duties, and to shut down the station.
- [49] Mr Hermans stated that Monyebodi's allegations could not be relied on as he was a disgruntled former employee who was suspended from his position twice before his employment was terminated. [I pause to state that when Mr Monyebodi gave evidence he assured the CCC that he was still employed by the station in his position as a technical and production manager and this assertion by him was not gainsaid].
- [50] According to Mr Hermans, the complaint against the Respondent had no basis. Instead, it was triggered by the then pending disciplinary hearing against Mr Monyebodi which was scheduled for the 23 March 2024. The hearing was to take place at 14h00 that afternoon. However, between 12h00 and 13h00, a group of people started gathering outside the station.
- [51] Mr Hermans was informed that this was a vigilante group which was there specifically to disrupt disciplinary proceedings. After disrupting the proceedings, the group proceeded to lodge a false complaint against the Respondent.

DISCUSSION OF EVIDENCE AND ANALYSIS

- [52] At this stage, it is convenient to discuss and analyse the allegations as well as the evidence, if any, in respect of such allegations.

Relationship Among Members of the Board

- [53] The allegation was that the Chairperson of the Board, Samuel Walter Mampane, is related to the Station Manager, Isaac Magapu Mampane.
- [54] The Respondent denied the allegation. This made it necessary for the Complainant to lead evidence. However, the only evidence that the Complainant led was to the

effect that one of the two men referred to the other as "*mtwana ka Mamncane*" meaning "*child of my mom's younger sister.*"

[55] This evidence left much to be desired, in my view. I say this for reasons stated in detail hereunder.

The Prohibited Relationships Among Members of the Board

[56] **I** The relevant clause specifically states:

"the composition of the Board must exclude immediate family members such as parents, siblings, children connected by birth or adoption etc."

[57] In terms of the clause above, certain people are excluded from the Board as a result of their relationship with another Board member. Specifically mentioned is the nature and the degree of the relationship that is prohibited.

[58] In the present case, to determine the whether the relationship, if any, between the Chairperson of the Board and the station manager falls within the description above we have to ask "*What is the nature of the relationship, if any?*"

[59] The prohibited relationship is specified as "*immediate family*" such as "*parents*", "*siblings*", and "*children*" whether these relationships be biological or a result of adoption etc.

[60] Mr Isaac Mampane is the station manager, and in his capacity as such he is an **ex officio** member of the Board. He and the Chairperson of the Board, therefore, may not be immediate family. The two cannot have a child-parent relationship and they cannot be siblings, whether biological or by adoption, while they are employed by the station.

[61] Interestingly, none of the relationships above was alleged. It was not alleged that one was a child or a parent, of the other or that the two were siblings.

[62] The allegation, therefore, in the form it was presented, failed to persuade the CCC

that it fell within the category of the relationships prohibited.

- [63] Of course some semblance of evidence was presented on behalf of the Complainant, but it was woefully inadequate. It was alleged that the two men were related as they referred to each other as "*mtana ka Mamncane*". This is a Zulu phrase meaning "*a child of my younger maternal aunt.*"
- [64] In my view, therefore, the allegation does not fall within the prohibited relationships.
- [65] In any event, the alleged relationship, as general as it was presented, was denied on behalf of the Respondent. It was explained that mothers of the two men shared a surname. The CCC was given no reason to reject this explanation and we accepted it as plausible.
- [66] One would have expected the Complainant to lead evidence in rebuttal. This did not happen. Instead, the Complainant sought to argue that the Chairperson of the Board sought to conceal the relationship by changing his surname.
- [67] The CCC cannot rely on such conjecture as proof that the station manager is related to the Chairperson of the Board. There are numerous reasons why people change names. To conclude that the reason for a name change was to conceal the fact that the two men were related, would be to rely on speculation - something the CCC is not allowed to do.
- [68] Having regard to the fact that the Respondent denied the relationship, and gave a perfectly plausible version, it seems to me that more should have been done by the Complainant, not only to prove the existence of the relationship, but also that it fell within the prohibited categories. That was not done.

As a result, this charge has not been proven.

Office Bearers of Political Parties and their Affiliates Prohibited From Playing a Role in a Community Radio Station

[69] **II Regulation 9(a) of the Regulations** states:

"the following office bearers must not play any role in the Board, Management and Staff of a Community Broadcasting Service: (a) Members of the Local Executive Committees of political parties, the youth affiliates and the women's affiliates of political parties, and any organisation that is in alliance with a political party."

[70] The provisions of this regulation are very specific; the prohibition includes members of the Board, Management as well as Staff. None of these individuals may play any role as office bearers in Local Executive Committees of political parties; the youth affiliates and the women's affiliates of political parties, and any organisation that is in alliance with a political party.

[71] In the present case, it was alleged that Mr Walter Mampane, the Chairperson of the Board, was an executive member of the African National Congress in branch 13, Emalahleni. This turned out to be a bare assertion with no supporting evidence.

[72] I say this because one would have expected that the Complainants would lead evidence in support of their case, but they chose not to.

[73] During the course of the proceedings, a great deal of time was spent on allegations and counter allegations but not a shred of evidence was produced in support of the allegations which were expressly denied.

[74] In the absence of any evidence, whether oral or documentary, an adverse finding against the Respondent cannot be made and the charge remains unproven.

Transfer of Licence from One Entity to Another

[75] **Regulation 8(1) and 8(2) of the Regulations** which state that:

"(1) An intention to transfer of a licence from one entity to the other must be tabled and endorsed by the licensee's constituency either at the AGM or Special General Meeting and

(2) *full disclosure of the intended transfer must be tabled and submitted to the community served”.*

[76] It was similarly alleged that at the Annual General Meeting (“AGM”) in November 2022, the licence of Witbank was transferred to another entity but that the issue of the transfer of the licence was never discussed. In addition, proper procedures were not followed, such as consulting relevant Stakeholders of the Station.

[77] No documentary evidence was produced proving or disproving that such transfer had actually occurred. No dates, names of parties or other details were given to prove the transfer. This charge also remains unproven.

Composition of the Board of Directors

[78] **Clause 20.5.1 of the Constitution** which states that:

“the Board of Directors shall consist of not less than 7 Executive members democratically elected at the AGM.”

[79] It was alleged that one of the Board members, who was expelled, was never replaced. As a result, the current number of Board members remained less than seven. This allegation was not denied and, as a result, no further evidence was needed.

The Community and the Management of the Station

[80] Regulation 13(2) of the Regulations read with clause 32.2 and clause 33 of the Constitution. Regulation 13(2) states that:

“a licensee must involve the community members in the management of the Community Broadcasting licensee.”

[81] It was alleged that the current Board deprived the community an opportunity to participate in the affairs of the Station. This allegation was also not denied. In any event, throughout the proceedings the Complainants led formidable evidence

proving that the allegations, that there was no community involvement in the affairs of the station, were true.

Sharing of Properly Audited Accounts

[82] Clause 21.1.5 of the Constitution which states that:

"the organisation is properly audited and accounts to be shared with the public."

[83] It was alleged that at the last AGM in November 2022, the Community Audience Advisory Committee members and community members were not apprised of the state of the finances of the Station. This allegation was not denied.

Alleged Name Change from Witbank FM to Greater Coal

[84] Clause 18.2 of the Witbank FM Constitution ("Constitution")

III The clause states that:

"the Board is responsible for making decisions and acting on such decisions, which it believes it needs to make in order to achieve the objectives of the organisation as stated in the constitution, however such decisions and their activities may not be against the resolutions of the members or be against the law of the Republic of South Africa."

[85] In support of the allegations that the Respondent had contravened Clause 18.2 of the Constitution, the Complainant alleged that Witbank FM had its name changed to Greater Coal without the knowledge or approval of the community.

[86] In November 2022, an AGM was held. It was alleged that it was at this meeting that the name change occurred. It was argued that this was not in accordance with procedure as the item was not tabled for a discussion and input from members of the public.

[87] There was evidence that the name that had been discussed previously was

“Emalahleni FM” not “Greater Coal.

- [88] There was no evidence that the issue of changing the name of Witbank FM was discussed. Similarly, there was also no evidence produced to show that the name change did in fact take place. Name change does not just occur because of someone’s say so. It has to be done procedurally and documented. In the present case there is no indication that such a process took place. For that reason, this remains an unproven allegation.
- [89] The Respondent could neither give a clear response nor raise any defence in this regard. It could also not produce minutes of the AGM to rebut the allegations by the Complainant.
- [90] On the other hand, the Complainant, also failed to produce evidence in support of the allegations. Merely stating that there was a name change without any documentary evidence, was of no assistance at all. Without such crucial evidence, an adverse finding against the Respondent could not be made.

Alleged Failure by the Board to Raise Funds for the Station

- [91] Clause 18.3.1 of the Constitution.

IV This clause directs the Board to *“raise funds or to invite donors and receive contributions on behalf of the organisation.”*

- [92] The allegations were that the Board failed to raise funds for the station.
- [93] There was conflicting evidence regarding the source of the funds in the coffers of the station, that were used to pay not only the station’s business expenses but to pay its workers salaries.
- [94] The Complainant insisted that the money was not raised by the Board but by workers at the station. Though disputing the allegations, the Respondent failed to provide details of where and when the Board raised the funds that were in the coffers of the station. This failure on the part of the Respondent to produce such

crucial evidence, served to lend credence to the Complainant's case that the Board did not raise the funds concerned.

Composition of the Board of Witbank FM

[95] Clause 20.5.1 of the Constitution.

V The clause states that:

"the Board of Directors shall consist of not less than 7 Executive members democratically elected at the AGM."

[96] The allegation was that the Board consisted of only six members instead of seven.

[97] The Respondent admitted the allegation. This made the leading of evidence in this regard unnecessary.

[98] It, therefore, became common cause that the composition of the Board was less than 7 members. There was, therefore, no need to lead any evidence.

Involvement of Community Members in the Management of the Community Broadcasting Licensee

[99] Regulation 13(2) of the Regulation read with clause 32.2 and clause 33 of the Constitution.

VI Regulation 13(2) states that:

"a licensee must involve the community members in the management of the Community Broadcasting licensee."

[100] Evidence was led that members of the community broadcasting service were not involved at all in the affairs of the station, let alone in its management. The saddest part is that not even the CAAC, the official representative body of the community of Malahleni, was involved.

Properly Audited Accounts to be Shared with the Public

[101] Clause 21.1.5 of the Constitution.

The clause requires the Board to ensure that:

"the organisation is properly audited and accounts to be shared with the public."

[102] The allegation was that the Respondent failed to provide the public with audited accounts.

[103] The alleged non compliance above, is linked to the main allegation that no AGM has been held since 2022.

[104] Since the last AGM of the Respondent was held in November 2022, it goes without saying that no financial information of the station could have been shared with the public since that time. Similarly, no other activity by the community could have taken place.

Failure by the Respondent to Comply with Language Requirements

[105] The Complainants alleged that the Respondent had failed to adhere to the requisite language balance.

[106] The Respondent admitted the allegation unequivocally. The evidence led was that the language requirement was not being met. Apparently, only the Sepedi language was aired, and this was against the station's license terms and conditions. The Respondent was struggling to get the other languages to comply. It was not clear how and when the Respondent would correct the situation, if at all.

IV Lack of Community Participation

[107] One of the main complaints was that community participation in the affairs of the station is nonexistent.

[108] There appears to be some confusion as to the nature, purpose and role of a community in respect of a community radio station. As a result, it is necessary, at this stage, to discuss this issue in detail.

[109] The allegation was that the current board deprived the community of an opportunity to participate in the station's affairs as prescribed in the 2019 Community Broadcasting Regulations under Community Participation.

Public Participation in the Development of the Editorial Policies of the Station

[110] The Regulations concerned provide as follows:

"32.2 The Board of Directors must ensure that there is public participation in the development of the editorial policies by inviting and considering public comment on such draft policies and by other means. The station must provide suitable means for regular input of community opinion on its services and ensure that such community opinion is given due consideration."

[111] As can be seen, Regulation 32.2 above imposes a duty on members of the Board to ensure that there is public participation in the development of the editorial policies. The Regulation then states how this should be achieved. One of the methods is *"inviting and considering public comment"* on draft policies. In addition, the Regulation grants the Licensee a discretion to use *"other means"*, not specified in the Regulation. As long as the means used are *"suitable"* that will suffice.

[112] A feature that stands out is that through the Regulation, public participation has been made as wide as possible. This is an indication that the Regulator contemplates a situation where public participation is simple and easy to affect.

[113] In addition, this also affords a Licensee an opportunity to use its discretion, to

engage the community in ways other than those specifically mentioned in the Regulation. So, it can never be an excuse that because the AGM has not yet taken place, the Respondent has not been able to secure public participation.

[114] In the present case, there was no evidence or indication that the Respondent made any attempt at all to involve the community in any editorial process or decision.

[115] Related to the above, there were also the following allegations:

115.1 That the Respondent failed to convene meetings with the CAAC in terms of its Constitution.

115.2 That audited accounts were not shared with the public.

[116] Of real concern for the CCC was that we are here dealing with a community radio station whose very existence depends upon community involvement.

[117] The allegation was that the current board deprived the community an opportunity to participate in the station's affairs as prescribed in the 2019 Community Broadcasting Regulations under Community Participation.

[118] The Complainants emphasised that, apart from playing a role in the election of members of the board, the community has never been involved in any meaningful participation in the affairs of the Respondent.

[119] Although the Respondent was reluctant to make any concessions in this regard, in our view, the complaint has merit for reasons set out here under:

[120] The ethos of a community broadcasting service should be to involve, engage and support the community. This should be more than lip service but should be done in earnest.

[121] Where there is no community participation or involvement of any kind, the radio station cannot claim that it is operating as a community radio station.

[122] In the present case, it is clear that the community is not involved in any way, in the affairs of the station.

[123] Lending credence to the above is the fact that the last official record of the station's AGM was November 2022. This means that for more than two years the community has had no opportunity to take its legal place as the owner and participator at the station.

Role of the Community in the Affairs of the Community Sound Broadcasting Service

[124] As can be seen from the above, in the present case, community involvement is not limited to AGM attendance only. After all, an AGM takes place only once a year. On the one hand, community participation is not a once off or one day affair but an on-going hands-on activity.

[125] Community involvement is more than just counting heads and signing the attendance register at a meeting. There are numerous ways that the station can adopt to ensure that the members of the community participate in the affairs of the station meaningfully, not once, but throughout the year.

[126] Participation in the development of editorial policy, is one example. It is one of those crucial duties of a radio station which cannot wait for an AGM which occurs once a year. That is why it can be achieved by inviting the public to comment on draft policies and by having regard to public input in that regard.

[127] In the present case, the Licensee is also specifically required to involve the community in the management of the broadcasting services. No submissions were made to the effect that although no AGM was held, management activities by the community were not curtailed.

[128] The silence on the part of the Respondent, in this regard, is telling, especially because there was a direct allegation that the community of Emalahleni did not know what was going on with their station.

- [129] The role of a community radio station is, among other things, to empower the community to shape its own destiny by having a voice in issues that affect it. It also enables members of the community to respond effectively to what is happening around them.
- [130] There is an unfortunate misconception that a community's sole purpose is to make the community radio station look good and compliant to the Authorities. That is a fallacy. Community is far more important than that. It is not a mere appendage to a community radio station. Communities play an important role as members of the community and the voice of the people. As they also share a common background and interest in the life and journey of the station, the station is more likely to succeed in its vision.
- [131] Notably, there is always mutual benefit for the parties, as they work, as partners, for the common good. While the community radio station may help to develop the community, members of the community, through their involvement, ensure that the station is able to do that successfully.
- [132] Members of the community get involved in programming and other activities precisely to assist the station in this symbiotic relationship.
- [133] Providing relevant information can easily be procured and disseminated if producers, for instance, come from the community served by the community radio station. This is because such producers, as members of the community, are better placed to understand local realities more intimately. The station, in turn, is able to meaningfully give a voice to the voiceless.
- [134] Community radio stations are operated, owned and influenced by the communities they serve. More importantly, community radio stations are the most widely available and affordable medium of communication between the masses.
- [135] In the present case, there is evidence that CAAC was established to ensure that the community of Emalahleni would not only play a role in the affairs of the station but would also be kept abreast of all the affairs of the station.

[136] However, there is evidence that CAAC exists in name only. The CAAC was established specifically to ensure that members of the community played a meaningful role in the affairs of the station. That goal has not been fulfilled.

[137] This is sad as, considering its composition,(of people with various backgrounds), the CAAC was the most convenient and effective vehicle to represent the wider community and deal with issues on its behalf.

[138] I say this because the CAAC's composition was specifically designed to ensure that the community played its role effectively.

[139] The CAAC plays an important role in the affairs of the station. For that reason, it is obligatory that the CAAC be consulted on the station's performance in promoting the mandate; This is done in various ways:

1. Submitting a report to the Board of Directors every six (6) months on the station's performance in each community of coverage and advise on issues arising.
2. Publishing an Annual Review JG Report each year, assessing the extent to which the station is meeting the mandate as outlined in the Charter for inclusion in the station's Annual Report for presentation to Parliament.
3. In addition to the above, the CAAC shall consist of persons not employed by the station but with experience and or relevant skills for the effective functioning of the station.

[140] The CCC has had regard to the above. Moreover, it has noted that despite the existence of the CAAC, the Respondent failed to ensure that the community was truly involved in the affairs of Witbank FM.

CONCLUSION

[141] In conclusion, to determine aggravating factors as opposed to mitigating factors, the CCC had to consider the following:

The nature and seriousness of the non compliances;
The consequences of the non compliances;
Steps taken by the Respondent to remedy the non compliances;
Steps taken by the Respondent to ensure that similar incidents do not occur in the future.

The Nature and Seriousness of the non compliances

[142] The non compliances range from failure to comply with the terms and conditions of a licence, failure to comply with Regulations and failure to comply with the Constitution of the Respondent.

[143] Although all the non-compliances are very serious, there are those which are more serious than others. In the present case, what comes to mind is lack of community involvement in the affairs of the station.

[144] In the present case, lack of community participation by members of the community is very serious as it takes away the power from the ordinary people and the opportunity to shape their own lives and communities.

Consequences of the Non Compliances

[145] It is impossible for the CCC to determine the consequences of the non-compliances as it has no resources to undertake the necessary investigations.

[146] Suffice it to say that, all non-compliances, by Licensees, have an adverse impact on consumers served by them.

[147] In the present case, the community of Emalahleni was disadvantaged as a result of lack of community participation in the affairs of the radio station. This is just one example. There may be many more.

Steps Taken by the Respondent to remedy the non compliances.

[148] No steps were taken by the Respondent to try to remedy or mitigate the problems which might have led to the current situation.

[149] A disturbing feature about this matter is that there was no indication from the Respondent how and when it was going to remedy the various non compliances. This silence on its part is cause for concern as it may be an indication that the Respondent does not take compliance issues seriously.

Steps Taken by the Respondent to Ensure that Similar Non compliances Do Not Occur in the Future

[150] Though confronted with overwhelming evidence in respect of a number of contraventions, the Respondent failed to address the all-important question of how to prevent similar incidents of non-compliances in the future.

[151] For example, the Respondent could not even say whether and when it would plan a special or an elective AGM to at least address the issue of the composition of the Board or to address the lack of participation by members of the community.

[152] The above is a strong indication that the Respondent lacks insight of the seriousness of the non-compliances. As a result, the chances of the Respondent repeating similar non compliances are high.

[153] Added to this was the fact that the Respondent expressed no remorse whatsoever. This is certainly an aggravating factor, in my view.

[154] From the foregoing, it seems that heavy sanctions are warranted. However, whatever sanction is imposed, the CCC has to ensure that it is not against the public interest. Any sanction that adversely affects the community, the very people who were victims, in the present case, would not be in the public interest. Retribution is called for, but we must ensure that the community is not adversely affected thereby. It must be emphasised that the interests of the community are paramount and must, therefore, be protected.

FINDING

Not Enough Evidence

[155] Accordingly, the CCC makes the following findings:

155.1 That there is not enough evidence to prove that the Respondent did not comply with the following

1. **Regulation 5(2) of the Community Broadcasting Services Regulations of 2019 ("Regulations"). Regulation 5(2)** states that

"the composition of the Board must exclude immediate family members such as parents, siblings, children connected by birth or adoption, etc."

2. **Regulation 9(a) of the Regulations** which states that

"the following office bearers must not play any role in the Board, Management and Staff of a Community Broadcasting Service: (a) Members of the Local Executive Committees of political parties, the youth affiliates and the women's affiliates of political parties, and any organisation that is in alliance with a political party."

3. **Regulation 8(1) and 8(2) of the Regulations** which states that:

"(1) An intention to transfer of a licence from one entity to the other must be tabled and endorsed by the licensee's constituency either at the AGM or Special General Meeting and

(2) full disclosure of the intended transfer must be tabled and submitted to the community served".

Alleged name change from Witbank FM to Greater Coal

[156] No evidence was produced confirming that the station's name was in fact changed from Witbank FM to Greater Coal.

[157] This allegation, therefore, remained unproven.

Proven Contraventions

[158] On the other hand, the CCC found the following to have been contravened by the Respondent:

158.1 Clause 18.3.1 of the Constitution which directs the Board to *"raise funds or to invite donors and receive contributions on behalf of the organisation."* in that the Board failed to raise funds for the station.

158.2 Clause 20.5.1 of the Constitution which states that:

"the Board of Directors shall consist of not less than 7 Executive members democratically elected at the AGM." in that the Board consisted of only six members instead of seven.

158.3 Regulation 13(2) of the Regulations read with clause 32.2 and clause 33 of the Constitution. Regulation 13(2) states that:

"a licensee must involve the community members in the management of the Community Broadcasting licensee."

[159] The Respondent is found to have failed to comply with Regulation 13(2) in that it failed to involve the community in the management of the station.

[160] The Respondent is found not to have complied with the language obligations in terms of its licence terms and conditions.

ORDER

[161] Accordingly, the CCC recommends the following: that the Authority:

(a) directs the Licensee to desist from further non compliances in future;

(b) directs the Licensee to take the following remedial steps:

(i) with regard to Lack of Community Participation - schedule an AGM no later than three (3) months of the issuing of this order, and that the AGM be announced on Witbank FM and in a local newspaper, well before the date of the meeting.

(c) directs the Licensee to provide a detailed, clear and concrete plan on how it is going to remedy the rest of its non compliances, to the Authority, within a period not exceeding 12 (twelve) months from the issuance of this Order.

TM Masipa

Judge Thokozile Masipa
Chairperson of the CCC

10 March 2025

Date

