

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 28 June 2007

Case number: 3/2007

**Monitoring and Complaints Unit of
the Independent Communications
Authority of South Africa**

Complainant

Vs

Rainbow Christian Community Radio

Respondent

The Complaint

Rainbow Christian Community Radio has failed to comply with its license conditions to the satisfaction of the MCU.

Summary

Complaints and Compliance Committee (“CCC”), a committee set up by the Council of the ICASA in terms of section 17C of the ICASA Act – failure of *Rainbow Christian Community Radio* to comply with licence conditions by submitting its audited Financial Statements and Minutes of Programming Committee Meetings.

Held on the facts,

1(a) that the CCC is satisfied that *Rainbow Christian Community Radio* conceded that it acted in contravention of its license conditions requiring the radio

¹ Established in terms of s 17C of the ICASA Act 13 of 2000 as amended

station to submit its Financial Statement, to the Monitoring and Compliance and Compliance Unit of the Independent Communication Authority when requested; and

- 1(b) that a recommendation is hereby made to ICASA to impose a fine of R5000.00 suspended for a period of 2 years on condition that *Rainbow Christian Community Radio* is not found by the CCC to have breached the same licence condition during the period of suspension.
- 2 (a) The CCC is further satisfied that *Rainbow Christian Community Radio* conceded that it acted in contravention of its licence conditions requiring it to keep and to submit to the Monitoring and Compliance Unit of ICASA the, Minutes of Programming Meetings when requested;
- (b) A recommendation is hereby made to ICASA to impose a fine of R5000.00 suspended for a period of 2 years on condition that *Rainbow Christian Community Radio* is not found by the CCC to have breached the same licence condition during the period of suspension.
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Judgment

K E Moloto-Stofile

[1] *Rainbow Christian Community Radio* is a community radio station, licensed by the Independent Communications Authority of South Africa (ICASA). The Monitoring and Complaints Unit (“MCU”) of ICASA has referred the complaints set out in the charge sheet against the station to this Committee for hearing, and adjudication.

[2] The hearing commenced with Mr. *Mkhize*, putting the charges to the Representatives of radio station being that:

Charge 1: *Rainbow Christian Community Radio* failed to submit Audited financial statements setting out the station’s income and expenditure, which is a requirement of clause 9.4 of the station’s license conditions; which states that; “ *the licensee shall furnish to the Authority, for every completed one (1) year of this license or upon*

written demand by the Authority an audited statement of income and expenditure compiled in accordance with Generally Accepted Accounting Procedures, and any further supporting vouchers and documentations as may be required by the authority after receipt of the annual audited statement”; and that

Charge 2: They failed to submit to the Authority proof of meetings of the programming committees in the form of minutes, which is a requirement of clause 9 of Schedule C of the station’s license conditions which states that, *“the licensee shall within one (1) year of being granted the license establish programming committees to promote community participation in its coverage area to cater for the programming needs of members from areas such as Randfontein, Kagiso, Ennerdale, Krugersdorp, Rooderpoort and their environs. The licensee shall provide the Authority with proof of such meetings by providing the appropriate minutes”*.

[3] Charge 1 was put to Mr Humphrey Berkinstock, the Station Manager of Rainbow Christian Community Radio, by Mr Mkhize and his plea was that he admitted that they failed to submit the Audited Annual Financial Statements in time. However, he stated that they submitted unaudited statements at the time, and that at the moment he is possession of audited Financial Statements. He further stated that the audit was unqualified.

[4] A plea of guilty was entered; and the parties addressed the Committee in mitigation. Mr Humphrey Berkinstock stated that the problem was caused by their internal auditors who were volunteers. They also did not have enough funds at the time to engage external auditors and that they have since appointed a permanent bookkeeper, together with external auditors. They have also registered a section 21 Company.

[5] Mr Mkhize then put Charge 2 to the representatives of *Rainbow Christian Community Radio* and Mr Humphrey Berkinstock pleaded guilty and admitted that they failed to submit the appropriate minutes of the programming committee to MCU, but gave an explanation that indicated their inexperience at the time to take such minutes. He was asked by the Chairperson to clarify his plea whether he understood the charge and whether he still wished to plead guilty, to which he replied in the affirmative.

[6] Mr Ronald Johnson addressed the Committee in mitigation and said that they had not been able to get minutes drawn up as they had between 300 – 400 people attending their programming meetings. They instead have reports on their meetings, which he proposes to hand in instead of minutes. Mr Berkinstock was asked whether he understood the difference between community participation forums and programming committees. He indicated that they did have an internal Programming Committee, which comprises of internal staff but they did not keep minutes of its meetings. The CCC made him aware of the station's responsibilities for both programming committee meetings and community participation forums. They apologized for their breach and said it would not happen again. The parties then addressed the committee on sanction.

[7] In these circumstances, and having taken into account the evidence at its disposal:

1(a) the CCC is satisfied that *Rainbow Christian Community Radio* conceded that it acted in contravention of its license condition requiring the radio station to submit Financial Statements to the Monitoring and Compliance Unit of Independent Communication Authority when requested; and

1(b) **In the light of the seriousness of this breach and to ensure future compliance, a recommendation is hereby made by the CCC to ICASA to impose a fine on *Rainbow Christian Community Radio* of R5000.00, suspended for a period of 2 years on condition that *Rainbow Christian Community Radio* is not found by the CCC to have contravened the same licence condition during the period of suspension;** and further more that

2 (a) The CCC is satisfied that *Rainbow Christian Community Radio* conceded that it acted in breach of its licence condition requiring it to submit to the Monitoring and Compliance unit of ICASA, the Minutes of Programming Meeting when requested and therefore;

(b) In the light of the seriousness of this breach and to ensure that there is future compliance, a recommendation is hereby made to ICASA to impose a fine of R5000.00 suspended for a period of 2 years on condition that *Rainbow Christian Community Radio* is not found by the CCC to have breached the same licence condition during the period of suspension.

[8] The co-ordinator of the CCC is directed to communicate the recommendations to *Rainbow Christian Community Radio* in writing and to advise them that they have an election of accepting the recommendations and if they do, they should advise him accordingly. Or if they do not accept the recommendations they should file representations with him to be placed before Council when considering the appropriate order, with due consideration of the recommended sanction. The time periods for submitting their election should be stated by the co-ordinator in the letter to *Rainbow Christian Community Radio*.

The Committee Members R. Mokwena-Msiza, N.Ntanjana, D.Moalosi, S.Thakur and J.C.W van Rooyen concurred.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC

16 August 2007

The above Judgment was submitted to Council of the (ICASA) for consideration of its resolve as to sanction in the matter of *Rainbow Christian Community Radio* —Case 3/2007.

The Council endorsed the recommendation as to sanction on 16th August 2007.