

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of first hearing: 3 June 2010

Case number: 32/2010

Hearing continued on 21 June 2010.

In the matter between

Compliance Unit of ICASA

Complainant

and

Unitra Community Radio

Respondent

Complaints and Compliance Committee

V Soni SC (Acting Chairperson)

N. Ntanjana

S. Thakur

T. Ramuedzisi

J.C.W. van Rooyen SC ²

The Complainant :

Ms. Fikile Hlongwane – Manager Compliance Unit

Mr. Maano Dzebu – Compliance Officer

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

² By virtue of section 17A (1) of the ICASA Act 2000, as amended.

For the Respondent :

Mr. L. Gqwetha (Board Member);

Mr. Wiseman Xabendlini (Station Manager);

Mr. Yonela Ntsabo (Board Member)

In attendance: Mr. Luxolo Tyali (Complainant representing the community)

INTERIM JUDGMENT

V Soni SC

[1] The Complaints and Compliance Committee (“the Committee”) has been called upon to decide on four charges that have been proffered against Unitra Community Radio (“the Radio Station”).

[2] The Radio station, at the session of these proceedings that was held on 3 June 2010, pleaded guilty to counts 2 and 4 but not guilty to counts 1 and 3. For convenience sake a copy of the charge sheet setting out all the charges is annexed hereto, marked “**A**”.

[3] In view of the plea of guilty and having regard to the information available to it, the Committee finds the Radio Station guilty of counts 2 and 4.

[4] However, in respect of the sanction that ought to be imposed, the Committee has decided as follows:

the imposition (and thus the recommendation to Council) of a sanction in respect of each of counts 2 and 4 is postponed to 31 January 2011. The reasons for this decision emerge from what is set out immediately hereunder.

- (i) Whilst the guilt or otherwise of the Radio Station in respect of counts 1 and 3 was being considered by the Committee, it became clear that there have been numerous violations by the Radio Station. Some of these were of a very serious nature. For example, it emerged that for some years there was no properly constituted Board. In addition, the Radio Station's constitution was deeply flawed. For example, to secure membership, members of the public were required to pay an annual fee of R200. In view of the Committee, such a clause would not withstand constitutional scrutiny.
- (ii) A finding of guilty on counts 1 and 3 would, however, not touch the essence of the problem that beset the Radio Station. For that to occur, further charges would have to be prepared and investigated.
- (iii) It also emerged that the community was deeply divided and that there were two groups who appeared to be attempting to have control of the station: the one to retain control and the other to wrest control.
- (iv) During the course of exchanges with the Committee, however, the representatives of the groups accepted that it was in the community's interest that they cease hostilities.
- (v) On being encouraged to map out the way forward, through the facilitation of ICASA's Compliance Unit, they reached an agreement on the way forward.
- (vi) After considering the terms of the agreement and the input of the community, the Committee has accepted the agreement that has finally been reached

[5] The terms of the agreement were as set out in the paragraphs hereunder.

[6] A Steering Committee is to be formed.

[7] The members of the Steering Committee are:

- (a) Mr Bongani Magoko (Chairperson of the Steering Committee)
- (b) Mr Lungisa Gqwetha
- (c) Ms EN Matu

- (d) Mr Luxolo A Tyali
- (e) Mr Sisa Maxakana
- (f) Mr Zola Yolelo
- (g) Mr Wiseman Xabendlini
- (h) Mr Thembinkosi Gqiba.

[8] One of the first tasks of the Steering Committee is to appoint a constitutional committee whose principal task is to propose amendments to the constitution that the station had submitted to ICASA for the license application and to make improvements thereon.

[9] Notwithstanding the provisions of the constitution, the membership fee payable by an ordinary member will be R10 per annum. The membership fees for other categories of members will be determined by the Steering Committee.

[10] The right to register for membership would commence the following day, 22 June 2010, and would close on 31 July 2010.

[11] The Radio Station will ensure that the audited financial statements and amended constitution are ready by 31 July 2010 so that they are presented at the AGM to be held on 21 or 22 August 2010.

[12] A progress report will be submitted to the Compliance Unit fortnightly. The first such report due is to be submitted on 11 July 2010.

[13] In light of these developments, the Committee decided that it would postpone the consideration of counts 1 and 3 till 31 January 2011. Should the Compliance Unit, having regard to the progress made in healing the division and ensuring compliance by the Radio Station with its obligations be satisfied, the Committee may decide not to proceed with any further consideration of those counts.

[14] The Compliance Unit may in addition ask that a finding be made in respect of charges 1 and 3 and also that a penalty be imposed (and thus recommended) in respect of each of charges 2 and 4.

[15] To the extent necessary, these proceedings are postponed indefinitely.

[16] It is recorded that the decision and reasons have been unanimously agreed upon by all members of the Committee.

V Soni

Acting Chairperson

Judgment confirmed by:

A handwritten signature in black ink, reading "J.C.W. van Rooyen". The signature is written in a cursive style with a large initial 'J'.

Councillor JCW Van Rooyen