

# COMPLAINTS AND COMPLIANCE COMMITTEE<sup>1</sup>

Date of hearing: 17<sup>th</sup> may 2007

Case number: 5/2007

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

**Complainant**

**Vs**

**Kaya FM**

**Respondent**

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## The Complaint

Kaya FM had failed to comply with section 8.6 of its license condition.

The clause states that: *“the licensee must keep a record of Programmes broadcast, which must be submitted on a quarterly basis to the Authority. A pro-forma log to be kept, will be supplied by the Authority”*.

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## Summary

The 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 Kaya FM to comply

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<sup>1</sup> Established in terms of s 17C of the ICASA Act 13 of 2000 as amended

with licence conditions by submitting music logs instead of the required Programme Log Sheets to ICASA.

Held on the facts;

- i) that the CCC is satisfied that the MCU proved that Kaya FM was in breach of its licence condition and
  - ii) a recommendation be and is made to ICASA to impose a fine of R5000.00 suspended for a period of 2 years on condition that Kaya FM is not found by the CCC to have breached the same licence condition during the period of suspension.
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## **Judgment**

### **KE Moloto-Stofile (Chairperson)**

[1] Kaya FM is a commercial radio station, licensed by the Independent Communications Authority of South Africa (ICASA). The Monitoring and Complaints Unit (“MCU”) of ICASA has decided to place complaints set out in the charge sheet against the station before this Committee.

[2] Before the hearing Mr. *Mkhize*, who put the case on behalf of the MCU, informed the Committee that he had received the documents that were outstanding in terms of charge 1 and had had discussions with Kaya FM representatives and that he had decided to withdraw Charge 1 against Kaya FM and was only proceeding with charge 2. The charge levelled against the representatives of Kaya FM being that they breached section 8.6 of their license conditions which states that, “*the licensee must keep a record of*

*Programmes broadcast, which must be submitted on a quarterly basis to the Authority. A pro-forma log to be kept, will be supplied by the Authority”.* They kept sending music logs instead of the required general Programme logs, despite repeated requests by the MCU.

[3] The charge was put to the Managing Director of Kaya FM, Ms Deacon, by Mr Mkhize and she pleaded guilty on behalf of the station and admitted that they failed to submit the appropriate Programme Logs, but stated that it was a result of a misunderstanding. She was asked by the Chairperson to clarify her plea whether she understood the charge and whether she still wished to plead guilty. She confirmed the station having contravened its licence condition.

[4] A plea of having contravened was entered and the parties addressed the Committee in mitigation. The committee heard an address by the Mr Mkhize for the CMU that the representatives of Kaya FM had over a period of time, since December 2001 been made aware that they were breaching their license conditions by failing to submit quarterly Programme Logs. Instead of submitting Programme Logs as requested, the representatives of Kaya FM have been submitting Music Logs. In May 2006 the representatives of Kaya FM were made aware that the logs submitted were incorrect and that they were still in breach. To date the representatives of Kaya FM had not rectified the position. He therefore submitted that a sanction commensurate with the seriousness of their breach be imposed.

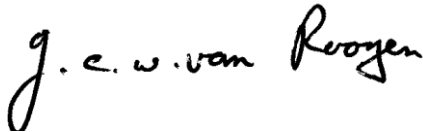
[5] The representative of Kaya FM addressed the committee and apologised for their failure to submit the Programme Logs as required, and stated that their breach was as a result of a breakdown in communication. The correspondence sent to Kaya FM by the MCU went to a general fax and not to the office of the General Manager with the result that it did not come to her attention and she was not placed in a position to respond; that there was no deliberate act on their part and that they are a serious commercial Radio Station, which appreciates the consequences of failing to submit. Had the correspondence

come to her attention, they would have submitted the required logs. She therefore requested that they be given a warning.

[6] **Having taken the above address and documents submitted into account, the CCC is satisfied that the Management at Kaya FM knew or ought to have known from the correspondence sent to it that they were in breach of the condition of its licence and that their explanation does not change their situation. The Committee therefore recommends to ICASA to impose a fine of R5000 and that the fine is wholly suspended for a period of 2 years, on condition that the representatives of Kaya FM are not found guilty of breach of the same condition during the period of suspension.**

**K E Moloto-Stofile (Chairperson)**

*The Committee Members R. Mokoena-Msiza, D. Moalosi, and S. Thakur concurred.*



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**JCW van Rooyen**

**For: CHAIRPERSON OF THE CCC**

**The above Judgment was submitted to Council of the (ICASA) for consideration of its resolve as to sanction in the matter of Kaya FM —Case 5/2007.**

**The Council endorsed the recommendation as to sanction on 22<sup>nd</sup> August 2007.**